Number, if available; the jurisdictional agency with which the application for determination was filed; and, if applicable, the date of withdrawal of the application; and

(B) File with the Commission (*1*) a statement of concurrence by the purchaser that all proper refunds have been made; or

(*2*) If a purchaser does not submit a statement of concurrence to the seller, a statement that no concurrence was received.

(ii) A seller is not required to include in a report filed under paragraph (f)(1)(i) any information regarding a refund recovered by an interstate pipeline through a billing adjustment.

(2) *Interstate Pipelines.* (i) An interstate pipeline must include with any Purchased Gas Adjustment Filing under § 154.38 of this chapter, a refund report identifying all billing adjustments that are reflected in the interstate pipeline's PGA filing to effect refunds required to be made to it by sellers under paragraph (e) of this section. The interstate pipeline must file with the Commission the original and two copies of the refund report showing for each seller:

(A) The amounts of overcharges and interest to be refunded by that seller as determined in accordance with paragraph (e) of this section;

(B) The dates on which any refunds by the seller were due;

(C) The amounts of, and the dates on which, billing adjustments were made by the pipeline to satisfy the seller's refund obligations under paragraph (e) of this section in whole or in part;

(D) The well name and, if available, American Petroleum Institute Well Number of the well that produced the natural gas for which the interstate pipeline was overcharged by that seller; and

(E) If applicable, the date of withdrawal of the seller's application.

(ii) If the interstate pipeline does not submit a statement of concurrence to the seller concerning refunds under § 273.302 of this chapter, the interstate pipeline must submit to the Commission such concurrence or a statement indicating the reason for its refusal to submit its concurrence with the seller. The interstate pipeline's submission is due within thirty (30) days of the date that a refund report or statement that does not include a statement of concurrence by the purchaser is filed by the seller. A duplicate of the submission must be served upon the seller.

* * * * *

[FR Doc. 85-13261 Filed 6-4-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 4H5440/R768; PH-FRL 2845-3]

Pesticide Tolerance for Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation for residues of the fungicide iprodione in or on the feed commodity soapstock. This regulation to establish a maximum permissible level for residues of iprodione in or on soapstock was requested by Rhone-Poulenc, Inc. Elsewhere in this issue of the **Federal Register**, tolerances on various raw agricultural commodities are also being established.

EFFECTIVE DATE: Effective on June 5, 1985.

ADDRESS: Written objections, identified by the document control number [FAP 4H5440/R768], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Room 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of December 12, 1984 (49 FR 48374), which announced that Rhone-Poulenc, Inc., P.O. Box 125, Monmouth Junction, NJ 08852, had submitted food/feed additive petition 4H5440 to the Agency proposing that 21 CFR be amended as follows:

1. In Part 193 by establishing a food tolerance for residues of the fungicide iprodione [3-(3,5-dichlorophenyl) *N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] and its metabolite [3-(3,5-dichloro-phenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on the commodity crude oil (of peanut fractions) at 1.0 ppm.

2. In Part 561 by establishing a feed tolerance for residues of the fungicide iprodione as expressed above in or on the commodity soapstock (of peanut fractions) at 10 ppm.

The petition was subsequently amended (May 8, 1985; 50 FR 19444) by withdrawing the proposed tolerance of 1.0 ppm for crude oil (of peanut fractions).

There were no comments received in response to the notices of filing.

The data submitted in the petition and other relevant material have been evaluated and discussed in a related document (PP 4F3129, 4F3111/R767) which appears elsewhere in this issue of the **Federal Register.**

The metabolism of iprodione is adequately understood, and an adequate analytical method, gas chromatography, is available for enforcement purposes.

The pesticide is considered useful for the purpose for which the feed additive regulation is sought, and it is concluded that the fungicide may be safely used in accordance with the prescribed manner when such uses are in accordance with the label and labeling registered pursuant to FIFRA as amended (86 Stat. 97 FIFRA) as amended (86 Stat. 973, 89 Stat. 751, U.S.C. 135(a) et. seq.)). Therefore, the feed additive regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Part 561

Feed additives, Pesticides and Pests.

Dated: May 23, 1985.
Steven Schatzow,
Director, Office of Pesticide Programs.

PART 561—[AMENDED]

Therefore, 21 CFR Part 561 is amended as follows:

1. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348

2. Section 561.263 is amended by revising the table of feed commodities to read as follows:

§ 561.263 Iprodione.

* * * * *

Feed	Parts per million
Grape, pomace, dry	225.0
Raisin waste	300.0
Soapstock	10.0

[FR Doc. 85-13367 Filed 6-4-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8029]

Furnishing Statements Required With Respect to Certain Substitute Payments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to statements required to be furnished by brokers and information returns of brokers. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations provide that a broker must furnish statements to its customers with respect to certain substitute payments received by the broker on behalf of such customers. The regulations also provide that brokers must make returns of information to the Internal Revenue Service respecting any customer to which such broker is required to furnish a statement. These regulations, which supersede the temporary regulations on this subject, affect brokers that receive substitute payments on behalf of customers and provide such brokers with the guidance needed to comply with the law.

