compliance with this airworthiness directive, if any, may be obtained from the ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Effective Date

(g) This amendment becomes effective on May 7, 2003.

Issued in Burlington, Massachusetts, on March 25, 2003.

Francis A. Favara,

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

[FR Doc. 03–7743 Filed 4–1–03; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 244 and 249

[Release Nos. 33–8216; 34–47583; IC–25983; FR–69; File Nos. S7–43–02 and S7–44–02]

RIN 3235–AI69 and 3235–AI71

Filing Guidance Related to: Conditions for Use of Non-GAAP Financial Measures; and Insider Trades During Pension Fund Blackout Periods

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; interim guidance regarding Form 8–K Item 11 and Item 12 filing requirements.

SUMMARY: The Securities and Exchange Commission is issuing interim guidance regarding the filing of information pursuant to new Items 11 and 12 of Form 8–K. Item 11 requires a registrant to provide public notice of a pension fund blackout period. Final rules related to this disclosure item were published in the **Federal Register** on January 28, 2003 (68 FR 4337). Item 12 requires a registrant to furnish specified disclosure when the registrant, or any person acting on its behalf, makes any public announcement or release disclosing material non-public information regarding the registrant's results of operations or financial condition for a competed quarterly or annual fiscal period. Final rules related to this disclosure item were published in the **Federal Register** on January 30, 2003 (68 FR 4819).

EFFECTIVE DATE: March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew Thorpe, Special Counsel, with respect to the Form 8–K Item 11 information, or Joseph Babits, Special Counsel, with respect to the Form 8–K Item 12 information, at (202) 942–2910, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0402.

SUPPLEMENTARY INFORMATION: On January 22, 2003, the Commission issued two separate adopting releases. One of the releases contained final rules to clarify the application and prevent evasion of section 306(a) of the Sarbanes-Oxley Act of 2002.[1] Section 306(a) prohibits any director or executive officer of an issuer of any equity security from, directly or indirectly, purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that temporarily prevents plan participants or beneficiaries from engaging in equity securities through their plan accounts, if the director or executive officer acquired the equity security in connection with his or her service or employment as a director or executive officer. Among other things, the Commission created new Item 11 of Form 8–K, which requires a registrant to provide public notice of a pension fund blackout period. The Item 11 disclosure requirement is effective on March 31, 2003. The Commission deferred effectiveness until March 31 to allow time for Commission staff to program the addition of Item 11 to the Electronic Data Gathering, Analysis and Retrieval (''EDGAR'') system. In recognition of the fact that section 306(a) of the Sarbanes-Oxley Act of 2002, including the notice requirement, became effective on January 26, 2003, the release stated that between January 26 and March 31, 2003, a registrant could provide the required notice to the Commission by disclosing the information described in Item 11 under Item 5 (''Other Information'') of Form 10–Q or 10–QSB, in the first quarterly period filed by the registrant after commencement of the blackout period.

The other release contained final rules and amendments to address public companies' disclosure or release of certain financial information that is calculated and presented on the basis of methodologies other than in accordance with generally accepted accounting principles.[2] Among other things, the Commission created new Item 12 of Form 8–K, that requires a registrant to furnish specified disclosure when the registrant, or any person acting on its behalf, makes any public announcement or release disclosing material non-public information regarding the registrant's results of operations or financial condition for a competed quarterly or annual fiscal period. The Item 12 disclosure requirement applies to earnings releases and similar announcements made after March 28, 2003.

Because the necessary programming to add Items 11 and 12 of Form 8–K to the EDGAR system is not yet complete, we are providing the following interim guidance regarding the filing requirement for these Items.

- Registrants should continue to disclose the information required by Item 11 under Item 5 (''Other Information'') of Form 10–Q or 10–QSB in the first quarterly report filed by the registrant after commencement of the blackout period.
- Registrants should furnish the information required by Item 12 under Item 9 (''Regulation FD Disclosure'') of Form 8–K.
- The text of Item 5 of the Form 10–Q that provides information required under Item 11 should indicate that information is being provided under Item 11.
- The caption in the Form 8–K that provides information required under Item 12 should indicate that information is being provided under Item 12, or under Items 9 and 12, as the case may be.

