such returns, statements, or other documents to the Internal Revenue Service, so stating. A person required to file a taxpayer identifying number shall correct any errors in such filing when his attention has been drawn to them.

(d) *Obtaining a taxpayer identifying number*—(1) *Social security number*. Any individual required to furnish a social security number pursuant to paragraph (b) of this section shall apply for one, if he has not done so previously, on Form SS-5, which may be obtained from any Social Security Administration or Internal Revenue Service office. He shall make such application far enough in advance of the first required use of such number to permit issuance of the number in time for compliance with such requirement. The form, together with any supplementary statement, shall be prepared and filed in accordance with the form, instructions, and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. Individuals who are ineligible for or do not wish to participate in the benefits of the social security program shall nevertheless obtain a social security number if they are required to furnish such a number pursuant to paragraph (b) of this section.

(2) *Employer identification number*. Any person required to furnish an employer identification number pursuant to paragraph (b) of this section shall apply for one, if he has not done so previously, on Form SS-4, which may be obtained from any office of the Internal Revenue Service. He shall make such application far enough in advance of the first required use of such number to permit issuance of the number in time for compliance with such requirement. The form, together with any supplementary statement, shall be prepared and filed in accordance with the form, instructions, and regulations applicable thereto, and shall set forth fully and clearly the data therein called for.

(e) *Banks, and brokers and dealers in securities*. For additional requirements relating to deposits, share accounts, and brokerage accounts, see 31 CFR 103.34 and 103.35.

(f) *Penalty*. For penalty for failure to supply identifying numbers, see section 6676 and § 301.6676-1.

(g) *Nonresident alien exclusion*. This section shall not apply to nonresident aliens, foreign corporations, foreign partnerships, or foreign private foundations that do not have income effectively connected with the conduct of a trade or business within the United States and do not have an office or place of business or a fiscal or paying agent in the United States.

(h) *Effective date*. The provisions of this section are effective for information which must be furnished after April 15, 1974. See the parts of 26 CFR (revised as of April 1, 1973) which relate to the particular tax for provisions with respect to information which must be furnished before April 16, 1974, and for information which must be furnished to the Bureau of Alcohol, Tobacco and Firearms prior to the effective date of comparable procedural regulations promulgated by the Bureau in 27 CFR Part 70. Nothing contained in the regulations under section 6109 shall limit the authority of the Internal Revenue Service to obtain taxpayer identifying numbers required before or after the effective date of this paragraph after notice is served upon the taxpayer pursuant to section 6001.

PAR. 4. Paragraph (a) of § 301.6676-1 is amended by replacing the phrase "Under § 1.6109-1(b)(2)" with "Under § 301.6109-1(c)". It reads as follows:

§ 301.6676-1 Penalty for failure to supply identifying number.

(a) *In general*. Except as provided in paragraph (c) of this section, if any person who is required by the regulations under section 6109—

(1) To include his identifying number in any return, statement, or other document,

(2) To furnish his identifying number to another person, or

(3) To include in any return, statement, or other document made with respect to another person the identifying number of such other person,

fails to comply with such requirement at the time prescribed by such regulations, such person shall pay a penalty of $5 for each such failure. Such penalty shall be paid in the same manner as tax upon the issuance of a notice and demand therefor. Under § 301.6109-1(c) a payer is required to request the identifying number of the payee. If, after such a request has been made, the payee does not furnish the payer with his identifying number, the penalty will not be assessed against the payer.

* * * * *

PAR. 5. Section 301.7701-11 is amended to read as set forth below:

§ 301.7701-11 Social security number.

For purposes of this chapter, the term "social security number" means the taxpayer identifying number of an individual or estate which is assigned pursuant to section 6011 (b) or corresponding provisions of prior law, or pursuant to section 6109, and in which nine digits are separated by hyphens as follows: 000-00-0000. Such term does not include a number with a letter as a suffix which is used to identify an auxiliary beneficiary under the social security program. The terms "account number" and "social security number" refer to the same number.

PAR. 6. Section 301.7701-12 is amended to read as set forth below:

§ 301.7701-12 Employer identification number.

For purposes of this chapter, the term "employer identification number" means the taxpayer identifying number of an individual or other person (whether or not an employer) which is assigned pursuant to section 6011 (b) or corresponding provisions of prior law, or pursuant to section 6109, and in which nine digits are separted by a hyphen, as follows: 00-0000000. The terms "employer identification number" and "identification number" (defined in § 31.0-2(a)(11) of this chapter (Employment Tax Regulations)) refer to the same number.

[FR Doc.74-6046 Filed 3-14-74;8:45 am]

[T.D. 7308]

PART 12—TEMPORARY INCOME TAX REGULATIONS UNDER THE REVENUE ACT OF 1971

Activities Not Engaged in for Profit

The following regulations relate to section 183(e) of the Internal Revenue Code of 1954, as added by section 311(a) of the Revenue Act of 1971 (85 Stat. 525), which permits a taxpayer to elect to postpone the determination of the presumption that an activity is engaged in for profit if it is profitable in two years during a period of five consecutive years (seven consecutive years in the case of activities concerning the breeding, training, showing or racing of horses).

The regulations provide, generally, that an election with respect to an activity shall be made by filing a statement with the service center where the taxpayer's return is filed within three years after the due date of the return (determined without regard to extensions) for the first taxable year in which the taxpayer engages in such activity or, if earlier, upon notice that a district director proposes to disallow deductions attributable to an activity not engaged in for profit under section 183, by filing a statement with the district director who issued such notification within 60 days after such notice. (For purposes of the election a taxpayer shall be treated as not having engaged in any activity during any taxable year beginning before January 1, 1970.) The election must include a general extension of the three year statute of limitations, with respect to all years in the five or seven year period, commencing with the year in which the taxpayer first engages in the activity, to 18 months after the due date of the return (determined without regard to extensions) for the last taxable year in the five or seven year period.

The regulations set forth herein are temporary and are designed to provide rules governing the manner and time for making an election to postpone a determination of whether an activity is engaged in for profit. The regulations are effective until the issuance of final regulations to be prescribed by the Commissioner and approved by the Secretary or his delegate.

In order to provide such temporary regulations under section 183(e) of the Internal Revenue Code of 1954, the following regulations are adopted:

Section 12.9 is added immediately following § 12.8 and reads as follows:

§ 12.9 Election to postpone determination with respect to the presumption described in section 183(d).

(a) *In general*. An individual, electing small business corporation, trust or estate may elect in accordance with the rules set forth in this section to postpone a determination whether the presumption described in section 183(d) applies with respect to any activity in which the taxpayer engages until after the close of the fourth taxable year (sixth taxable year, in the case of an activity described in § 1.183–1(c)(3)) following the taxable year in which the taxpayer first engages in such activity. The election must be made in accordance with the applicable requirements of paragraphs (b), (c) and (d) of this section. Except as otherwise provided in paragraphs (c) and (e) of this section, an election made pursuant to this section shall be binding for the first taxable year in which the taxpayer first engages in the activity and for all subsequent taxable years in the five (or seven) year period referred to in the first sentence of this paragraph. For purposes of this section, a taxpayer shall be treated as not having engaged in an activity during any taxable year beginning before January 1, 1970.

(b) *Period to which an election applies*. An individual, trust, estate, or small business corporation may make the election. The five year presumption period (seven year presumption period in the case of an activity described in § 1.183–1(c)(3)) to which the election shall apply shall be the five (or seven) consecutive taxable years of such taxpayer beginning with the taxable year in which such taxpayer first engages in the activity. For purposes of this section, a taxpayer who engages in an activity as a partner, engages in it in each of his taxable years with or within which ends a partnership year during which the activity was carried on by the partnership.

(c) *Time for making an election*. A taxpayer who is an individual, trust estate or small business corporation may make the election provided in § 183(e) by filing the statement and consents required by paragraph (d) of this section within—

(1) 3 years after the due date of such taxpayer's return (determined without extensions) for the taxable year in which such taxpayer first engages in the activity, but not later than

(2) 60 days after such taxpayer receives a written notice (if any) from a district director that the district director proposes to disallow deductions attributable to an activity not engaged in for profit under section 183.

The provisions of paragraph (c)(2) of this section shall in no event be construed to extend the period described in (c)(1) of this section for making such election. Notwithstanding the time periods prescribed in paragraph (c) (1) and (2) of this section, if no election has been made before a suit or proceeding described in section 7422(a) is maintained or a petition is filed in the Tax Court for a redetermination of a deficiency for any taxable year within the presumption period to which the election would apply, no election may be made except with the consent of the Commissioner which will not be given unless no appreciable delay in the suit or proceeding will be caused.

(d) *Manner of making election*. (1) The election shall be made by the individual, trust, estate, or electing small business corporation, as the case may be, engaged in the activity, by filing a statement which sets forth the following information—

(i) The name, address, and taxpayer identification number of such taxpayer, and, if applicable, of the partnership in which he engages in the activity,

(ii) A declaration stating that the taxpayer elects to postpone a determination as to whether the presumption described in section 183(d) applies until after the close of the taxpayer's fourth taxable year (sixth taxable year, in the case of an activity described in § 1.183–1(c)(3)) following the taxable year in which the taxpayer first engaged in such activity and identifying that first such taxable year, and,

(iii) A description of each activity (as defined in § 1.183–1(d)(1)) with respect to which the election is being made.

(2) For an election to the be effective, there must be attached to the statement properly executed consents, in the form prescribed by the Commissioner, extending the period prescribed by section 6501 for the assessment of any tax to a date which is not earlier than 18 months after the due date of the return (determined without extensions) for the final year in the presumption period to which the election applies, as follows:

(i) Consents for each of the taxpayer's taxable years in the presumption period to which the election applies.

(ii) If the election is made by an electing small business corporation, a consent of each person who is a shareholder during any taxable year to which the election applies, for each of such shareholder's taxable years with or within which end each of the corporation's taxable years in the presumption period,

(iii) If a taxpayer referred to in paragraph (d)(2)(i) of this section or shareholder referred to in paragraph (d)(2)(ii) of this section is married at the time of the election, in the case of his present spouse, a consent for each of such spouse's taxable years which correspond to the taxable years (other than prior years of the shareholder during no part of which he was a shareholder) for which consents are required by paragraph (d)(2) (i) or (ii) of this section as the case may be. Such consents shall not be construed to shorten the period described in section 6501 for any taxable year within the presumption period to which the election applies.

(3) The statement, with the required consents attached, shall be filed—

(i) With the service center at which the taxpayer making the election is required to file his return, or

(ii) If the taxpayer is notified by a district director that, pursuant to section 183 he is proposing to disallow deductions with respect to an activity not engaged in for profit, with such district director.

(e) *Subsequent invalidations*. If, after a timely election has been made, but still within the presumption period, a suit or proceeding (as described in section 7422(a)) is maintained by the electing taxpayer, a shareholder referred to in paragraph (d)(2)(ii) of this section, or spouse referred to in paragraph (d)(2)(iii) of this section for any taxable year for which a consent is required by this section and the taxpayer, shareholder, or spouse has not been issued a notice of deficiency (as described in section 6212(a)) with respect to such taxable year such election shall not be effective to postpone the determination whether the presumption applies, for such taxable year, but the consents extending the statute of limitations filed with the election shall not thereby be invalidated. The immediately preceding sentence shall not apply to a suit or proceeding maintained by the spouse of an electing taxpayer for a taxable year for which such spouse has filed a separate return, or a suit or proceeding maintained by a shareholder for a taxable year in which he was not such a shareholder. An election by an individual taxpayer or electing small business corporation, shall be subsequently invalidated for all years in the presumption period to which it had applied if—

(1) The electing taxpayer or shareholder taxpayer files a joint return for one of the first three (five, in the case of an activity described in § 1.183–1(c)(3)) taxable years in such presumption period, and

(2) The spouse with whom he files such joint return has not previously executed a consent described in paragraph (d)(2)(iii) of this section, and

(3) Within one year after the filing of such joint return (or, if later, 90 days after March 14, 1974), such spouse has not filed a consent described in paragraph (d)(2) of this section.

An election by an electing small business corporation shall be invalidated for all years in the presumption period to which it applies if a person who was not a shareholder on the date of election becomes a shareholder during the first three (or five) years of the presumption period to which election applies and does not, within 90 days after the date on which he becomes a shareholder (or, if later, 90 days after March 14, 1974), a consent required by paragraph (d)(2) of this section. Invalidation of the election by operation of this paragraph will in no case affect the validity of the consents filed with such election.

(f) *Extension of time for filing election in hardship cases*. The Commissioner may upon application by a taxpayer, consent to an extension of time prescribed in this section for making an election if he finds that such an extension would be justified by hardship incurred by reason of the time at which this section is published. The burden will be on the taxpayer to establish that under the relevant facts the Commissioner should so consent.