DATES: The regulations apply to substitute payments received by brokers after December 31, 1984. The cross-references added to Part 1 under sections 6042 and 6049 are effective after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Bruce H. Jurist of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T), 202-566-3238, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 1984, the Federal Register published temporary regulations (T.D. 7987; 49 FR 42715) and proposed amendments (49 FR 42744) to the Income Tax Regulations (26 CFR Part 1) under section 6045 of the Internal Revenue Code of 1954. These amendments were proposed to conform the regulations to section 148 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 690). Three written comments responding to this notice were received. No requests for a public hearing were received and accordingly none was held. After consideration of all written comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Public Comments

Section 6045(d) requires brokers to furnish written statements to their customers showing the amount of payments in lieu of dividends or tax-exempt interest (or such other items as the Secretary may prescribe) received by brokers on behalf of their customers. The proposed regulations required a broker to furnish a statement informing an individual that a payment is a substitute payment in lieu of a capital gain distribution or a return of capital, provided that the broker had reason to know the character of the payment by January 31 of the calendar year following the year in which the payment was received. Two comments were received suggesting that this requirement be removed from the regulations because, at the time substitute payments are made, brokers are unable to determine that the payments are in lieu of a capital gain distribution or are in lieu of a return of capital. In response to those comments, the final regulations provide that a broker is required to furnish a statement informing an individual that a payment is a substitute payment in lieu of a capital gain distribution or a return of capital, only if the broker has reason to know the character of the payment on the record date of such payment.

The proposed regulations required a broker to determine the identity of the customer whose securities were transferred and on whose behalf the broker received substitute payments. The determination with respect to substitute payments (other than for tax-exempt dividends and tax-exempt interest) had to be made using one of the following methods: (1) specific identification; (2) allocation and selection; or (3) any other method with the prior approval of the Commissioner. Under the allocation and selection method, the broker proportionately allocates the transferred shares of stock between two pools of shares, one consisting of shares owned by individuals and one consisting of shares owned by nonindividuals.

The Internal Revenue Service has received a number of applications for approval of identification methods that purportedly fall under the third method (*i.e.*, a method requiring the prior approval of the Commissioner). The identification methods described in the majority of these applications relate to various forms of the allocation and selection method described in § 1.6045-2(f)(2)(ii). Prior approval by the Commissioner is not required for any type of random or first-in-first-out ("FIFO") allocation method within the pool of nonindividual shares. These applications indicate that the scope of the third method has been misunderstood. The Commissioner's approval is necessary only where identification of customers is based on a nonrandom method other than FIFO identification.

A commentator requested that the allocation and selection method be amended to allow brokers to allocate transferred shares first to shares of the same class and issue borrowed from other brokers or customers and then to the two pools. The final regulations adopt the requested change.

Section 1.6045-2(b)(1) of the proposed regulations provided that a broker need not furnish a statement to a customer on whose behalf the broker receives substitute payments that aggregate less than $10 in a calendar year. A commentator requested that this minimal payments exception be expanded to an annual $10 per issue per customer exception. This request was not adopted in the final regulations.

Section 1.6045-2(a)(4)(ii) of the proposed regulations defined the term "broker," in part, as any person described in § 1.6045-1(a)(1). A commentator requested that the proposed regulations be amended to incorporate specifically the exceptions to the definition of broker provided in example (2) of § 1.6045-1(b). Such an express incorporation is unnecessary. Because example (2) of § 1.6045–1(b) includes a cross-reference to § 1.6045–1(a) and the proposed regulations defined broker with reference to § 1.6045–1(a), example (2) was included in the definition of broker in the proposed regulations by a series of cross-references. Therefore, no specific incorporation of example (2) is made in the final regulations.

Two commentators requested that the effective date of the requirement to furnish statements be delayed. Section 150(b) of the Tax Reform Act of 1984 provides that section 6045(d) applies to payments received after December 31, 1984. The Tax Reform Act of 1984 does not authorize the Internal Revenue Service to administratively change the statutorily prescribed effective date, and a delay in the effective date of the statement requirement is not adopted in the final regulations. Penalties for failure to file information returns or to furnish written statements, however, may be waived if it can be shown that such failure was due to reasonable cause and not to willful neglect.

Special Analyses

Although a notice of proposed rulemaking soliciting public comments was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The Treasury Department has determined that these final regulations are not major rules under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983. Accordingly, a Regulatory Impact Analysis is not required.

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget ("OMB") in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

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

List of Subjects

26 CFR 1.6001–1 Through 1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements; OMB control numbers under the Paperwork Reduction Act.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 and Part 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * § 1.6045–2 also issued under 26 U.S.C. 6045.

Par. 2. New § 1.6045–2 is added at the appropriate place. The new section is set forth below.

§ 1.6045–2 Furnishing statement required with respect to certain substitute payments.