This procedural guidance does not affect the legal obligations or consequences of providing the information under these items. For example, the information in a Form 8–K report furnished pursuant to Item 9 is not deemed to be ''filed'' for the purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that section, except if the registrant specifically states that the information is to be considered ''filed'' under the Exchange Act or incorporates it by reference into a filing under the Securities Act of 1933 or the Exchange Act. As provided in the final rules, a registrant must furnish the information that is required by Item 12 under Item 9 of Form 8–K within five business days after the occurrence of an event specified in Item 12. Information provided under Item 12 also may be required to be provided under the requirements of Regulation FD; in this case, any earlier deadline for Item 9 under Regulation FD would apply.

This interim guidance will remain in effect until we announce that our EDGAR system permits registrants to file or furnish information using the

[1] Release No. 34–47225 (January 22, 2003) [68 FR 4337].

[2] Release No. 33–8176 (January 22, 2003) [68 FR 4819].

Item 11 and 12 designations. We will issue a statement and post it on the Commission's Web site to announce this date as soon as it becomes known.

By the Commission.

Dated: March 27, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7841 Filed 4–1–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9034]
RIN 1545–AW65

Education Tax Credit; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Thursday, December 26, 2002 (67 FR 78687), relating to the education tax credit.

DATES: This correction is effective December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Marilyn E. Brookens (202) 622–4920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 25A of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9034), that were the subject of FR Doc. 02–32453, is corrected as follows:

§ 1.25A–3 [Corrected]

■ 1. On Page 78694, Column 2, § 1.25A–3(d)(2), *Example 4.,* line 1, the language ''Prior to 1998, Student was not'' is corrected to read ''Prior to 1998, Student C was not''.

§ 1.25A–5 [Corrected]

■ 2. On page 78696, Column 2, § 1.25A–5(c)(4), *Example 1.,* line 2, the language ''A, who lives on X's campus, $3,000 for'' is corrected to read ''A, who lives on University X's campus, $3,000 for''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Procedure & Administration).

[FR Doc. 03–7732 Filed 4–1–03; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40, 48, and 49

[TD 9051]

RIN 1545–AX97

Diesel Fuel; Blended Taxable Fuel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the tax on diesel fuel and the tax on blended taxable fuel. This document also makes clerical and clarifying changes to other excise tax regulations. These regulations affect persons that remove, enter, or sell diesel fuel or remove or sell blended taxable fuel.

DATES: *Effective Date:* These regulations are effective April 2, 2003.

Applicability Date: For date of applicability, *see* § 48.4081–3(g)(2)(ii).

FOR FURTHER INFORMATION CONTACT: Frank Boland, (202) 622–3130 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Manufacturers and Retailers Excise Tax Regulations (26 CFR part 48) relating to the definition of diesel fuel, the definition of refinery, and the application of the tax on blended taxable fuel.

On May 16, 2002, a notice of proposed rulemaking (REG–106457–00) was published in the **Federal Register** (67 FR 34882). Written comments were received but no public hearing was requested or held. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Definition of Diesel Fuel

Existing regulations generally define diesel fuel as any liquid that, without further processing or blending, is suitable for use as a fuel in a diesel-powered highway vehicle or diesel-powered train. The proposed regulations would add to existing regulations by providing that a liquid is suitable for use as diesel fuel if the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train.

One commentator suggested that the final regulations should provide that a liquid does not possess practical and commercial fitness solely by reason of its possible or rare use as a fuel in a vehicle or train. The final regulations adopt this suggestion. The final regulations also provide that a liquid may possess practical and commercial fitness even though the liquid is not predominantly used as a fuel in a vehicle or train.

The commentator also suggested that the final regulations should describe *practical and commercial fitness* in a manner similar to the description of the term in § 145.4051–1(a)(4) of the temporary regulations relating to the tax on the retail sale of certain heavy vehicles. The final regulations do not adopt this suggestion because Treasury and the IRS believe that such detail is not required to determine the classification of most liquids.

Definition of Refinery

Under existing regulations, refinery generally means a facility used to produce taxable fuel from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons and from which taxable fuel may be removed by pipeline, by vessel, or at a rack. The proposed regulations would remove from the definition the references to the source of materials used to produce taxable fuel.

Taxable fuel includes finished gasoline and certain gasoline blendstocks. One commentator indicated that because gas processing plants and chemical plants produce small amounts of gasoline blendstocks, the plants would be considered refineries under the proposed definition. Thus, the commentator suggested, refinery should exclude gas processing plants and chemical plants that mainly produce products other than taxable fuel.

In fact, however, the gas processing plants and chemical plants described by the commentator are refineries under existing regulations. A facility does not lose its status as a refinery simply because it produces only small amounts of gasoline blendstocks. Thus, the final regulations do not adopt the commentator's suggestion.