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

(Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: March 12, 1974.

JOHN H. HALL,
Deputy Assistant Secretary of the Treasury

[FR Doc.74-6040 Filed 3-14-74;8:45 am]

PART 172—DISPOSITION OF SEIZED PERSONAL PROPERTY

Recodification of Regulations

CROSS REFERENCE: For a document recodifying 26 CFR Part 172 as 27 CFR 72 see FR Doc. 74-6044, *infra.*

[T.D. 7305]

PART 301—PROCEDURE AND ADMINISTRATION

Federal Tax Liens

By a notice of proposed rule making appearing in the FEDERAL REGISTER for Saturday, August 28, 1971 (36 FR 17355), amendments to the Regulations on Procedure and Administration (26 CFR Part 301) were proposed in order to conform such regulations to changes in the Internal Revenue Code of 1954 made by sections 107, 108, 110, 111, 112, and 113 of the Federal Tax Lien Act of 1966 (80 Stat. 1140, 1142, 1145, 1146). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, certain changes were made, and the proposed amendments of the regulations, subject to the changes indicated below, are adopted by this document.

This document contains amendments to the regulations relating to Federal tax liens, proceedings by taxpayers and third parties, and the sale of personal property and administration of real estate acquired by the United States in payment of debts arising under the internal revenue laws.

Under § 301.7426-1(a)(1), any person, other than the taxpayer against whom is assessed the tax out of which a levy arises, may bring a civil action against the United States in a district court of the United States based upon such person's claim that he has an interest in, or a lien on, property which is senior to the interest or lien of the United States and that the property was wrongfully levied upon. With respect to a wrongful levy, the forms of relief which may be granted by a district court are set forth under § 301.7426-1(b)(1). Relief may be granted under these provisions only if the property levied upon belongs to a person other than the taxpayer or if the levy or sale pursuant to levy will irreparably injure or destroy an interest or lien which is senior to the interest or lien of the United States. Section 301.7426-1(b), as changed, sets forth an example of a wrongful levy under subparagraph (2). Accordingly, subparagraphs (2) and (3) of proposed § 301.7426-1(b) are redesignated as subparagraphs (3) and (4) of § 301.7426-1 (b) as adopted by this document.

Example (1) of proposed § 301.6532-3(c) is revised by this document to clarify the calculation of the period of limitations illustrated therein. Further, references to the Alcohol, Tobacco, and Firearms Division and the Division of Loans and Currency in §§ 301.7403-1(a) and 301.7505-1(a)(1), respectively, are revised to reflect reorganizational changes.

Pursuant to paragraph 4(a) of Treasury order 221, published in the FEDERAL REGISTER for June 10, 1972 (37 FR 11696), certain regulations of the Internal Revenue Service continue in effect as regulations of the Bureau of Alcohol, Tobacco, and Firearms until superseded or revised. The regulations amended by this Treasury decision are among those that continue to apply for purposes of the laws administered by the Bureau in addition to applying for purposes of the laws administered by the Internal Revenue Service. The Director, Bureau of Alcohol, Tobacco, and Firearms has, for this reason, joined as a signatory to this Treasury decision.

Adoption of amendments to the regulations. On August 28, 1971, notice of proposed rule making to conform the Regulations on Procedure and Administration (26 CFR Part 301) to changes in the Internal Revenue Code of 1954 made by sections 107, 108, 110, 111, 112, and 113 of the Federal Tax Lien Act of 1966 (80 Stat. 1140, 1142, 1145, 1146) was published in the FEDERAL REGISTER (36 FR 17355). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted, subject to the changes set forth below.

PARAGRAPH 1. Example (1) of § 301.6532-3(c), as set forth in paragraph 5 of the appendix to the notice of proposed rule making, is revised to read as set forth below.

PAR. 2. The historical note for § 301.7402, as set forth in paragraph 6 of the appendix to the notice of proposed rule making, is revised to read as set forth below.

PAR. 3. Paragraph (a) of § 301.7403-1, as set forth in paragraph 8 of the appendix to the notice of proposed rule making, is revised to read as set forth below.

PAR. 4. Section 301.7426-1(b), as set forth in paragraph 14 of the appendix to the notice of proposed rulemaking, is changed by redesignating subparagraphs (2) and (3) as subparagraphs (3) and (4), respectively, and by inserting a new subparagraph (2) immediately after subparagraph (1). These redesignated and added provisions read as set forth below.

PAR. 5. Subparagraph (1) of § 301.-7505-1(a), as set forth in paragraph 16 of the appendix to the notice of proposed rule making, is revised to read as set forth below.

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

[SEAL] REX D. DAVIS,
Director, Bureau of Alcohol, Tobacco and Firearms.

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: March 11, 1974.

JOHN H. HALL,
Deputy Assistant Secretary of the Treasury.

PARAGRAPH 1. Section 301.6322 is amended by revising section 6322 and by adding a historical note to read as follows:

§ 301.6322 Statutory provisions; period of lien.

SEC. 6322. *Period of lien.* Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lapse of time.

[Sec. 6322 as amended by sec. 113(a), Federal Tax Lien Act 1966 (80 Stat. 1146)]

PAR. 2. Section 301.6502 is amended by revising subsection (a) of section 6502 and by adding a historical note to read as follows:

§ 301.6502 Statutory provisions; collection after assessment.

SEC. 6502. *Collection after assessment*—(a) *Length of period.* Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun—

(1) Within 6 years after the assessment of the tax, or

(2) Prior to the expiration of any period for collection agreed upon in writing by the Secretary or his delegate and the taxpayer before the expiration of such 6-year period (or, if there is a release of levy under section 6343 after such 6-year period, then before such release).

The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. The period provided by this subsection during which a tax may be collected by levy shall not be extended or curtailed by reason of a judgment against the taxpayer.

* * * * *

[Sec. 6502 as amended by sec. 113(b) Federal Tax Lien Act 1966 (80 Stat. 1146)]

PAR. 3. Section 301.6502-1 is amended by adding a new subparagraph (3) to paragraph (a) to read as follows:

§ 301.6502-1 Collection after assessment.

(a) *Length of period.* * * *

(3) The period provided by section 6502(a) and this section shall not be

extended or curtailed by reason of a judgment against a taxpayer. Therefore, a personal judgment rendered against a taxpayer arising out of an unpaid assessed tax liability will not extend the period during which the liability may be collected by levy. Similarly, the period during which the liability may be collected by levy is not curtailed by the fact that the United States secures such a judgment. For example, if the United States secures a personal judgment arising out of a tax liability assessed 4 years earlier, the liability may be collected in any manner provided by section 7403 or in any manner provided for the enforcement of a judgment or, during the remaining 2 years of the 6 year statutory period, by levy as if such judgment had not been secured.

* * * * *

PAR. 4. Section 301.6532 is amended by adding a new subsection (c) to section 6532 and by amending the historical note to read as follows:

§ 301.6532 Statutory provisions; periods of limitation on suits.

* * * * *

(c) *Suits by persons other than taxpayers*—(1) *General rule*. Except as provided by paragraph (2), no suit or proceeding under section 7426 shall be begun after the expiration of 9 months from the date of the levy or agreement giving rise to such action.

(2) *Period when cl im is filed*. If a request is made for the return of property described in section 6343(b), the 9-month period prescribed in paragraph (1) shall be extended for a period of 12 months from the date of filing of such request or for a period of 6 months from the date of mailing by registered or certified mail by the Secretary or his delegate to the person making such request of a notice of disallowance of the part of the request to which the action relates, whichever is shorter.

[Sec. 6532 as amended by sec. 89(b), Technical Amendments Act 1958 (72 Stat. 1665) and sec. 110(b) Federal Tax Lien Act of 1966 (80 Stat. 1144)]

PAR. 5. Immediately after § 301.6532-2 there is added the following new section:

§ 301.6532-3 Periods of limitation on suits by persons other than taxpayers.

(a) *General rule*. No suit or proceeding, except as otherwise provided in section 6532(c)(2) and paragraph (b) of this section, under section 7426 and § 301.7426-1 relating to civil actions by persons other than taxpayers, shall be begun after the expiration of 9 months from the date of levy or agreement under section 6325(b)(3) giving rise to such action.

(b) *Period when claim is filed*. The 9-month period prescribed in section 6532(c)(1) and paragraph (a) of this section shall be extended to the shorter of,

(1) 12 months from the date of filing by a third party of a written request under § 301.6343-1(b)(2) for the return of property wrongfully levied upon, or

(2) 6 months from the date of mailing by registered or certified mail by the district director to the party claimant of a notice of disallowance of the part of the request to which the action relates. A request which, under § 301.6343-1(b)(3), is not considered adequate does not extend the 9-month period described in paragraph (a) of this section.

(c) *Examples*. The provisions of this section may be illustrated by the following examples:

Example (1). On June 1, 1970, a tax is assessed against A with respect to his delinquent tax liability. On July 19, 1970, a levy is wrongfully made upon certain tangible personal property of B's which is in A's possession at that time. On July 20, 1970, notice of seizure is given to A. Thus, under section 6502(b), July 20, 1970, is the date on which the levy is considered to be made. Unless a request for the return of property is sooner made to extend the 9-month period, no suit or proceeding under section 7426 may be begun by B after April 20, 1971, which is 9 months from the date of levy.

Example (2). Assume the same facts as in the preceding example except that, on August 3, 1970, B properly files a request for the return of his property wrongfully levied upon. Assume further that the district director mails, on March 1, 1971, a notice of disallowance of B's request for the return of the property. No suit or proceeding under section 7426 may be begun by B after August 3, 1971, which is 12 months from the date of filing a request for the return of property wrongfully levied upon.

Example (3). Assume the same facts as in the preceding example except that the notice of disallowance of B's request for the return of property wrongfully levied upon is mailed to B on November 12, 1970. Since the 6-month period from the mailing of the notice of disallowance expires before the 12-month period from the date of filing the request for the return of property which ends on August 3, 1971, no suit or proceeding under section 7426 may be begun by B after May 12, 1971, which is 6 months from the date of mailing the notice of disallowance.

PAR. 6. Section 301.7402 is amended by redesignating subsection (e) of section 7402 as subsection (f), by adding a new subsection (e) to section 7402, and by adding a historical note to read as follows:

§ 301.7402 Statutory provisions; jurisdiction of district courts.

Sec. 7402. *Jurisdiction of district courts.*

* * * * *

(e) *To quiet title*. The U.S. district courts shall have jurisdiction of any action brought by the United States to quiet title to property if the title claimed by the United States to such property was derived from enforcement of a lien under this title.

(f) *General jurisdiction*. * * *

[Sec. 7402 as amended by sec. 107(a) Federal Tax Lien Act 1966 (80 Stat. 1140); sec. 230(d), Act of June 6, 1972 (Pub. Law 92-310, 86 Stat. 209)]

PAR. 7. Section 301.7403 is amended by adding a new sentence at the end of subsection (c) of section 7403 and by adding a historical note to read as follows:

§ 301.7403 Statutory provisions; action to enforce lien or to subject property to payment of tax.

Sec. 7403. *Action to enforce lien or to subject property to payment of tax.*

* * * * *

(c) *Adjudication and decree*. The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States. If the property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary or his delegate directs.

* * * * *

[Sec. 7403 as amended by sec. 107(b) Federal Tax Lien Act 1966 (80 Stat. 1140)]

PAR. 8. Section 301.7403-1 is amended by adding paragraph (b) and by providing a heading for paragraph (a) to read as follows:

§ 301.7403-1 Action to enforce lien or to subject property to payment of tax.

(a) *Civil actions*. In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegate, at the request of the Commissioner (or the Director, Bureau of Alcohol, Tobacco, and Firearms, or the Chief Counsel for the Bureau, with respect to the provisions of subtitle E of the Code), or the Chief Counsel for the Internal Revenue Service or his delegate, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under the Code with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title or interest, to the payment of such tax or liability. In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Commissioner or the Chief Counsel for the Internal Revenue Service during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

(b) *Bid by the United States*. If property is sold to satisfy a first lien held by the United States, the United States may bid at the sale a sum which does not exceed the amount of its lien and the expenses of the sale. See also 31 U.S.C. 195.

PAR. 9. The center heading immediately preceding section 301.7421 is revised to read as follows:

PROCEEDINGS BY TAXPAYERS AND THIRD PARTIES

PAR. 10. Section 301.7421 is amended by revising subsection (a) of section 7421 and by adding a historical note to read as follows:

§ 301.7421 Statutory provisions; prohibition of suits to restrain assessment or collection.