(a) *Requirement of furnishing statements*—(1) *In general.* Any broker (as defined in paragraph (a)(4)(ii) of this section) that transfers securities (as defined in § 1.6045–1(a)(3)) of a customer (as defined in paragraph (a)(4)(iii) of this section) for use in a short sale and receives on behalf of the customer a substitute payment (as defined in paragraph (a)(4)(i)) shall, except as otherwise provided, furnish a statement to the customer identifying such payment as being a substitute payment.

2. *Special rule for transfers for broker's own use.* Any broker that borrows securities of a customer for use in a short sale entered into for the broker's own account shall be deemed to have transferred the stock to itself and received on behalf of the customer any substitute payment made with respect to the transferred securities, and shall be required to furnish a statement with respect to such payments in accordance with paragraph (a)(1) of this section.

(3) *Special rule for furnishing statements to individual customers with respect to payments in lieu of dividends*—(i) *In general.* Except as otherwise provided, a broker that receives a substitute payment in lieu of a dividend on behalf of a customer who is an individual ("individual customer") need not furnish a statement to the customer.

(ii) *Exception for certain dividends.* Any broker that receives on behalf of an individual customer a substitute payment in lieu of—

(A) An exempt-interest dividend (as defined in paragraph (a)(4)(vii) of this section);

(B) A capital gain dividend (as defined in paragraph (a)(4)(vi) of this section);

(C) A distribution treated as a return of capital under section 301(c)(2) or (c)(3); or

(D) An FTC dividend (as defined in paragraph (a)(4)(viii) of this section) shall furnish a statement to the individual customer identifying the payment as being a substitute payment as prescribed by this section, provided that the broker has reason to know not later than the record date of the dividend payment that the payment is a substitute payment in lieu of an exempt-interest dividend, a capital gain dividend, a distribution treated as a return of capital, or an FTC dividend.

(4) *Meaning of terms.* The following definitions apply for purposes of this section.

(i) The term "substitute payment" means a payment in lieu of—

(A) Tax-exempt interest, to the extent that interest has accrued on the obligation for the period during which the short sale is open;

(B) A dividend, the ex-dividend date for which occurs during the period after the transfer of stock for use in a short sale, and prior to the closing of the short sale; or

(C) Any other item specified in a rule-related notice published in the **Federal Register** (provided that such items shall be subject to the rules of this section only subsequent to the time of such publication).

For purposes of this section original issue discount accruing on an obligation (the interest upon which is exempt from tax under section 103) for the period during which the short sale is open shall be deemed a payment in lieu of tax-exempt interest.

(ii) The term "broker" means both a person described in § 1.6045–1(a)(1) and a person that, in the ordinary course of a trade or business during the calendar year, loans securities owned by others.

(iii) The term "customer" means, with respect to a transfer of securities for use in a short sale, the person that is the record owner of the securities so transferred.

(iv) The term "dividend" means a dividend (as defined in section 316) or a distribution that is treated as a return of capital under section 301(c)(2) or (c)(3).

(v) The term "tax-exempt interest" means interest to which the exception in section 6049 (b)(2)(B) applies.

(iv) The term "capital gain dividend" means a capital gain dividend as defined in section 852(b)(3)(C) or section 857(b)(3)(C).

(vii) The term "exempt-interest dividend" means an exempt-interest dividend as defined in section 852(b)(5)(A).

(viii) The term "FTC dividend" means a dividend with respect to which the recipient is entitled to claim a foreign tax credit under section 901 (but not by virtue of taxes deemed paid under section 902 or 960).

(5) *Examples.* The following examples illustrate the definition of a substitute payment in lieu of tax-exempt interest found in paragraph (a)(4)(i)(A) of this section.

Example (1). On September 1, 1984, L, a broker, borrows 200 State Q Bonds (the interest upon which is exempt from tax under section 103) held in street name for customer R and transfers the bonds to W for use in a short sale. The bonds each have a face value of $100 and bear 12% stated annual interest paid semiannually on January 1 and July 1 of each year. The bonds were not issued with original issue discount. On November 1, 1984, W closes the short sale and returns State Q Bonds to L. On January 1, 1985, L receives a $1200 interest payment (6%×$100×200 bonds =$1200) from State Q with respect to R's bonds. Four hundred dollars (2 months the bonds were on loan/6 months in the interest period = ⅓×$1200=$400) of the interest payment represents accrued interest on the obligations for the period during which the short sale was open and is a substitute payment in lieu of tax-exempt interest within the meaning of paragraph (a)(4)(i)(A) of this section. L must furnish a statement under paragraph (a) of this section to R for calendar year 1985 with respect to the $400 substitute payment.

Example (2). Assume the same facts as in Example (1), except that W closes the short sale on February 1, 1985. On January 1, 1985, L receives a $1200 payment from W with respect to R's bonds. Eight hundred dollars (4 months the bonds were on loan prior to January 1, 1985/6 months in the interest period = ⅔×$1200=$800) of the payment represents accrued interest on the obligation for the period during which the short sale was open and is a substitute payment in lieu of tax-exempt interest. On July 1, 1985, L receives a $1200 payment from State Q. Two hundred dollars (1 month the bonds were on loan after December 31, 1984/6 months in the interest period = ⅙×$1200=$200) of the payment represents accrued interest on the obligation for the period during which the short sale was open and is a substitute payment in lieu of the tax-exempt interest. Because both payments are received by L in 1985, L must furnish a statement under paragraph (a) of this section to R for that year with respect to both payments.

(b) *Exceptions*—(1) *Minimal payments.* No statement is required to be furnished under section 6045(d) or this section to any customer if the aggregate amount of the substitute payments received by a broker on behalf of the customer during a calendar year for which a statement must be furnished is less than $10.

(2) *Exempt recipients* (i) *In general.* A statement shall not be required to be furnished with respect to substitute payments made to a broker on behalf of—

(A) An organization exempt from taxation under section 501(a),

(B) An individual retirement plan,

(C) The United States, a possession of the United States, or an instrumentality or a political subdivision or a wholly-owned agency of the foregoing,

(D) A State, the District of Columbia, or a political subdivision or a wholly-owned agency or instrumentality of either of the foregoing,

(E) A foreign government or a political subdivision thereof, or

(F) An international organization.

(ii) *Determination of whether a person is described in paragraph (b)(2)(i) of this section.* The determination of whether a person is described in paragraph (b)(2)(i) of this section shall be made in the manner provided in §5f.6045–1(c)(3)(i)(B) of the Temporary Income Tax Regulations under the Tax Equity and Fiscal Responsibility Act of 1982.

(3) *Exempt foreign persons.* A statement shall not be required to be furnished with respect to substitute payments made to a broker on behalf of a person that is an exempt foreign person as described in § 1.6045–1(g)

(c) *Form of statement.* A broker shall furnish the statement required by paragraph (a) of this section on Form 1099. The statement must show the aggregate dollar amount of all substitute payments received by the broker on behalf of a customer (for which the broker is required to furnish a statement) during a calendar year, and such other information as may be required by Form 1099. A statement shall be considered to be furnished to a customer if it is mailed to the customer at the last address of the customer known to the broker.

(d) *Time for furnishing statements.* A broker must furnish the statements required by paragraph (a) of this section for each calendar year. Such statements shall be furnished after April 30th of such calendar year but in no case before the final substitute payment for the calendar year is made, and on or before January 31 of the following calendar year.

(e) *When substitute payment deemed received.* A Broker is deemed to have received a substitute payment on behalf of a customer when the amount is paid or deemed paid to the broker (or as it accrues in the case of original issue discount deemed a payment in lieu of tax-exempt interest).

(f) *Identification of customer and recordkeeping with respect to substitute payments*—(1) *Payments in lieu of tax-exempt interest and exempt-interest dividends.* A broker that receives substitute payments in lieu of tax-exempt interest, exempt-interest dividends, or other items (to the extent specified in a rule-related notice published pursuant to paragraph (a)(4)(i)(C) of this section) on behalf of a customer and is required to furnish a statement under paragraph (a) of this section must determine the identity of the customer whose security was transferred and on whose behalf the broker received such substitute payments by specific identification of the record owner of the security so transferred. A broker must keep adequate records of the determination so made.

(2) *Payments in lieu of dividends other than exempt-interest dividends*—(i) *Requirements and methods.* A broker that receives substitute payments in lieu of dividends, other than exempt-interest dividends, on behalf of a customer and is required to furnish a statement under paragraph (a) of this section must make a determination of the identity of the customer whose stock was transferred and on whose behalf such broker receives substitute payments. Such determination must be made as of the record date with respect to the dividend distribution, and must be made in a consistent manner by the broker in accordance with any of the following methods:

(A) Specific identification of the record owner of the transferred stock;

(B) The method of allocation and selection specified in paragraph (f)(2)(ii) of this section; or

(C) Any other method, with the prior approval of the Commissioner.

A broker must keep adequate records of the determination so made.

(ii) *Method of allocation and selection*—(A) *Allocation to borrowed shares and individual and nonindividual pools.* With respect to each substitute payment in lieu of a dividend received by a broker, the broker must allocate the transferred shares (*i.e.*, the shares giving rise to the substitute payment) among all shares of stock of the same class and issue as the transferred shares which were (1) borrowed by the broker, and (2) which the broker holds (or has transferred in a transaction described in paragraph (a)(1) of this section) and is authorized by its customers to transfer (including shares of stock of the same class and issue held for the broker's own account) ("loanable shares"). The broker may first allocate the transferred shares to any borrowed shares. Then to the extent that the number of transferred-shares exceeds the number of borrowed shares (or if the broker does not allocate to the borrowed shares first), the broker must allocate the transferred shares between two pools, one consisting of the loanable shares of all individual customers (the "individual pool") and the other consisting of the loanable shares of all nonindividual customers (the "nonindividual pool"). The transferred shares must be allocated to the individual pool in the same proportion that the number of loanable shares held by individual customers bears to the total number of loanable shares available to the broker. Similarly, the transferred shares must be allocated to the nonindividual pool in the same proportion that the number of loanable shares held by nonindividual customers bears to the total number of loanable shares available to the broker.