Sec. 7421. *Prohibition of suits to restrain assessment or collection*—(a) *Tax*. Except as provided in sections 6212 (a) and (c), 6213 (a), and 7426 (a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

* * * * *

[Sec. 7421 as amended by sec. 110(c) Federal Tax Lien Act 1966 (80 Stat. 1144)]

PAR. 11. Section 301.7424 is amended to read as follows:

§ 301.7424 Statutory provisions; intervention.

Sec. 7424. *Intervention.* If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under this title on the property which is the subject of such action or suit. The provisions of section 2410 of title 28 of the United States Code (except subsection (b)) and of section 1444 of title 28 of the United States Code shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. In any case in which the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such lien.

[Sec. 7424 as amended by sec. 108 Federal Tax Lien Act 1966 (80 Stat. 1140)]

PAR. 12. Section 301.7424-1 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively, and by adding a new paragraph (a). These redesignated and added paragraphs read as follows:

§ 301.7424-1 Civil action to clear title to property.

(a) The provisions of this section shall apply only to civil actions to clear title commenced on or before November 2, 1966. For provisions permitting the United States to be made a party defendant in a proceeding for the foreclosure of a lien upon property where the United States may have claim upon the property involved, see section 2410 of title 28 of the United States Code.

(b) Any person having a lien upon or any interest in the property referred to in section 7403, notice of which has been duly filed of record in the jurisdiction in which the property is located prior to the filing of the notice of the lien of the United States as provided in section 6323, or any person purchasing the property at a sale to satisfy such prior lien or interest, may make a written request to the Commissioner to authorize the filing of a civil action as provided in section 7403.

(c) If the Commissioner fails to authorize the filing of such civil action within 6 months after receipt of such written request, such person or purchaser may, after giving notice to the Commissioner, file a petition in the district court of the United States for the district in which the property is located praying leave to file a civil action for a final determination of all claims to or liens upon the property in question.

PAR. 13. There is inserted immediately after section 301.7424-1 the following new section:

§ 301.7424-2 Intervention.

If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under title 26 of the United States Code on the property which is the subject of such action or suit. The provisions of section 2410 of title 28 of the United States Code (except subsection (b)) and of section 1444 of title 28 of the United States Code shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. If the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such lien.

PAR. 14. Immediately after section 301.7425 there are added new § 301.7426 and a historical note and new § 301.7426-1 to read as follows:

§ 301.7426 Statutory provisions; civil actions by persons other than taxpayers.

Sec. 7426. *Civil actions by persons other than taxpayers*—(a) *Actions permitted*—(1) *Wrongful levy.* If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary or his delegate.

(2) *Surplus proceeds.* If property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property junior to that of the United States and to be legally entitled to the surplus proceeds of such sale may bring a civil action against the United States in a district court of the United States.

(3) *Substituted sale proceeds.* If property has been sold pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), any person who claims to be legally entitled to all or any part of the amount held as a fund pursuant to such agreement may bring a civil action against the United States in a district court of the United States.

(b) *Adjudication.* The district court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:

(1) *Injunction.* If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

(2) *Recovery of property.* If the court determines that such property has been wrongfully levied upon, the court may—

(A) Order the return of specific property if the United States is in possession of such property;

(B) Grant a judgment for the amount of money levied upon; or

(C) Grant a judgment for an amount not exceeding the amount received by the United States from the sale of such property.

For the purposes of subparagraph (C), if the property was declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

(3) *Surplus proceeds.* If the court determines that the interest or lien of any party to an action under this section was transferred to the proceeds of a sale of such property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale.

(4) *Substituted sale proceeds.* If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement described in section 6325 (b)(3) (relating to substitution of proceeds of sale), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

(c) *Validity of assessment.* For purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid.

(d) *Limitation on rights of action.* No action may be maintained against any officer or employee of the United States (or former officer or employee) or his personal representative with respect to any acts for which an action could be maintained under this section.

(e) *Substitution of United States as party.* If an action, which could be brought against the United States under this section, is improperly brought against any officer or employee of the United States (or former officer or employee) or his personal representative, the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action was commenced upon proper service of process on the United States.

(f) *Provision inapplicable.* The provisions of section 7422(a) (relating to prohibition of suit prior to filing claim for refund) shall not apply to actions under this section.

(g) *Interest.* Interest shall be allowed at the rate of 6 percent per annum—

(1) In the case of a judgment pursuant to subsection (b)(2)(B), from the date the Secretary or his delegate receives the money wrongfully levied upon to the date of payment of such judgment; and

(2) In the case of a judgment pursuant to subsection (b)(2)(C), from the date of the sale of the property wrongfully levied upon to the date of payment of such judgment.

(h) *Cross reference.* For period of limitation, see section 6532(c).

[Sec. 7426 as added by sec. 110(a), Federal Tax Lien Act 1966 (80 Stat. 1142)]

§ 301.7426-1 Civil actions by persons other than taxpayers.

(a) *Actions permitted*—(1) *Wrongful levy.* If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) may bring a civil action against the United States in a district court of the United States based upon such person's claim—

(i) That he has an interest in, or a lien on, such property which is senior to the interest of the United States; and

(ii) That such property was wrongfully levied upon.

No action is permitted under section 7426(a)(1) unless there has been a levy upon the property claimed. For example,. no cause of action arises under this section where the United States sets-off an amount due to the taxpayer against taxes owed by him since no levy has been made.

(2) *Surplus proceeds*. If property has been sold pursuant to levy, any person (other than the person against whom is assessed the tax out of which such levy arose) may bring a civil action against the United States in a district court of the United States based upon such person's claim that he—

(i) Has an interest in or lien on such property junior to that of the United States; and

(ii) Is entitled to the surplus proceeds of such sale.

(3) *Substituted sale proceeds*. Any person who claims to be legally entitled to all or any part of the amount which is held as a fund from the sale of property pursuant to an agreement described in section 6325(b)(3) may bring a civil action against the United States in a district court of the United States to obtain the relief provided by section 7426 (b)(4). It is not necessary that the claimant be a party to the agreement which provides for the substitution of the sale proceeds for the property subject to the lien.

(b) *Adjudication*—(1) *Wrongful levy*. If the court determines that property has been wrongfully levied upon, the court may—

(i) Grant an injunction to prohibit the enforcement of such levy or to prohibit a sale of such property if such sale would irreparably injure rights in the property which are superior to the rights of the United States in such property; or

(ii) Order the return of specific property if the United States is in possession of such property; or

(iii) Grant a judgment for the amount of money levied upon; or

(iv) Grant a judgment for an amount not exceeding the amount received by the United States from the sale of such property (which, in the case of property declared purchased by the United States at a sale, shall be the greater of the minimum amount determined pursuant to section 6335(e) or the amount received by the United States from the resale of such property).

For purposes of this paragraph, a levy is wrongful against a person (other than the taxpayer against whom the assessment giving rise to the levy is made), if (*a*) the levy is upon property exempt from levy under section 6334, or (*b*) the levy is upon property in which the taxpayer had no interest at the time the lien arose or thereafter, or (*c*) the levy is upon property with respect to which such person is a purchaser against whom the lien is invalid under section 6323 or 6324 (a)(2) or (b), or (*d*) the levy or sale pursuant to levy will or does effectively destroy or otherwise irreparably injure such person's interest in the property which is senior to the Federal tax lien. A levy may be wrongful against a holder of a senior lien upon the taxpayer's property under certain circumstances although legal rights to enforce his interest survive the levy procedure. For example, the levy may be wrongful against such a person if the property is an obligation which is collected pursuant to the levy rather than sold and nothing thereafter remains for the senior lienholder, or the property levied upon is of such a nature that when it is sold at a public sale the property subject to the senior lien is not available for the senior lienholder as a realistic source for the enforcement of his interest. Some of the factors which should be taken into account in determining whether property remains or will remain a realistic source from which the senior lienholder may realize collection are: (*1*) The nature of the property, (*2*) the number of purchasers, (*3*) the value of each unit sold or to be sold, (*4*) whether, as a direct result of the distraint sale, the costs of realizing collection from the security have or will be so substantially increased as to render the security substantially valueless as a source of collection, and (*5*) whether the property subject to the distraint sale constitutes substantially all of the property available as security for the payment of the indebtedness to the senior lienholder.

(2) *Example*. The provisions of subparagraph (1) of this paragraph may be illustrated by the following example:

Example. On April 10, 1972, A makes a $10,000 loan to B which is partially secured by a $5,000 obligation owed to B by C. Under local law, A's security interest in the obligation owed to B by C is protected against a subsequent judgment lien arising out of an unsecured obligation. Thus, under section 6323(h) (1), A's security interest exists as of April 10, 1972, for purposes of determining priorities against a tax lien under section 6323. On April 17, 1972, an assessment of $6,000 is made against B with respect to his delinquent Federal tax liability. Thereafter, notice of lien is filed pursuant to section 6323(f) with respect to B's delinquent tax liability. On July 10, 1972, a notice of levy is served upon C to reach the amount owed by him to B. C pays over the $5,000 obligation in satisfaction of the levy and, under local law, the obligation is discharged as to A. Because the levy effectively destroyed A's senior security interest in the obligation owed to B by C, the levy is wrongful as to A for purposes of section 7426. Under these circumstances, the levy is wrongful with respect to A even if, under local law, A may have a cause of action in contract against B for the $10,000 loan or may have a cause of action in tort against C for the amount of the $5,000 payment which defeated A's security interest in the obligation owed by C to B.

(3) *Surplus proceeds*. If the court determines that the interest or lien of any party to an action under section 7426 was transferred to the proceeds of a sale of the property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale. The term "surplus proceeds" means those proceeds realized on a sale of property remaining after application of the provisions of section 6342(a).

(4) *Substituted sale proceeds*. If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement described in section 6325(b)(3), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

PAR. 15. Section 301.7505 is amended to read as follows:

§ 301.7505 Statutory provisions; sale of personal property acquired by the United States.

SEC. 7505. *Sale of personal property acquired by the United States*—(a) *Sale*. Any personal property acquired by the United States in payment of or as security for debts arising under the internal revenue laws may be sold by the Secretary or his delegate in accordance with such regulations as may be prescribed by the Secretary or his delegate.

(b) *Accounting*. In case of the resale of such property, the proceeds of the sale shall be paid into the Treasury as internal revenue collections, and there shall be rendered a distinct account of all charges incurred in such sales.

[Sec. 7505 as amended by secs. 111 (a) and (c) Federal Tax Lien Act 1966 (80 Stat. 1145)]

PAR. 16. Section 301.7505-1 is amended by revising the heading thereof, by revising subparagraph (1) of paragraph (a), and by revising so much of subparagraph (2) of paragraph (a) as precedes subdivision (ii) thereof. These revised provisions read as follows:

§ 301.7505-1 Sale of personal property acquired by the United States.

(a) *Sale*—(1) *In general*. Any personal property (except bonds, notes, checks, and other securities) acquired by the United States in payment of or as security for debts arising under the internal revenue laws may be sold by the district director who acquired such property for the United States. United States savings bonds shall not be sold by the district director but shall be transferred to the appropriate office of the Treasury Department for redemption. Other bonds, notes, checks, and other securities shall be disposed of in accordance with instructions issued by the Commissioner.

(2) *Time, place, manner, and terms of sale*. The time, place, manner, and terms of sale of personal property acquired for the United States shall be as follows:

(i) *Time, notice, and place of sale*. The property may be sold at any time after it has been acquired by the United States. A public notice of sale shall be posted at the post office nearest the place of sale and in at least two other public places. The notice shall specify the property to be sold and the time, place, manner, and conditions of sale. In addition, the district director may use such other methods of advertising as he believes will result in obtaining the highest price for the property. The place of sale shall be within the internal revenue district where the property was originally acquired by the United States. However, if the district director believes that a substantially higher price may be obtained, the sale may be held outside his district.

* * * * *

PAR. 17. Section 301.7506 is amended by revising subsection (a) of section 7506 and by adding a historical note to read as follows:

§ 301.7506 Statutory provisions; administration of real estate acquired by the United States.

SEC. 7506. *Administration of real estate acquired by the United States*—(a) *Person charged with*. The Secretary or his delegate shall have charge of all real estate which is or shall become the property of the United States by judgment of forfeiture under the internal revenue laws, or which has been or shall be assigned, set off, or conveyed by purchase or otherwise to the United States in payment of debts or penalties arising under the laws relating to internal revenue, or which has been or shall be vested in the United States by mortgage or other security for the payment of such debts, or which has been redeemed by the United States, and of all trusts created for the use of the United States in payment of such debts due them.