(B) *Selection of deemed transferred shares within the nonindividual pool.* The broker must select which shares within the nonindividual pool are deemed transferred for use in a short sale (the "deemed transferred shares"). Selection of deemed transferred shares may be made either by purely random lottery or on a first-in-first-out ("FIFO") basis.

(C) *Selection of deemed transferred shares within the individual pool.* The broker must select which shares within the individual pool are deemed transferred shares (in the manner described in the preceding paragraph) only with respect to substitute payments as to which a statement is required to be furnished under paragraph (a)(2)(ii) of this section.

(3) *Examples.* The following examples illustrate the identification of customer rules of paragraph (f)(2):

Example (1). A, a broker, holds X corporation common stock (of which there is only a single class) in street name for five customers: C, a corporation; D, a partnership; E, a corporation; F, an individual; and G, a corporation. C owns 100 shares of X stock, D owns 50 shares of X stock, E owns 100 shares of X stock, F owns 50 shares of X stock, and G owns 100 shares of X stock. A is authorized to loan all of the X stock of C, D, E, and F. G, however, has not authorized A to loan its X stocks. A does not hold any X stock in its trading account nor has A borrowed any X stock from another broker. A transfers 150 shares of X stock to H for use in a short sale on July 1, 1985. A dividend of $2 per share is declared with respect to X stock on August 1, 1985, payable to the owners of record as of August 15, 1985 (the "record" date). A receives $2 per transferred share as a payment in lieu of a dividend with respect to X stock or a total of $300 on September 15, 1985. H closes the short sale and returns X stock to A on January 2, 1986. A's records specifically identify the owner of each loanable share of stock held in street name. From A's records it is determined that the shares transferred to H consisted of 100 shares owned by C, 25 shares owned by D, and 25 shares owned by F. The substitute payment in lieu of dividends with respect to X stock is therefore attributed to C, D and F based on the actual number of their shares that were transferred to H. Accordingly, C receives $200 (100 shares × $2 per share), and D and F each receive $50 (25 shares each × $2 per share). A must furnish statements identifying the payments as being in lieu of dividends to both C and D, unless they are exempt recipients as defined in paragraph (b)(2) of this section or exempt foreign persons as defined in paragraph (b)(3) of this section. Assuming that A had no reason to know on the record date of the payment that the dividend paid by X is of a type described in paragraph (a)(3)(ii)(A)-(D) of this section, A need not furnish F with a statement under section 6045(d) because F is an individual. (However, A may be required to furnish F with a statement in accordance with section 6042 and the regulations thereunder. See paragraph (h) of this section.) By recording the ownership of each share transferred to H, A has complied with the identification requirement of paragraph (f)(2) of this section.

Example (2). Assume the same facts as in example (1), except that A's records do not specifically identify the record owner of each share of stock. Rather, all shares of X stock held in street name are pooled together. When A receives the $2 per share payment in lieu of a dividend, A determines the identity of the customers to which the payment relates by the method of allocation and selection prescribed in paragraph (f)(2)(ii) of this section. First, the transferred shares are allocated proportionately between the individual pool and the nonindividual pool. One-sixth of the transferred shares or 25 shares are allocated to the individual pool (50 loanable shares owned by individuals/300 total loanable shares-⅙; ⅙ × 150 transferred shares = 25 shares). Assuming A has no reason to know by the record date of the payment that the payment is in lieu of a dividend of a type described in paragraph (a)(3)(ii)(A)-(D) of this section, no selection of deemed transferred shares within the individual customer pool is required. (However, A may be required to furnish F with a statement under section 6042 and the regulations thereunder. See paragraph (h) of this section.) Five-sixths of the transferred shares or 125 shares are allocated to the nonindividual pool (250 loanable shares owned by nonindividuals/300 total loanable shares = ⅚; × ⅚150 transferred shares = 125 shares). A must select which 125 shares within the nonindividual pool are deemed to have been transferred. Using a purely random lottery, A selects 100 shares identified as being owned by C, and 25 shares identified as being owned by D. Accordingly, A is deemed to have transferred 100 shares and 25 shares owned by C and D respectively, and received substitute payments in lieu of dividends of $200 (100 shares × $2 per share) and $50 (25 shares × $2 per share) on behalf of C and D respectively. A must furnish statements to both C and D identifying such payments as being in lieu of dividends unless they are exempt recipients as defined in paragraph (b)(2) of this section or exempt foreign persons as defined in paragraph (b)(3) of this section. A has complied with the identification requirement of paragraph (f)(2) of this section.

(g) *Reporting by brokers*—(1) *Requirement of reporting.* Any broker required to furnish a statement under paragraph (a) of this section shall report on Form 1096 showing such information as may be required by Form 1096, in the form, manner, and number of copies required by Form 1096. With respect to each customer for which a broker is required to furnish a statement, the broker shall make a return of information on Form 1099, in the form, manner and number of copies required by Form 1099.

(2) *Use of magnetic media.* Brokers not receiving an undue hardship exception under paragraph (l)(2) of § 1.6045-1 shall file the returns required by this paragraph on magnetic media in accordance with paragraph (l)(1) of § 1.6045-1.

(3) *Time and place of filing.* The returns required under this paragraph (g) for any calendar year shall be filed after September 30 of such year, but not before the final substitute payment for the year is received by the broker, and on or before February 28 of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for Form 1096.

(h) *Coordination with section 6042.* In cases in which reporting is required by both sections 6042 and 6045(d) with respect to the same substitute payment in lieu of a dividend, the provisions of section 6045(d) control, and no report or statement under section 6042 need be made. If reporting is not required under section 6045(d) with respect to a substitute payment in lieu of a dividend, a report under section 6042 must be made if required in accordance with the rules of section 6042 and the regulations thereunder. Thus, if a broker receives a substitute payment in lieu of a dividend on behalf of an individual customer and the broker does not have reason to know by the record date of the payment that the payment is in lieu of a dividend of a type described in paragraph (a)(3)(ii)(A)–(D) of this section, the broker must report with respect to the substitute payment if required in accordance with section 6042 and the regulations thereunder.

(i) *Effective date.* These regulations apply to substitute payments received by a broker after December 31, 1984.

Par. 3. Paragraph (a)(2) of § 1.6042–3 is amended by adding the following sentence to the end thereof.

§ 1.6042–3 Dividends subject to reporting.

(a) * * *

(2) * * * See § 1.6045–2(h) for coordination of the reporting requirements under sections 6042 and 6045(d) with respect to payments in lieu of dividends.

* * * * *

Par. 4. Paragraph (a)(5) of section 1.6049–5 is amended by adding the following sentence to the end thereof.

§ 1.6049–5 Interest and original issue discount subject to reporting after December 31, 1982.

(a) * * *

(5) * * * See § 1.6045–2 for reporting requirements with respect to payments in lieu of tax-exempt interest.

* * * * *

PART 602—[AMENDED]

Par. 5. The authority for Part 602 is revised to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.6045–2(a)(1) . . . 1545–0115" and "§ 1.6045–2(f) . . . 1545–0115" and "§ 1.6045–2(g)(1) . . . 1545–0115."

Approved: May 20, 1985.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85–13520 Filed 6–4–85; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 18, 19, 20, 22, 170, and 196

[T.D. ATF–207]

Stills; Miscellaneous Provisions

AGENCY: The Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule implements several recently enacted amendments to the statutes concerning stills used in distilling. These statutory amendments repeal the occupational tax on manufacturers of stills and the commodity tax for each still or condenser manufactured. Also, discretionary authority with respect to the statutory requirements relating to removal and set up of stills is provided. The implementation of these amendments will benefit both the Government and private industry by reducing costs and paperwork.

DATES: These regulations are effective June 5, 1985 and are made applicable by statute retroactively to November 1, 1984.

FOR FURTHER INFORMATION CONTACT: J.R. Whitley, ATF Tax Specialist, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202–566–7531).

SUPPLEMENTARY INFORMATION: This final rule implements section 451 of the Deficit Reduction Act of 1984, Pub. L. 98–369, 98 Stat. 818. This section of the Act amends the provisions of Chapter 51 of Title 26 of the United States Code (U.S.C.) by repealing the $55 per year occupational tax on manufacturers of stills and the $22 commodity tax on each still or condenser to be used for distilling which is manufactured. Additionally, discretionary authority with respect to the statutory requirements relating to the removal and set up of stills to be used for the purpose of distilling is provided. The statutory provision which requires registration immediately after set up of any still and distilling apparatus to be used for the purpose of distilling, however, remains unchanged.

The following is a discussion of the significant amendments made by the final rule to conform the regulations concerning stills to these statutory changes.

(1) The regulations relating to the liability for, and payment of, occupational and commodity taxes; and the regulations concerning the exportation of stills and condensers with benefit of drawback, or without payment of tax, are removed. These regulations are no longer necessary since the occupational and commodity taxes applicable to stills are repealed. As a result of this change, Internal Revenue Service Form 11, Special Tax Return and Application for Registry, is no longer required to be filed. Also, ATF F 1610 (5620.11), Claim for Internal Revenue Drawback on Distilling Apparatus Exported and Entry for Exportation Thereof, is eliminated.

(2) The mandatory requirement that a manufacturer file notice when a still or other distilling apparatus is removed from the place of manufacture is revised. The revised regulations provide that the notice be filed in letter form when requested by the regional director (compliance). ATF F 110 (5000.13), Notice of Intention to Remove Distilling Apparatus, is eliminated.

(3) The regulations relating to obtaining a permit for the set up of a still are removed. However, it is provided that the regional director (compliance) may require that no still or distilling apparatus be set up without the manufacturer first giving written notice in letter form of that purpose. ATF F 1609 (5110.24), Application and Permit to Set Up Distilling Apparatus, is eliminated.