* * * * *

[Sec. 7506 as amended by section 111(b) Federal Tax Lien Act 1966 (80 Stat. 1145)]

PAR. 18. Section 301.7506–1 is amended by revising paragraph (a) to read as follows:

§ 301.7506–1 Administration of real estate acquired by the United States.

(a) *Persons charged with*. The district director for the internal revenue district in which the property is situated shall have charge of all real estate which is or shall become the property of the United States by judgment of forfeiture under the internal revenue laws, or which has been or shall be assigned, set off, or conveyed by purchase or otherwise to the United States in payment of debts or penalties arising under the laws relating to internal revenue or which has been or shall be vested in the United States by mortgage, or other security for payment of such debts, or which has been redeemed by the United States, or which has been or shall be acquired by the United States in payment of or as security for debts arising under the internal revenue laws, and of all trusts created for the use of the United States in payment of such debts due the United States.

* * * * *

PAR. 19. Section 301.7809 is amended by revising subsections (a) and (b) of section 7809, and by revising the historical note. These amended and revised provisions read as follows:

§ 301.7809 Statutory provisions; deposit of collections.

SEC. 7809. *Deposit of collections*—(a) *General rule*. Except as provided in subsections (b) and (c) and in sections 4735, 4762, 7651, 7652, 7654, and 7810, the gross amount of all taxes and revenues received under the provisions of this title, and collections of whatever nature received or collected by authority of any internal revenue law, shall be paid daily into the Treasury of the United States under instructions of the Secretary or his delegate as internal revenue collections, by the officer or employee receiving or collecting the same, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description. A certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the Treasurer of the United States, designated depository, or proper officer of a deposit bank, shall be transmitted to the Secretary or his delegate.

(b) *Deposit funds*. * * *

(2) *Sums offered for purchase of real estate*. Sums offered for the purchase of real estate under the provisions of section 7506;

(3) *Surplus proceeds in sales under levy*. Surplus proceeds in any sale under levy, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for costs and charges of the levy and sale; and

(4) *Surplus proceeds in sales of redeemed property*. Surplus proceeds in any sale under section 7506 of real property redeemed by the United States, after making allowance for the amount of the tax, interest, penalties, and additions thereto and for the costs of sale.

Upon the acceptance of such offer in compromise or offer for the purchase of such real estate, the amount so accepted shall be withdrawn from such deposit fund account and deposited in the Treasury of the United States as internal revenue collections. Upon the rejection of any such offer the Secretary or his delegate shall refund to the maker of such offer the amount thereof.

* * * * *

[Sec. 7809 as amended by sec. 3(b), Act of Oct. 23, 1962 (Pub. Law 87–870, 76 Stat. 1161) and sec. 112(b) Federal Tax Lien Act 1966 (80 Stat. 1146)]

PAR. 20. Section 301.7810 is added and reads as follows:

§ 301.7810 Statutory provisions; revolving fund for redemption of real property.

SEC. 7810. *Revolving fund for redemption of real property*—(a) *Establishment of fund*. There is established a revolving fund, under the control of the Secretary or his delegate, which shall be available without fiscal year limitation for all expenses necessary for the redemption (by the Secretary or his delegate) of real property as provided in section 7425(d) and section 2410 of title 28 of the United States Code. There are authorized to be appropriated from time to time such sums (not to exceed $1,000,000 in the aggregate) as may be necessary to carry out the purposes of this section.

(b) *Reimbursement of fund*. The fund shall be reimbursed from the proceeds of a subsequent sale of real property redeemed by the United States in an amount equal to the amount expended out of such fund for such redemption.

(c) *System of accounts*. The Secretary or his delegate shall maintain an adequate system of accounts for such fund and prepare annual reports on the basis of such accounts.

[Sec. 7810 as added by sec. 112(a) Federal Tax Lien Act 1966 (80 Stat. 1145)]

[FR Doc.74–6047 Filed 3–14–74;8:45 am]

Title 27—Alcohol, Tobacco Products and Firearms

CHAPTER I—BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, DEPARTMENT OF THE TREASURY

[T.D. ATF–9]

PART 72—DISPOSITION OF SEIZED PERSONAL PROPERTY

Recodification of Regulations

The following regulations are hereby recodified from 26 CFR Part 172 and prescribed as 27 CFR Part 72 (a portion of the CFR devoted exclusively to alcohol, tobacco, firearms, and explosives matters, as administered and enforced by the Bureau of Alcohol, Tobacco, and Firearms). The publication of these regulations under Title 27 is a part of a general plan to move all regulations pertaining to the Bureau of Alcohol, Tobacco, and Firearms from Title 26 to Title 27. In addition, several changes are proposed. These are discussed below.

Changes—Necessity for inquiry. Section 72.34 reflects a change in Treasury policy as contained in the notice of change in policy as to mitigation and remission decisions on vehicle forfeitures, issued in the FEDERAL REGISTER for December 15, 1971 (36 FR 23800) relating to the necessity for inquiry.

Changes reflecting Bureau status. The Bureau of Alcohol, Tobacco, and Firearms, formerly a Division of the Internal Revenue Service, was established as a separate Bureau pursuant to Treasury Department Order No. 221 dated June 6, 1972 (37 FR 11696). As a result, the following changes are reflected in new 27 CFR Part 72: (1) In § 72.11, the definitions of "Assistant regional commissioner", "Commissioner", "I.R.C.", "Regional Commissioner", and "Supervisor in Charge" are eliminated; new definitions of "Alcohol, tobacco, and firearms officer" and "Regional director" are added; and the definitions of "Contraband firearms", "Director", "Region", and "U.S.C." are modified. (2) The phrase "Supervisor in Charge" is replaced by the phrase "regional director" wherever it appears in §§ 72.22, 72.23, 72.26, 72.36, 72.39, 72.40, 72.61, 72.63, 72.65, and 72.68. (3) The phrases "officers of the internal revenue service" and "internal revenue officers" are replaced by the phrase "alcohol, tobacco, and firearms officers" in §§ 72.1, 72.21, 72.32, and 72.34. (4) The phrase "regional commissioner of internal revenue" is changed in the definition of "Region" in § 72.11 to read "regional director, Bureau of Alcohol, Tobacco, and Firearms". (5) The phrase "internal revenue laws, and certain other" is eliminated from § 72.21. (6) The phrase "internal revenue laws" is replaced wherever it appears in § 72.22 by the phrase "title 26 U.S.C." (7) The phrase "Internal Revenue Service" is replaced in § 72.22 by the phrase "Bureau of Alcohol, Tobacco, and Firearms". (8) The phrase "Alcohol, Tobacco, and Firearms Division" is eliminated from §§ 72.2, 72.32, 72.33, 72.34, and 72.39.

Other changes. (1) The definition of "Commercial crimes" in § 72.11 is changed to simplify terminology and to eliminate the reference to "gambling or wagering". The latter change conforms to the Treasury Department's definition of commercial crimes and is already covered in the defiintion as "offenses against the revenue laws". (2) In the definition of "Re-appraisal" in § 72.11, the word "specified" is changed to "written". (3) The phrase "of 1952" is eliminated from the definition of "U.S.C." in § 72.11. (4) In § 72.21, the phrase "40 (explosives), 44 (firearms)" is inserted after the numeral "59"; the phrase "26 U.S.C., chapters 51 (distilled spirits), 52 (tobacco), 53 (firearms); and title" is inserted immediately before the phrase "27 U.S.C."; and the phrase "title 15 U.S.C., chapter 18 (firearms)" is eliminated. (5) The word "custom" is replaced by the word "customs" in subsections 72.22(a)(1), (a)(4), and (a)(5). (6) In subsection 72.22(b), the numeral "(1)" is eliminated and the world "libel" is replaced by the word "forfeiture". (7) in § 72.35, the word "propetry" is changed to its correct spelling, "property". (8) The numeral "(1)" is eliminated from subsections 72.39(b) and 72.40(a). (9) In § 72.41, the word "properly" is changed to "property". (10) In § 72.51, the word "day" is replaced by the phrase "hour or portion thereof", and the phrase "the internal revenue laws" is replaced by the phrase "title 26 U.S.C." (11) Section 72.64 is amended to permit sale by cashier's check, certified check, or postal money order in addition to cash. (12) Subpart G is revised to cover the disposal of forfeited firearms, ammunition, or explosive materials, rather than the destruction of coin-operated gaming devices; since destruction of these devices is now handled exclusively by the Internal Revenue Service.

In consideration of the foregoing, it is proposed that amended 27 CFR Part 72 read as follows:

1. The regulations in this part shall supersede regulations in 26 CFR Part 172 insofar as such regulations relate to activities administered by the Bureau of Alcohol, Tobacco, and Firearms. Such regulations shall remain in effect to the extent that they deal with activities administered by the Internal Revenue Service.

2. These regulations shall not affect any act done or any liability or right accruing or accrued, or any suit or proceeding had or commenced before the effective date of these regulations.

3. The regulations in this part shall become effective March 15, 1974.

AUTHORITY: The provisions of this Part 72 issued under sec. 8, 53 Stat. 1293, sec. 1, 62 Stat. 761, as amended, sec. 7805, 68A Stat. 917, sec. 921, 82 Stat. 1214; 49 U.S.C. 788, 18 U.S.C. 1261, 26 U.S.C. 7805, 18 U.S.C. 921, unless otherwise noted.

Subpart A—Scope of Regulations

§ 72.1 Procedures relating to personal property and carriers.

Regulations in this part shall relate to personal property and carriers seized by alcohol, tobacco and firearms officers as subject to forfeiture as being involved, used, or intended to be used, as the case may be, in any violation of Federal laws.

§ 72.2 Forms prescribed.

The Director is authorized to prescribe all forms required by this part, or necessary for its administration. Information called for shall be furnished in accordance with the instructions on the forms or issued with respect thereto.

Subpart B—Definitions

§ 72.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms shall have the meanings ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

Alcohol, tobacco, and firearms officer. An officer or employee of the Bureau of Alcohol, Tobacco, and Firearms duly authorized to perform any or all the functions relating to the administration or enforcement of this part.

Appraised value. The value placed upon seized property or carriers by the appraiser or appraisers designated for the purpose of determining whether the property or carriers may be forfeited administratively.

Carrier. A vessel, vehicle, or aircraft seized under title 49 U.S.C., chapter 11 for having been used to transport, carry, or conceal a contraband firearm. Vessels, vehicles, or aircraft seized under other provisions of applicable laws shall be considered personal property.

Commercial crimes. Any of the following types of crimes (Federal or State): Offenses against the revenue laws; burglary; counterfeiting; forgery; kidnapping; larceny; robbery; illegal sale or possession of deadly weapons; prostitution (including soliciting, procuring, pandering, white slaving, keeping house of ill fame, and like offenses); extortion; swindling and confidence games; and attempting to commit, conspiring to commit, or compounding any of the foregoing crimes. Addiction to narcotic drugs and use of marihuana will be treated as if such were commercial crime.

Contraband firearm. A firearm with respect to which there has been committed a violation of the National Firearms Act (26 U.S.C., chapter 53) or any regulation issued thereunder.

Director. The Director, Bureau of Alcohol, Tobacco, and Firearms, the Department of the Treasury, Washington, D.C. 20226.

Equity. As used in administrative action on petitions for remission or mitigation of forfeitures, shall mean that interest which a petitioner has in the personal property or carrier petitioned for at the time of final administrative action on the petition, but such interest shall not be considered to include any unearned finance charges from the date of seizure or the date of default, if later; any amount rebatable on account of paid insurance premiums; attorney's fees for collection; any amount identified as dealer's reserve; or any amount in the nature of liquidated damages that may have been agreed upon by the buyer and the petitioner.

Person. An individual, trust, estate, partnership, association, company or a corporation.

Re-appraisal. An up-to-date statutory appraisal to determine the present value of the property or carrier involved in a petition for remission or mitigation of forfeiture made in the same manner as the original appraisal, and performed at the written request of the petitioner whose petition in regard to the property or carrier has been allowed and who, for reasonable cause, is not satisfied that the original appraisal represents the present value of the property or carrier.

Region. The area comprising the geographical jurisdiction of a regional director, Bureau of Alcohol, Tobacco, and Firearms.

Regional director. A regional director who is responsible to, and functions under the direction and supervision of, the Director.

U.S.C. The United States Code.

Subpart C—Seizures and Forfeitures

§ 72.21 Personal property and carriers subject to seizure.

Personal property may be seized by duly authorized alcohol, tobacco and firearms officers for forfeiture to the United States when involved, used, or intended to be used, in violation of the laws of the United States which such officers are empowered to enforce, including title 18 U.S.C., chapters 40 (explosives), 44 (firearms), 59 (liquor traffic), 229 (liquor); title 26 U.S.C., chapters 51 (distilled spirits), 52 (tobacco), 53 (firearms); and title 27 U.S.C., section 206 (liquor). Carriers, as defined in § 72.11, similarly may be seized when used or intended to be used in violation of title 49 U.S.C., chapter 11 (transportation et cetera of contraband firearms).

§ 72.22 Forfeiture of seized personal property and carriers.

(a) *Administrative forfeiture.* (1) Personal property seized as subject to forfeiture under title 26 U.S.C. which has an appraised value of $2,500.00 or less, and any carrier appraised by the seizing officer at $2,500.00 or less under the customs laws, shall be forfeited to the United States in administrative or summary forfeiture proceedings.

(2) In respect of personal property seized as subject to forfeiture under title 26 U.S.C. which, in the opinion of the seizing officer, has an appraised value of $2,500.00 or less, such officer shall cause a list containing a particular description of the seized property to be prepared and an appraisement thereof to be made by three sworn appraisers, selected by the seizing officer, who shall be respectable and disinterested citizens of the United States residing within the internal revenue district wherein the seizure was made. Such list and appraisement shall be properly attested to by the seizing officer and such appraisers.

(3) In respect of personal property seized as subject to forfeiture under title 26 U.S.C. and found by the appraisers to have a value of $2,500.00 or less, the regional director shall publish a notice once a week for three consecutive weeks, in some newspaper of the judicial district where the seizure was made, describing the articles and stating the time, place, and cause of their seizure, and requiring any person claiming them to make such claim within 30 days from the date of the first publication of such notice.

(4) In respect of carriers seized as subject to forefeiture under the customs laws which, in the opinion of the seizing officer, have an appraised value of $2,500.00 or less, such officer shall cause a list containing a particular description of the seized carriers to be prepared and the seizing officer shall make the appraisement thereof. Such list and appraisement shall be properly attested to by the seizing officer.

(5) In respect of carriers seized as subject to forfeiture under the customs laws and appraised by the seizing officer as having a value of $2,500.00 or less, the regional director shall publish a notice of seizure in the same manner as required by subparagraph (3) of this paragraph; provided that the time for making claim shall be within 20 days from the date of first publication. (19 U.S.C. 1608)

(6) Any person claiming the personal property or carrier so seized, within the time specified in the notice, may file with the regional director a claim, stating his interest in the articles or carrier seized, and may execute a bond to the United States in the penal sum of $250.00, conditioned that, in case of condemnation of the articles or carrier so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation. Both the claim and the cost bond should be executed in quadruplicate.

(b) *Judicial condemnation.* The Regional Counsel, Bureau of Alcohol, Tobacco, and Firearms, shall authorize institution of forfeiture proceedings in those instances where the appraised value of the seized personal property or carrier exceeds $2,500.00, or where a claim and cost bond are filed as provided above.

§ 72.23 Type and conditions of cost bond.

The cost bond delivered by a claimant to effect removal of the forfeiture status of the property or carrier claimed to the jurisdiction of the Federal court for adjudication shall be a corporate surety bond: *Provided, however,* That upon a showing to the satisfaction of the regional director that the claimant is unable to furnish a corporate surety bond such claimant may deliver a cost bond with individual sureties acceptable to the regional director: *Provided further,* That in lieu of a cost bond with corporate or individual sureties the claimant may deposit collateral as provided in § 72.25. The cost bond shall be conditioned that in the case of the condemnation of the property the obligators shall pay all costs and expenses of the proceedings to obtain such condemnation.

§ 72.24 Corporate surety bonds.

Corporate surety bonds may be given only with surety companies holding certificates of authority from the Secretary of the Treasury as acceptable sureties on Federal bonds, subject to the limitations prescribed by Treasury Department Circular 570, and subject to such amendments as may be issued from time to time.

(Sec. 6, 61 Stat. 648, as amended, 68A Stat. 847, as amended; 6 U.S.C. 6, 26 U.S.C. 7101)

§ 72.25 Deposit of collateral.

Bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by claimants as collateral security in lieu of corporate sureties in accordance with the provisions of Department Circular No. 154, revised (31 CFR Part 225): *Provided,* That cash, postal money orders, and certified or cashiers' or treasurers' checks may be furnished by claimants as collateral security in lieu of corporate sureties.

(Sec. 15, 61 Stat. 650, 68A Stat. 847, as amended; 6 U.S.C. 15, 26 U.S.C. 7101)

§ 72.26 Bond for return of seized perishable goods.

The proceedings to enforce forfeiture of perishable goods shall be in the nature of a proceeding in rem in the district court of the United States for the district wherein such seizure is made. Whenever such property is liable to perish or become greatly reduced in price or value by keeping, or when it cannot be kept without great expense, the regional director shall advise the owner, when known, of the seizure thereof. The owner may apply to the regional director to have the property examined any time prior to referral of the property to the U.S. Marshal for disposition, and if in the opinion of the regional director it shall be necessary to sell such property to prevent waste or expense, the regional director shall cause the property to be appraised. Thereupon the owner shall have the property returned to him upon giving a corporate surety bond (see § 72.24) in an amount equal to the appraised value of the property, which bond shall be conditioned to abide the final order, decree, or judgment of the court having cognizance of the case, and to pay the amount of the appraised value to the regional director, the U.S. Marshal, or otherwise, as may be ordered and directed by the court, which bond shall be filed by the regional director with the U.S. Attorney for the district in which the proceedings may be commenced. If the owner of such property neglects or refuses to give such bond within a reasonable time considering the condition of the property the regional director shall request the U.S. Marshal to proceed to sell the property at public sale as soon as practicable and to pay the proceeds of sale, less reasonable costs of the seizure and sale, to the court to abide its final order, decree, or judgment.

(68A Stat. 869, 870, as amended; 26 U.S.C. 7322, 7323, 7324)

Subpart D—Remission or Mitigation of Forfeitures

§ 72.31 Laws applicable.

Remission or mitigation of forfeitures shall be governed by the applicable customs laws.

(Sec. 613, 618, 46 Stat. 756, as amended, 757, as amended, sec. 4, 53 Stat. 1292, sec. 7327, 68A Stat. 871; 19 U.S.C. 1613, 1618, 49 U.S.C. 784, 26 U.S.C. 7327)

§ 72.32 Interest claimed.

Any person claiming an interest in property, including carriers, seized by alcohol, tobacco and firearms officers as subject to administrative forfeiture may file a petition addressed to the Director, for remission or mitigation of the forfeiture of such property.

§ 72.33 Form of the petition.

There is no set or standardized form provided or required by the Department for use in filing a petition for remission or mitigation of forfeiture. However, it is preferable that the petition be typewritten on legal size paper; and it is necessary that the petition be executed under oath, prepared in triplicate and addressed to the Director, and that all copies of original documents submitted as exhibits in support of allegations of the petition be certified as true and accurate copies of originals. Each copy of the petition must contain a complete set of exhibits.

§ 72.34 Contents of the petition.

(a) *Description of the property.* The petition should contain such a description of the property or carrier and such facts of the seizure as will enable the alcohol, tobacco and firearms officers concerned to identify the property or carrier.

(b) *Statement regarding knowledge of seizure.* In the event the petition is filed for the restoration of the proceeds derived from sale of the property or carrier pursuant to summary forfeiture, it should also contain, or be supported by, satisfactory proof that the petitioner did not know of the seizure prior to the declaration or condemnation of forfeiture, and that he was in such circumstances as prevented him from knowing of the same. (See also § 72.35.)

(c) *Interest of petitioner.* The petitioner should state in clear and concise terms the nature and amount of the present interest of the petitioner in the property or carrier, and the facts relied upon to show that the forfeiture was incurred without willful negligence or without any intention upon the part of the petitioner to defraud the revenue or to violate the law, or such other mitigating circumstances as, in the opinion of the petitioner, would justify the remission or mitigation of the forfeiture.

(d) *Petitioner innocent party.* If the petitioner is not the one who in person committed the act which caused the seizure the petition should state how the property or carrier came into the possession of such other person, and that the petitioner had no knowledge or reason to believe, if such be the fact, that the property or carrier would be used in violation of law. If known to the petitioner, at the time the petition is filed, that such other person had either a record or a reputation, or both, as a violator in the field of commercial crime, the petition should state whether the petitioner had actual knowledge of such record or reputation, or both, before the petitioner acquired his interest in the property or carrier, before such other person acquired his right in the property or carrier, whichever occurred later. When personal property is seized for violation of the liquor laws, the determining factor will be whether the person dealt with by the petitioner had either a record or a reputation, or both, as a violator of the liquor laws.

(e) *Documents supporting claim.* The petition should also be accompanied by copies, certified by the petitioner under oath as correct, of contracts, bills of sale, chattel mortgages, reports of investigators or credit reporting agencies, affidavits, and any other papers or documents that would tend to support the claims made in the petition.

(f) *Costs.* The petition should also contain an undertaking to pay the costs, if costs are assessed as a condition of allowance of the petition. Costs shall include all the expenses incurred in seizing and storing the property or carrier; the costs borne or to be borne by the United States; the taxes, if any, payable by the petitioner or imposed in respect of the property or carrier to which the petition relates; the penalty, if any, asserted by the Director; and, if the property or carrier has been sold, or is in the course of being sold, the expenses so incurred.

§ 72.35 Time of filing petition.

A petition may be filed at any time prior to the sale or other disposition of the property or carrier involved pursuant to administrative forfeiture, but a petition in regard to property or a carrier which has already been sold or otherwise disposed of pursuant to administrative forfeiture must be filed within three months from the date of sale, and must contain the proof defined in § 72.34(b). Acquisition for official use is equivalent to sale so far as remission or mitigation of any forfeiture is concerned.

(Sec. 306, 49 Stat. 880; 40 U.S.C. 304k)

§ 72.36 Place of filing.

The petition should be filed in triplicate with the regional director for the region in which the seizure was made.

§ 72.37 Discontinuance of administrative proceedings.

If the petition is filed prior to administrative sale or retention for official use, proceedings to effect such sale or retention will be discontinued.

§ 72.38 Return of defective petition.

If the petition is defective in some correctable respect, the original of the petition will be returned by letter to the petitioner for his submission of a corrected petition, in triplicate, within a reasonable time.

§ 72.39 Final action.

(a) *Petitions for remission or mitigation of forfeiture.* (1) The Director shall take final action on any petition filed pursuant to these regulations. Such final action shall consist either of the allowance or denial of the petition. In the case of allowance, the Director shall state the conditions of the allowance.

(2) In the case of an allowed petition, the Director may order the property or carrier returned to the petitioner, sold for the account of the petitioner, or, pursuant to agreement, acquired for official use.

(3) The regional director shall notify the petitioner of the allowance or denial of the petition and, in the case of allowance, the terms and conditions under which the Director allowed the petition.

(b) *Offers in compromise of liability to forfeiture.* The regional director shall take final action on any offer in compromise of the liability to forfeiture of personal property, including carriers, seized as provided in § 72.21. Such action shall consist either of the acceptance or rejection of the offer.

§ 72.40 Acquisition for official use and sale for account of petitioner in allowed petitions.

(a) *Acquisition for official use.* The property or carrier may be purchased by the United States pursuant to agreement and retained for official use. Where the petitioner is the owner, the purchase price is the appraised value of the property or carrier less all costs. Where the petitioner is a creditor, the purchase price is whichever one of these amounts is the smaller: (1) The petitioner's equity, or (2) the appraised value of the property or carrier less the amount of all costs incident to the seizure and forfeiture.

(b) *Sale for account of petitioner.* The petitioner may elect not to comply with the condition on which the property or carrier may be returned. In this event, the regional director is authorized to sell it. Where the petitioner is the owner of the property or carrier, there is deducted from the proceeds of the sale all costs incident to the seizure, forfeiture, and sale, and the regional director pays to the petitioner, out of the proper appropriation, an amount equal to the balance, if any. Where the petitioner is a creditor, there is deducted from the proceeds of the sale all costs incident to the seizure, forfeiture, and sale, and the regional director pays to the petitioner, out of the proper appropriation, an amount equal to the balance, if any, of the selling price after deduction of all costs incident to the seizure, forfeiture, or sale: *Provided,* That if the amount of such balance exceeds the amount of the equity of the petitioner, only the latter amount is paid to the petitioner.

§ 72.41 Re-appraisal of property involved in an allowed petition.

In determining the nature and extent of the relief to be afforded a petitioner pursuant to allowance of his petition, the value of the property or carrier involved in the allowed petition shall be considered to mean the value placed on said property or carrier pursuant to official appraisal thereof immediately following seizure: *Provided, however,* That if the petitioner desires an up-to-date re-appraisal made of the property or carrier, after notification as to the terms of allowance of the petition, and makes written request therefor, undertaking in said request to pay, or to be liable for, the total costs of such re-appraisal, the property or carrier shall be re-appraised officially in the same manner in which the original appraisal was made, and the terms and conditions of allowance shall stand modified to the extent required by such re-appraisal.