(4) The requirement that every person having control or possession of a still or distilling apparatus to be used for distilling register the apparatus with ATF immediately upon its being set up remains unchanged. However, the existing registration procedures are revised. It is provided that registration is to be accomplished by listing the still or distilling apparatus on the registration or permit application prescribed by regulation for qualification under 26 U.S.C. Chapter 51. Approval of the application by the regional director (compliance) constitutes registration. If subsequent to registration there is a change in ownership or location of the still or distilling apparatus, the registrant is required to file a letter notice with the regional director (compliance) in whose region the apparatus is located. In addition, the registrant must comply with the prescribed procedures for amendment of the registration or permit application. It is no longer provided that registration may be accomplished by filing ATF F 26 (5100.19). Consequently, this form is eliminated.

Further, the final rule removes Part 196 of Title 27 of the Code of Federal Regulations (27 CFR Part 196) in its entirety and recodifies the regulations relating to stills as 27 CFR Part 170, Subpart C. This change more accurately reflects the new scope of the still regulations and improves the organization of Title 27, CFR. In addition, the provisions of the following rulings have been obsoleted by the statutory changes implemented by this final rule or have been incorporated into the revised regulations—

Revenue Ruling 56–31, 1956–1 C.B. 711;

Revenue Ruling 57–98, 1957–1 C.B. 564

Revenue Ruling 63–68, 1963–1 C.B. 386; and

Revenue Ruling 64–196, 1964–2 C.B. 532.

ATF believes the changes made by this final rule will reduce the administrative and compliance costs, and the paperwork burden, for both Government and private industry.

Administrative Procedures Act

Since the statutory amendments implemented by this rule are effective November 1, 1984, there is an immediate need for guidance with respect to the provisions contained in this rule. For this reason, ATF has determined that it is impracticable to issue this rule with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d). Accordingly, ATF finds, upon good cause shown, that the exception provisions of 5 U.S.C. 553 are applicable to this rule.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under 5 U.S.C. 553(b), the provisions of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1165, 5 U.S.C. 601 et seq.) relating to a regulatory flexibility analysis are not applicable to this final rule.

Executive Order 12291

This final rule is not a "major rule" within the meaning of section 1(b) of Executive Order 12291 on Federal Regulations issued February 17, 1981 (46 FR 13193). Analysis of the rule indicates that it will not result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The requirements to collect information contained in this final rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507 of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 U.S.C. Chapter 35). These requirements have been approved by OMB under control number 1512–0341.

List of Subjects

27 CFR Part 18

Administrative practice and procedure, Authority delegations, Excise taxes, Fruits, Exports, Labeling, Reporting and recordkeeping requirements, Security measures, Spices and flavorings, Stills, Surety bonds.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 20

Administrative practice and procedure, Advertising, Alcohol, Authority delegations, Chemicals, Claims, Cosmetics, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Transportation.

27 CFR Part 22

Administrative practice and procedure, Alcohol, Authority delegations, Claims, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Stills, Surety bonds, Wine.

27 CFR Part 196

Authority delegations, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Liquors, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Stills.

Drafting Information

The principal author of this rule is J. R. Whitley, ATF Tax Specialist, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

In consideration of the foregoing, and under authority delegated by the Secretary of the Treasury, Title 27, Code of Federal Regulations, is amended as follows:

Section A. Part 18 is amended as follows:

PART 18—PRODUCTION OF VOLATILE FRUIT-FLAVOR CONCENTRATE

Paragraph 1. The authority citation for Part 18 continues to read as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917 (26 U.S.C. 7805); 44 U.S.C. 3504(h), unless otherwise noted.

Par. 2. The table of sections is amended by revising the entry for § 18.23 to read as follows:

Sec.

* * * * *

18.23 Registry of stills.

* * * * *

Par. 3. Section 18.23 is revised to read as follows:

§ 18.23 Registry of stills.

The provisions of Subpart C of Part 170 of this chapter are applicable to stills or distilling apparatus located on concentrate plant premises used for the production of concentrate. As provided under § 170.55, the listing of a still in the application, and approval of the application, constitutes registration of the still.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1355, as amended, 1392, as amended (26 U.S.C. 5179, 5511))

Section B. Part 19 is amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for Part 19 continues to read as follows:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805, unless otherwise noted.

§ 19.3 [Amended]

Par. 2. Section 19.3 is amended by removing the words "27 CFR Part 196—Stills".

Par. 3. Section 19.169 is revised to read as follows:

§ 19.169 Registry of stills.

The provisions of Subpart C of Part 170 of this chapter are applicable to stills or distilling apparatus located on plant premises used for distilling. As provided under § 170.55, the listing of a still in the application for registration, and approval of the application, constitutes registration of the still.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1355, as amended (26 U.S.C. 5172, 5179))

Par. 4. Section 19.905 is revised to read as follows:

§19.905 Taxes.