Subpart E—Appraisers Fees

§ 72.51 Rate of compensation.

Each appraiser selected under § 72.22 (a)(2) shall receive compensation of $3.00 per hour or portion thereof for the performance of his duties in appraising property seized as subject to forfeiture under title 26 U.S.C.

(68A Stat. 870, as amended; 26 U.S.C. 7325)

Subpart F—Administrative Sale of Personal Property

§ 72.61 Alternative methods of sale.

When personal property or a carrier forfeited administratively may be sold, the regional director shall cause a notice of sale to be placed in a newspaper of general circulation published in the judicial district wherein the seizure was made. The sale shall not occur in less than 10 days from the date of the publication of the notice. At the discretion of the regional director based upon which method in his sound judgment is most advantageous to the best interests of the United States, the forfeited personal property or carrier may be advertised for sale, and sold, at public auction to the highest bidder on open, competitive bids, or to the highest bidder on sealed, competitive bids.

(68A Stat. 870, as amended; 26 U.S.C. 7325)

§ 72.62 All bids on unit basis.

All competitive bids, whether sealed or otherwise, shall be on a unit basis, i.e. if a number of forfeited automobiles are advertised for sale at the same date, hour and place, whether or not in the same notice of sale, there shall be a separate, individual bid required as to each automobile, and it shall not be permissible to accept one blanket bid to cover the entire group of cars offered for sale.

§ 72.63 Conditions of sale.

(a) *No recourse.* All personal property and carriers to be sold shall be offered for sale "as is" and without recourse against the United States.

(b) *No guarantee.* No guarantee or warranty, expressed or implied, shall be given or understood in respect of any forfeited property or carrier offered for sale.

(c) *No sale.* (1) The United States reserves the right to reject any and all bids received at public auction and in sealed, competitive bid sales.

(2) When "no sale" is declared for property other than cigars, cigarettes, and cigarette papers and tubes, the regional director shall re-advertise the property for sale.

(3) When "no sale" is declared for cigars, cigarettes, or cigarette papers or tubes, such property shall be destroyed or, if fit for human consumption, be given to a Federal or State hospital or institution.

(d) *One bid.* When only one bid is received for a single unit of property or a carrier offered at public auction or in a sealed, competitive bid sale, such bid shall be considered to be and treated as the highest bid received for that property or carrier.

§ 72.64 Terms of sale.

The terms of sale shall be cash, cashier's check, certified check, or postal money order, in the amount of the accepted bid.

§ 72.65 Sale of forfeited cigars, cigarettes, and cigarette papers and tubes.

All cigars, cigarettes, and cigarette papers and tubes shall be sold at a price which will include the tax due and payable thereon. Written, timely notice shall be given by the regional director to the manufacturer of any such forfeited articles offered for sale.

§ 72.66 Publisher entitled to bill of sale.

Each purchaser of administratively forfeited property, including carriers, shall be entitled to receive a suitable and authentic bill of sale on a form to be provided for the purpose.

§ 72.67 Sale on open, competitive bids.

If the personal property or carrier is to be sold at public auction to the highest bidder on open, competitive bids, the notice of sale shall so specify, and state the date, hour, and place of sale.

§ 72.68 Sale on sealed, competitive bids.

If the property or carrier is to be sold to the highest bidder on sealed, competitive bids, the notice of sale shall so specify, and shall state the date, hour, and place of sale, and the date, hour, and place before the sale when and where the property, including carriers, may be viewed by prospective sealed bidders, and necessary information obtained. All sealed bids must be filed with the regional director before the sale. No bids will be accepted after the sale starts. At the appointed date, hour, and place of sale, all sealed bids timely filed shall be opened in the presence of all bidders attending the sale, who shall have the privilege of inspecting the bids if they so desire.

Subpart G—Disposal of Forfeited Firearms, Ammunition or Explosive Materials

§ 72.81 Authority for disposal.

Forfeited firearms, ammunition or explosive materials, not the subject of an allowed petition, may only be disposed of in accordance with the provisions of 26 U.S.C. 5872(b) (National Firearms Act).

Because this Treasury decision merely recodifies 26 CFR Part 172 as 27 CFR Part 72 and makes only minor changes therein, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b), or subject to the effective date limitation of 5 U.S.C. 553(d). Accordingly, this Treasury decision shall become effective March 15, 1974.

[SEAL] REX D. DAVIS,
Director, Bureau of Alcohol, Tobacco, and Firearms.

Approved: March 7, 1974.

JAMES B. CLAWSON,
Acting Assistant Secretary of the Treasury.

[FR Doc.74-6044 Filed 3-14-74;8:45 am]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR

[S-74-5]

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Hazardous Materials

On November 7, 1972 a notice was published in the FEDERAL REGISTER (37 FR 23646) proposing to amend certain provisions in §§ 1910.103, 1910.104, 1910.106, 1910.107 and 1910.110 of 29 CFR Part 1910, pertaining to unattended service stations, inspections of bulk hydrogen and oxygen systems, protection by public fire departments, and several miscellaneous amendments. The notice invited interested persons to submit written data, views and arguments within 30 days. Interested persons were also notified of their right to request a hearing. Several comments were received: there was no request for a hearing.

1. The existing standards, §§ 1910.-103(b)(5)(i) and (c)(5)(i), and 1910.-104(b)(10)(i), dealing with the inspection and maintenance of storage facilities for hydrogen and oxygen, provide that such facilities must be periodically inspected and maintained by a qualified representative of the supplier. It was proposed to delete the provision that a supplier must perform the inspection and maintenance because it was found that many users possess the capability to perform their own inspections and maintenance. No comment has been received with regard to this proposal. However, several comments were received with regard to the proposal to require monthly inspections. In substance, the comments recommend inspections at different intervals of time. In view of the fact that inspections are made whenever the storage facilities are filled, it has been decided to eliminate the specific requirement for inspection, and simply to require maintenance of the facilities in good working condition.

2. Section 1910.106(a)(27) defines "protection from exposure" to mean "fire protection for structures on property adjacent to tanks." The section further states that "when acceptable to the authority having jurisdiction, such structures located (i). within the jurisdiction of any public fire department or (ii) within or adjacent to plants having private fire brigades shall be considered as having adequate protection for exposures." It was proposed to revoke this clause and to provide that structures located within the jurisdiction of a public fire department having a class 5 or better rating by application of the American Insurance Association Grading Schedule are considered as having such protection. Several comments were received in opposition to this requirement. The comments assert that most fire departments with a class 5 or better rating are located in metropolitan areas, as opposed to rural areas where the tanks in question are often located. This observation appears to be well taken. Therefore, the definition has been revised

in terms of adequate fire protection in general.

3. Section 1910.106(c)(2)(i) requires the use of steel and nodular iron for piping, valves or fittings, with certain exceptions. However, malleable iron has also been used for such devices, with a satisfactory record of performance, for a considerable period of time. For this reason it was proposed to permit the use of malleable iron. No comments were received with regard to this proposal, and the proposal has been adopted.

4. Section 1910.106(d)(7)(ii) provides that when sprinklers are provided as fire protection devices, they shall be installed in an approved manner. It was proposed to require that sprinklers be installed in accordance with § 1910.159 which covers automatic sprinkler systems used in a fire suppression capacity. There were no objections to the proposal, and this has been adopted without change.

5. Section 1910.106(g)(1)(i)(*d*) provides for the temporary use of movable tanks in conjunction with the dispensing of flammable or combustible liquids into the fuel tanks of motor vehicles on premises not normally accessible to the public, but only under a permit from the enforcing authority. It was proposed to revoke this provision since it actually requires a variance properly handled in accordance with 29 CFR Part 1905. One comment objects to the revocation of the provision as prohibiting the use of movable skid tanks at construction sites. The objection is not valid because this provision does not cover construction activities, which are governed by 29 CFR 1926.152(g). The provision is revoked.

6. Section 1910.106(g)(1)(i)(*e*)(3) provides that flammable liquids may be dispensed in the open from a tank vehicle to a motor vehicle under certain conditions, one of which is that such motor vehicles are owned or operated by a commercial, industrial or governmental agency. A rule was proposed to delete this requirement because safety of employees does not depend upon ownership of the vehicle. No substantive comments were received and the proposal is adopted.

7. Section 1910.106(g)(3)(iv)(*b*) provides that dispensing devices of Class I liquids must be of an approved type. It was proposed to add the requirement that evidence of listing to fuel dispensing nozzles be affixed in such a way that an attempt to dismantle a nozzle would destroy it, and to prohibit the use of any nozzle which does not have intact evidence of listing. A number of comments were received concerning the time allowed for compliance and the manner in which such evidence of listing should be affixed. Underwriters Laboratories, Inc., has suggested delaying the application of such a requirement until 1979, so that work may be undertaken with manufacturers to devise a reasonable means to comply with the requirement. The suggestion has been accepted, and the adopted rule requires evidence of listing only on nozzles installed after December 31, 1978. Existing nozzles are excepted because of their short useful life.

8. Section 1910.106(g)(3)(vii) provides for the use of special dispensing devices, such as coin-operated or remote preset types, at service stations, provided there is at least one qualified attendant on duty. It was proposed to revoke the requirement of an attendant, and to adopt certain procedures for the safety protection of employees, such as repairmen, who occasionally enter the stations. Numerous comments have been received in opposition to these proposed procedures, and it has been determined that they are not necessary nor appropriate for the safety of such employees occasionally present. Thus, 1910.106(g)(3)(vii) has been simply revoked.

9. Section 1910.107(b)(1) permits spray booths to be substantially constructed of steel not thinner than No. 18 U.S. gauge. It was proposed to delete the specification of No. 18 U.S. gauge, since the substantiality requirement is adequate to insure safety without reference to a specific gauge of steel. There were no substantial objections to the proposal and this has been adopted.

10. Section 1910.107(d)(2) provides, among other things, that all spraying areas must be provided with mechanical ventilation adequate to remove flammable vapors, mists, or powders to a safe location and to confine and control combustible residues so that life or property is not endangered. It was proposed to delete the requirement that property be protected, since the Act is not addressed to the protection of property. No comments were received and the proposal is adopted.

11. Section 1910.110(f)(5)(iii) provides that single-strength glass or other similar explosion relieving-construction must be used for a portion of the exterior walls or roof having an area of not less than 10 percent of that of the combined area of the enclosing walls and roof. It was proposed to delete the words "single strength glass" to remove the implication that it is the best method of explosion-relieving construction. One comment was received suggesting that the wording of the proposed revision be changed from "explosion-relieving material" to "explosion-relieving construction." The comment has been accepted.

Accordingly, pursuant to section 6(b) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655), Secretary of Labor's Order No. 12-71 (36 FR 8754), and 29 CFR Part 1911, §§ 1910.103, 1910.104, 1910.106, 1910.107, and 1910.110 of 29 CFR Part 1910 are amended as follows:

1. In § 1910.103, paragraphs (b)(5) and (c)(5) are revised to read as follows:

§ 1910.103 Hydrogen.

* * * * *

(b) *Gaseous hydrogen systems.* * * *

(5) *Maintenance.* The equipment and functioning of each charged gaseous hydrogen system shall be maintained in a safe operating condition in accordance with the requirements of this section. The area within 15 feet of any hydrogen container shall be kept free of dry vegetation and combustible material.

(c) *Liquified hydrogen systems.* * * *

(5) *Maintenance.* The equipment and functioning of each charged liquified hydrogen system shall be maintained in a safe operating condition in accordance with the requirements of this section. Weeds or similar combustibles shall not be permitted within 25 feet of any liquified hydrogen equipment.

2. In § 1910.104, paragraph (b)(10) is revised to read as follows:

§ 1910.104 Oxygen.

* * * * *

(b) *Bulk oxygen systems.* * * *

(10) *Maintenance.* The equipment and functioning of each charged bulk oxygen system shall be maintained in a safe operating condition in accordance with the requirements of this section. Wood and long dry grass shall be cut back within 15 feet of any bulk oxygen storage container.

3. In § 1910.106, paragraphs (a)(27), (c)(2) (i) and (ii), and (d)(7)(ii) are revised, paragraph (g)(1)(i) (*d*) and (*e*) (*3*), and (g)(3)(vii) are revoked, and paragraph (g)(3)(iv)(b) is revised to read as follows:

§ 1910.106 Flammable and combustible liquids.

(a) *Definitions.* * * *

(27) Protection for exposure shall mean adequate fire protection for structures on property adjacent to tanks, where there are employees of the establishment.

* * * * *

(c) *Piping, valves, and fittings.* * * *

(2) *Materials for piping, valves, and fittings*—(i) *Required materials.* Materials for piping, valves, or fittings shall be steel, nodular iron, or malleable iron, except as provided in paragraph (c)(2) (ii), (iii) and (iv) of this section.

(ii) *Exceptions.* Materials other than steel, nodular iron, or malleable iron may be used underground, or if required by the properties of the flammable or combustible liquid handled. Material other than steel, nodular iron, or malleable iron shall be designed to specifications embodying principles recognized as good engineering practices for the material used.

* * * * *

(d) *Container and portable tank storage.* * * *

(7) *Fire control.* * * *

(ii) *Sprinklers.* When sprinklers are provided, they shall be installed in accordance with § 1910.159.

* * * * *

(g) *Service stations*—(1) *Storage and handling*— (i) *General provisions.* * * *

(*d*) [Revoked]

(*e*) * * *

(3) [Revoked]

* * * * *

(3) *Dispensing systems.* * * *

(iv) *Dispensing units.* * * *

(b) (1) Only listed devices may be used for dispensing Class I liquids. No such device may be used if it shows evidence of having been dismantled.

(2) Every dispensing device for Class I liquids installed after December 31, 1978, shall contain evidence of listing so placed that any attempt to dismantle the device will result in damage to such evidence, visible without disassembly or dismounting of the nozzle.

* * * * *

(vii) [Revoked]

* * * * *

4. In § 1910.107, paragraphs (b)(1) and (d)(2) are revised to read as follows:

§ 1910.107 Spray finishing using flammable and combustible materials.

* * * * *

(b) *Spray booths*—(1) *Construction.* Spray booths shall be substantially constructed of steel, securely and rigidly supported, or of concrete or masonry except that aluminum or other substantial noncombustible material may be used for intermittent or low volume spraying. Spray booths shall be designed to sweep air currents toward the exhaust outlet.

* * * * *

(d) *Ventilation.* * * *

(2) *General.* All spraying areas shall be provided with mechanical ventilation adequate to remove flammable vapors, mists, or powders to a safe location and to confine and control combustible residues so that life is not endangered. Mechanical ventilation shall be kept in operation at all times while spraying operations are being conducted and for a sufficient time thereafter to allow vapors from drying coated articles and drying finishing material residue to be exhausted.

* * * * *

5. In § 1910.110, paragraph (f)(5)(iii) is revised to read as follows:

§ 1910.110 Storage and handling of liquefied petroleum gases.

* * * * *

(f) *Storage of containers awaiting use or resale.* * * *

(5) *Storage within special buildings or rooms.* * * *

(iii) A portion of the exterior walls or roof having an area not less than 10 percent of that of the combined area of the enclosing walls and roof shall be of explosion relieving construction.

* * * * *

Effective date. These amendments shall become effective on June 13, 1974.

(Sec. 6, 84 Stat. 1593 (29 U.S.C. 655); Secretary of Labor's Order No. 12-71, 36 FR 8754)

Signed at Washington, D.C., this 11th day of March 1974.

JOHN STENDER,
Assistant Secretary of Labor.

[FR Doc.74-6092 Filed 3-14-74;8:45 am]

PART 1999—PROCEDURE FOR THE PREPARATION AND CIRCULATION OF ENVIRONMENTAL IMPACT STATEMENTS

On November 7, 1973, a proposed procedure for the preparation and issuance of environmental impact statements was published in the FEDERAL REGISTER (38 FR 30744), in accordance with the requirements of the August 1, 1973 Guidelines of the Council on Environmental Quality (CEQ) (38 FR 20550). Interested persons were given an opportunity to submit written objections, data, views, and arguments concerning the proposal.

Written comments were received from The Dow Chemical Company, the National Audubon Society, and the Minnesota Public Interest Research Group (MPIRG). Dow urges that the procedures be broadened to include solicitations of economic information. The Audubon Society suggests that (1) the procedure should require the Director of the Office of Standards to confer with CEQ before determining whether an environmental impact statement need be prepared, and that a joint determination be made, and (2) in emergency cases parties that have commented on statements, or citizens or agencies in the area that could be affected by agency action taken under emergency circumstances, be notified that such a determination is pending. MPIRG recommends that the procedure contain provisions similar to those prepared by The Environmental Quality Council Staff in Minnesota on September 5, 1973.

In addition to the written comments received from the public, the proposal was reviewed by the staff of CEQ for compliance with its Guidelines, and by the U.S. Department of Labor's Office of Standards for technical and administrative feasibility.

In view of the small number of changes suggested by the comments received, the procedure has few modifications in its final form.

1. A clarifying change is made in § 1999.2(c), where major actions which are likely to require the preparation of environmental impact statements are identified. Instead of "the promulgation of standards regulating the quality of the environment in workplaces is ordinarily expected to be a major action" the second sentence in paragraph (c) reads, in part, "the promulgation, modification, or revocation of standards regulating environmental hazards to health in the workplace may be a major action." Paragraph (c), as revised, is felt to be a more accurate description of those Occupational Safety and Health Act (OSHA) activities which are likely to require environmental impact statements.

2. In § 1999.3, the provisions that the Director of the Office of Standards shall determine when an environmental impact statement is required have remained unchanged despite the Audubon Society's suggestion that the Director and the CEQ make a joint determination in this regard. The suggestion has not been adopted because the Office of Standards has ultimate responsibility to comply with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332) in connection with the administration of OSHA, and therefore should have ultimate authority to make the determination required by NEPA.

3. In § 1999.3(d), the first sentence is revised to read, in part, as follows: "Where the Director determines that an impact statement is required, either initially or after a previous determination that one was not required, a short statement indicating the reasons for such a decision * * * shall be published * * *." The amendatory phrase "either initially or after a previous determination that one was not required" makes clear that the Director of the Office of Standards need not be bound by his initial decision not to prepare a statement, if upon reconsideration or on the basis of new information it appears to him that an environmental impact statement is required. Also, the suggestion by Dow to broaden this paragraph is not accepted, because this paragraph, as it stands, requires the solicitation of all relevant information, including economic information.

4. Section 1999.4(h) of the proposed procedure has been amended to state that the Director, to the extent practicable, should make draft environmental impact statements available to the public at least fifteen (15) days prior to the time of hearings on proposed actions which are the subject of such statements. Paragraph (h) now also states that the Director may, where appropriate, hold public hearings solely for the purpose of exploring the environmental impact of a proposed action. Both changes, it is believed, will serve to enhance public participation prior to final agency action. These changes also reflect the emphasis on public participation found in the proposed regulations of the Environmental Quality Council Staff of MPIRG.

5. An additional sentence has been added to § 1999.5(a) to require the Director to set forth in writing his decision not to prepare a final environmental impact statement if he so decides after having circulated for comment a draft impact statement. Such a decision shall be available for public inspection. It is felt that should the Director decide that an environmental impact statement is no longer required, he should set forth in writing the reasons for his decision, which should be available for public inspection.

6. The first sentence in § 1999.5(b) of the proposed procedure has been reworded to insure that the final impact statement will contain an analysis of all significant comments, both comments submitted in writing and those received at a hearing. A comparison of the proposal with the MPIRG regulations suggested the need to clarify this section.

7. Section 1999.6, regarding emergency circumstances, has been changed to reflect the suggestion from the National Audubon Society. The procedure now states that where the Director must take action without complying with this procedure, he shall consult with CEQ regarding alternative procedures, which may include informal consultation with persons likely to be affected by the action.

8. Several editorial changes have been made for reasons which are apparent. The issues discussed above are believed to be the major points brought out by agency review and public comments. Accordingly, after consideration of all comments received and pursuant to section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), section 2(f) of Executive Order 11514 of March 5, 1970 (3 CFR 1966–1970, Comp. p. 902), and Secretary of Labor's Order No. 12–71 (36 FR 8754), 29 CFR Chapter XVII is amended by adding thereto a new Part 1999, to read as set forth below.

AUTHORITY: Sec. 102, Pub. L. 91–190, 83 Stat. 852 (42 U.S.C. 4332); EO 11514, 35 FR 4247, 3 CFR 1966–1970, Comp., p. 902; Secretary of Labor's Order No. 12–71 (36 FR 8754).

§ 1999.1 Purpose and scope.

(a) Section 102 of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332) directs that, to the fullest extent possible, the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in the Act for the preservation of the environment. More particularly, section 102(2) (B) of NEPA requires all Federal agencies to develop methods and procedures, in consultation with the Council on Environmental Quality (Council) which will insure that presently unquantified environmental amenities and values will be given appropriate consideration in agency decisionmaking.

(b) Section 3(h) of Executive Order 11514 of March 5, 1970 (3 CFR 1966–1970, Comp., p. 902) directs the Council to issue guidelines to Federal agencies for the preparation of environmental impact statements. On August 1, 1973, the Council published in final form its revised Guidelines, 40 CFR Part 1500 (38 FR 20550).

(c) The purpose of this part is to prescribe the policies and procedures to be followed when environmental impact statements are to be prepared in connection with the administration of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 651–678).

§ 1999.2 Identification of actions likely to require environmental impact statements.

(a) Section 102(2) (C) of NEPA requires all Federal agencies, including the Occupational Safety and Health Administration (OSHA), to include a detailed environmental impact statement "in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment." In addition, OSHA is required, pursuant to 40 CFR 1500.6(c) of the Council's August 1, 1973 Guidelines, to identify those actions it is authorized to take that are likely to require environmental impact statements and those actions that are not likely to require impact statements.

(b) The major activities involved in implementing the Williams-Steiger Occupational Safety and Health Act of 1970 are the promulgation of occupational safety and health standards and the granting of particular variances from the standards, approval of State plans for the development and enforcement of standards, inspection of workplaces for compliance with applicable standards and enforcement proceedings where violations of standards are believed to exist.

(c) Ordinarily, the granting of variances, approval of State plans, inspection and enforcement activities, and requests for appropriations are not expected to be major Federal actions significantly affecting the quality of the human environment. On the other hand, the promulgation, modification, or revocation of standards regulating environmental hazards to health in the workplace may be a major action requiring the preparation of an environmental impact statement. Examples of such standards are those regulating exposure to radiation, excessive noise, and harmful airborne material.

§ 1999.3 Initial determination of need for an environmental impact statement.

(a) Whenever the Occupational Safety and Health Administration is considering a major Federal action, the Director of the Office of Standards shall determine whether an environmental impact statement is required. The Director shall be the official responsible for the preparation and circulation of OSHA's impact statements (draft and final) required by this part. He shall also receive comments on the statements, prepare the comments of OSHA on impact statements of other agencies, and perform all other duties required by NEPA, Executive Order 11514, and the August 1, 1973 Guidelines (40 CFR Part 1500) relating to the administration of the Williams-Steiger Occupational Safety and Health Act of 1970.

(b) The Director shall be responsive to requests by the Council for the preparation of an impact statement, unless he determines that one is not required. In that case, he shall prepare a statement indicating the reasons for such a decision that will be available for public inspection under Part 1913 of this chapter.

(c) If there is potential that a proposed action may significantly affect the human environment or that the environmental impact of the action is likely to be highly controversial, an impact statement shall be prepared. A statement shall also be prepared if it is reasonable to anticipate a cumulatively significant impact on the environment from a number of actions which, individually, have a limited environmental effect.

(d) Where the Director determines than an impact statement is required, either initially or after a previous determination that one was not required, a short statement indicating the reasons for such a decision and soliciting comments that may be helpful in preparing a draft impact statement shall be published in the FEDERAL REGISTER as soon as practicable after the determination is made. The statement shall note that (1) a copy of the draft impact statement, once it is prepared, will be available to any member of the public who requests an opportunity to comment on it; (2) any person or agency submitting comments on the draft impact statement to the Director must at the same time forward five (5) copies of the comments to the Council; and (3) a 45 day period will be allowed for the submission of comments on the draft impact statement.

(e) If the Director determines that an impact statement is not required for a proposed action which: (1) Is identified by § 1999.2(c) as an action that may require a statement; (2) is similar to actions which have previously required statements; or (3) was previously announced as the subject of a statement, he shall set forth in writing the decision and the reasons for it, which shall be available for public inspection under Part 1913 of this chapter.

(f) The Director shall maintain a list of proposed actions for which impact statements are under preparation, and a list of determinations under paragraph (e) of this section not to prepare such statements. The lists shall be revised at regular intervals, no less frequently than quarterly each year. The Director shall transmit each such revision to the Council, which will periodically publish such lists in the FEDERAL REGISTER. The lists shall be made available for public inspection under Part 1913 of this chapter.

§ 1999.4 Preparation and circulation of draft environmental impact statements.

(a) After an initial determination of the need for an impact statement, the Director shall prepare and circulate a draft impact statement as early as possible following the close of the period allowed under § 1999.3(d) for public comments, but no less than 90 days before final agency action is taken. Where OSHA is involved with at least one other Federal agency in a major action that may significantly affect the human environment, the Director shall consider the possibility of joint preparation of an impact statement, or, where appropriate, designation of a single "lead agency" to prepare the statement.

(b) A draft statement must satisfy, at the time the draft is prepared, the requirements established for final statements by section 102(2)(C) of NEPA. The draft impact statement shall include a detailed statement on:

(1) The proposed action, its purposes and the environment that will be affected;

(2) The probable environmental impact of the proposed action and the sources of data used to identify, quantify, and evaluate it;

(3) The relationship, if any, of the proposed action to land use plans, policies, and controls for the affected area;

(4) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity;

(5) Any probable adverse environmental effects, including secondary or indirect consequences, which cannot be avoided should the proposal be implemented;

(6) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(7) Alternatives to the proposed action including, where relevant, those not within the existing authority of OSHA, that would minimize or avoid its adverse impact; and

(8) The interests and considerations of Federal policy that are thought to offset the adverse environmental effects of the proposed action should the action be adopted.

(c) Highly technical analyses and data shall be avoided in the body of the draft impact statement. Such materials shall be attached as appendices or footnoted with adequate bibliographic references.

(d) Ten copies of the draft impact statement shall be forwarded to the Council, which will publish in the FEDERAL REGISTER a notice of its filing.

(e) The draft statement shall also be circulated for comment, as soon as possible, to all Federal, Federal-State, State, and local agencies which have jurisdiction by law or special expertise with respect to the environmental impact involved. Those agencies and their relevant areas of expertise include those identified in Appendices II and III of the Council's August 1, 1973 Guidelines, 40 CFR Part 1500, (38 FR 20550). Wherever a proposed action relates to air or water quality, noise abatement and control, pesticide regulation, solid waste disposal, generally applicable environmental radiation criteria and standards, or other provision of the authority of the Administrator of the Environmental Protection Agency is involved, the Director shall submit such proposed action, and the relative draft impact statement, if any, to the Administrator for review and comment in writing.

(f) Copies of all draft impact statements shall be available to any organization or individual, without charge to the extent practicable, or at a fee which is not more than the actual cost of reproduction. A copy of the draft statement shall in all cases be sent free of charge to any applicant whose proposed action is the subject of the statement.

(g) All agencies and private parties shall be allowed a minimum of 45 days for review and submission of comments regarding a draft statement. The length of the review period shall be calculated from the date of publication in the FEDERAL REGISTER of the Council's listing notifying the public of the issuance of the impact statement. Where the Director determines that a request for an extension of time is meritorious, he may extend the review period. Where no such extension of time has been requested, and no comments have been received within the 45 day period, it may be presumed after 45 days that no agency or party has any comment to make.

(h) In cases where a public hearing is to be held on a proposed action which is the subject of an environmental impact statement, the impact of the proposed action on the environment shall be a proper issue at the hearing. The Director, to the extent practicable, should make the draft environmental impact statement available to the public at least fifteen (15) days prior to the time of such a hearing. Also, the Director may, where appropriate, hold public hearings solely for the purpose of exploring the environmental impact of a proposed action.

(i) The Director shall complete a summary sheet on each draft and final impact statement that shall accompany the statement. Appendix I of this part contains the form to follow for completing such a sheet.

§ 1999.5 Preparation and circulation of final environmental impact statements.

(a) After a draft impact statement has been circulated and at least 45 days have elapsed for review of it, the Director may prepare a final impact statement. If he decides not to prepare a final statement he shall set forth in writing his decision and the reasons for it, which shall be available for public inspection under Part 1913 of this chapter.

(b) The final impact statement shall contain an analysis of all significant comments received, including comments received at a hearing. All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous) shall be attached to the final statement, whether or not each such comment is thought to merit individual discussion in the text of the statement.

(c) Ten copies of the final impact statement, together with the substance of all comments received on the draft statement, shall be forwarded to the Council which will publish a notice thereof in the FEDERAL REGISTER.

(d) Copies of final impact statements, with comments attached, shall be sent, where practicable, to all Federal, Federal-State, State, and local agencies and private organizations that made substantial comments on the draft statement and to individuals who requested a copy of the final statement, as well as any applicant whose proposal is the subject of the statement. Copies shall also be sent to all agencies that share jurisdiction and expertise with OSHA in the area that involves the proposed action. (See § 1999.4(e) and Appendices II and III of the Council's Guidelines, 40 CFR Part 1500, (38 FR 20550).)

(e) In all cases, copies of final statements shall be sent to the Environmental Protection Agency to assist it in carrying out its responsibilities under section 309 of the Clean Air Act.

(f) Once the final statement has been prepared, the Director shall make the statement, the comments received regarding the draft impact statement, and any underlying documents, available to the public pursuant to the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion of intra- or interagency memoranda when such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action, and in accordance with Part 1913 of this chapter. Where appropriate, the Director shall utilize methods, in addition to the Council's noticing of the statement in the FEDERAL REGISTER, to publicize the existence of the environmental impact statement.

(g) In no case shall final agency action be taken sooner than 30 days after the publication in the FEDERAL REGISTER of the Council's listing notifying the public of issuance of the final impact statement, except as otherwise provided in § 1999.6.

(h) The Director may at any time supplement or amend a draft or final impact statement, particularly when substantial changes are made in the proposed action, or significant new information becomes available concerning its environmental impact. In such cases, the Director shall consult with the Council with respect to the possible need for or desirability of recirculation of the statement for an appropriate length of time.

§ 1999.6 Emergency circumstances.

When emergency circumstances, overriding considerations of expense to the Federal government, or impaired program effectiveness make it necessary to take an action with significant environmental impact without observing the requirements of §§ 1999.3, 1999.4 and 1999.5, the Director shall consult as soon as possible with the Council regarding alternative procedures to be followed, which may include informal consultation with persons likely to be affected by the action.

§ 1999.7 Effect of final impact statements upon agency decisionmaking.

In deciding whether to take an action which is the subject of a final impact statement, the Assistant Secretary of

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Labor for Occupational Safety and Health will consider the final impact statement and the comments thereon, along with other considerations dictated by the Williams-Steiger Occupational Safety and Health Act of 1970.

§ 1999.8 Subsequent revisions of this part.

Any revision of this part will be proposed and adopted only after prior consultation with the Council and, in the case of substantial revision, opportunity for public comment. All revisions will be published in the FEDERAL REGISTER.

APPENDIX I—SUMMARY TO ACCOMPANY DRAFT AND FINAL IMPACT STATEMENTS

Check one: ( ) Draft. ( ) Final Environmental Impact Statement.

Department of Labor, Occupational Safety and Health Administration, Office of Standards, Applications Research Branch, Room 210, 1726 M Street NW., Washington, D.C. 20210.

(1) Name of action. (Check one) ( ) Administrative action. ( ) Legislative action.

(2) Brief description of action and its purpose, what States are affected, and what other, if any, Federal actions are in the geographical area.

(3) Summary of environmental impacts and adverse environmental impacts and adverse environmental effects.

(4) Summary of major alternatives considered.

(5) (For draft statements) List all Federal, State, Federal-State, and local agencies and other parties from which comments have been requested. (For final statements) List all Federal, State, Federal-State, and local agencies and other parties from which written comments have been received.

(6) Date draft statement (and final environmental impact statement, if one has been issued) was made available to the Council and the public and the final date for submission of comments.

Effective date. This Part 1999 shall become effective March 15, 1974.

Signed at Washington, D.C. this 11th day of March 1974.

JOHN STENDER,
Assistant Secretary of Labor.

[FR Doc.74-6094 Filed 3-14-74;8:45 am]

Title 32—National Defense

SUBTITLE A—DEPARTMENT OF DEFENSE

CHAPTER VI—DEPARTMENT OF THE NAVY

SUBCHAPTER E—CLAIMS

PART 752—ADMIRALTY CLAIMS

On November 6, 1974, a new chapter XII of the Manual of the Judge Advocate General, Department of the Navy, was promulgated throughout the Navy. This new chapter XII revises admiralty claims regulations and procedures within the naval service. Those portions thereof having general applicability and legal effect constitute a revision of 32 CFR Part 752. Accordingly, effective March 15, 1974, Part 752 of 32 CFR Chapter VI is revised to read as follows:

AUTHORITY: 5 U.S.C. § 301, 10 U.S.C. § 5031, and 10 U.S.C. §§ 7621-7623.

NOTE: This Part 752 is derived from chapter XII of the Manual of the Judge Advocate General.

§ 752.1 Scope.

This part applies to admiralty-tort claims. These include claims against the United States for damage caused by a vessel in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and affirmative claims by the United States for damage caused by a vessel or floating object to Navy property.

§ 752.2 Organization.

(a) *Administrative authority of the Secretary of the Navy*. The Secretary of the Navy has administrative authority for settlement and direct payment, where the amount paid does not exceed $1,000,000 and where the matter is not in litigation, of claims for damage caused by naval vessels or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and for towage or salvage services rendered to naval vessels (10 U.S.C. 7622 (1970)). The Secretary also has authority to settle affirmative admiralty claims for damage caused by a vessel or floating object to property under the jurisdiction of the Navy (10 U.S.C. 7623 (1970)).

(b) *Admiralty Division of the Office of the Judge Advocate General*. The Navy's admiralty-tort claims are handled in the Admiralty Division of the Office of the Judge Advocate General. In addition, there are stationed in several district law centers, and in certain other commands, judge advocates who are also trained admiralty officers, and they act locally in admiralty matters.

(c) *Mission and policy*. The primary mission of the Admiralty Division is to effect prompt and equitable settlements of admiralty claims, both against and in favor of the United States. The settlement procedure has evolved to eliminate the expenses and delays arising out of litigation and to obtain results advantageous to the financial interests of the United States. Where settlements cannot be made, litigation ensues in the Federal courts. The final test of whether a settlement is justified is the probable result of litigation. Settlements are therefore considered and determined by the probable results of litigation. The policy of the Navy is to effect fair and prompt settlements of admiralty claims wherever legal liability exists.

(d) *Admiralty-tort claims*. As indicated above, the Admiralty Division primarily handles admiralty-tort claims. These are claims for damage caused by vessels in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and claims for damage caused by a privately owned vessel to a vessel or property of the Navy (affirmative claims). The Admiralty Division also handles claims for towage and salvage services rendered to a vessel in the naval service.

(e) *Admiralty-contract claims*. Admiralty-contract claims arising out of the operations of the Military Sealift Command (MSC) are handled by its Office of Counsel. MSC is responsible for the procurement of vessels and space for the commercial ocean transportation of Department of Defense cargo, mail, and personnel. It is also responsible for the maintenance, repair, and alteration of Government-owned vessels assigned to it. The Office of Counsel, MSC, deals with the various claims of a contract nature which arise out of these operations. These include claims for cargo damage, charter hire, redelivery, general average, and claims arising under MSC ship-repair contracts.

(f) *Damage caused by Navy contract stevedores*. Office of Counsel, Naval Supply Systems Command, has cognizance of admiralty claims for damage caused by Navy contract stevedores. Under these stevedore contracts, the stevedoring companies are responsible for negligent acts of their employees which result in vessel damage. It is important that the extent of any such damage be accurately determined and promptly reported to the contracting officer having cognizance of the particular stevedore contract involved.

(g) *Resolving conflicts*. Admiralty-tort claims, such as collision, personal-injury, and death claims, are dealt with by the Admiralty Division, irrespective of whether an MSC vessel or other naval vessel is involved. Whether any particular claim is to be handled by JAG or by MSC, therefore, is determined by the nature of the claim. Cases may arise which could be handled by either office. If doubt exists, such matters should be reported both to JAG and to MSC. An agreement will then be reached between the Admiralty Division and the Office of Counsel, MSC, as to how the incident should be handled.

§ 752.3 Claims against the Navy.

(a) *Settlement authority*. 10 U.S.C. 7622 (1970), as amended by Public Law 92-417, 86 Stat. 654, provides settlement authority for

(1) Damage caused by a vessel in the naval service or by other property under the jurisdiction of the Department of the Navy; (2) compensation for towage or salvage service, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy; or (3) damage caused by a maritime tort committed by any agent or employee of the Department of the Navy or by property under the jurisdiction of the Department of the Navy.

The limit on the Secretary's settlement authority is a payment of $1,000,000. A claim which is settled for an amount over