Distilled spirits may be withdrawn free of tax from the premises of an alcohol fuel plant exclusively for fuel use in accordance with this subpart. Payment of tax will be required in the case of diversion of spirits to beverage use or other unauthorized dispositions. The provisions of Subpart C of this part are applicable to distilled spirits for fuel use as follows:

(a) Imposition of tax liability (§§ 19.21 through 19.25);

(b) Assessment of tax (§§ 19.31 and 19.32); and

(c) Claims for tax (§§ 19.41 and 19.44).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended (26 U.S.C. 5001); sec. 232, Pub. L. 96-223, 94 Stat. 278 (26 U.S.C. 5181))

Section C. Part 20 is amended as follows:

PART 20—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

Paragraph 1. The authority citation for Part 20 continues to read as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805); Sec. 201., Pub. L. 85-859, 72 Stat. 1370-1373, as amended (26 U.S.C. 5271-5275), unless otherwise noted.

§ 20.3 [Amended]

Par. 2. Section 20.3 is amended by removing the words "27 CFR Part 196—Stills" and inserting, in their place, the words "27 CFR Part 170—Miscellaneous Regulations Relating To Liquor".

Par. 3. Section 20.66 is revised to read as follows:

§ 20.66 Registry of stills.

The provisions of Subpart C of Part 170 of this chapter are applicable to stills or distilling apparatus located on the premises of a permittee used for distilling. As provided under § 170.55, the listing of a still in the permit application (Form 5150.22), and approval of the application, constitutes registration of the still.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1355, as amended (26 U.S.C. 5179))

Section D. Part 22 is amended as follows:

PART 22—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL

Paragraph 1. The authority citation for Part 22 continues to read as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805); Sec. 201 Pub. L. 85-859, 72 Stat. 1370-1373, as amended (26 U.S.C. 5271-5275), unless otherwise noted.

§ 22.3 [Amended]

Par. 2. Section 22.3 is amended by removing the words "27 CFR Part 196—Stills" and inserting, in their place, the words "27 CFR Part 170—Miscellaneous Regulations Relating To Liquor".

Par. 3. Section 22.66 is revised to read as follows:

§ 22.66 Registry of stills.

The provisions of Subpart C of Part 170 of this chapter are applicable to stills on the premises of a permittee used for distilling. As provided in § 170.55, the listing of a still in the permit application (Form 5150.22), and approval of the application, constitutes registration of the still.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1355, as amended (26 U.S.C. 5179))

Section E. Part 170 is amended as follows:

1. The regulations in this subpart supersede 27 CFR Part 196 in its entirety.

2. These regulations do not affect any act done or any liability or right accruing, or accrued, or any suit or proceeding had or commenced before November 1, 1984.

PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUORS

Paragraph 1. Subpart C is added to Part 170 to read as follows:

* * * * *

Subpart C—Stills

Sec.
170.41 Scope of subpart.
170.43 Forms prescribed.
170.45 Meaning of terms.
170.47 Notice requirement; manufacture of stills.
170.49 Notice requirement; set up of still.
170.51 Failure to give notice; penalty.
170.53 Identification of distilling apparatus.
170.55 Registry of stills and distilling apparatus.
170.57 Failure to register; penalty.
170.59 Records.

Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805); 44 U.S.C. 33504(h), unless otherwise noted.

* * * * *

Subpart C—Stills

§ 170.41 Scope of subpart.

The regulations in this subpart relate to the manufacture, removal, and use of stills and condensers, and to the notice, registration, and recordkeeping requirements therefor.

§ 170.43 Forms prescribed.

(a) The Director is authorized to prescribe all forms, including all notices and records, required by this subpart. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) "Public Use Forms" (ATF Publication 1322.1) is a numerical listing of forms issued or used by the Bureau of Alcohol, Tobacco and Firearms. This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

(Pub. L. 89-554, 80 Stat. 383, as amended (5 U.S.C. 552))

§ 170.45 Meaning of terms.

When used in this subpart and in the forms prescribed under this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words in the masculine shall include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

AFT officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this subpart.

Condenser. Any apparatus capable of being used when connected with a still, for condensing or liquefying alcoholic or spirituous vapors, but shall not include condensers to be used with laboratory stills or stills used for distilling water or other nonalcoholic materials where the cubic distilling capacity is one gallon or less.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Distilling spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced).

Distilling. The conduct by any person of operations that constitute, as defined by 26 U.S.C. 5002, operation as a distiller. Such operations include: (a) The original manufacture of distilled spirits from mash, wort, or wash, or any materials suitable for the production of spirits; (b) the redistillation of spirits in the course of original manufacture; (c) the redistillation of spirits, or products containing spirits; (d) the distillation, redistillation, or recovery of spirits, denatured spirits, or articles containing spirits or denatured spirits; and (e) the redistillation or recovery of tax-free spirits.

Distilling apparatus. A still or condenser, as defined in this section, and any other apparatus to be used for the purpose of distilling.

Executed under the penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to any document prescribed under this subpart or, where no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this —— (insert type of document), including the documents submitted in support thereof, has been examined by me and, to best of my knowledge and belief, is true, correct and complete."

Manufacturer of stills. Any person who manufactures any still or condenser, as defined in this section, or any other apparatus to be used for the purpose of distilling. The term includes a person furnishing separate parts of a complete still or condenser, of any kind, to a person who assembles same into a still or condenser for distilling and a person who procures materials or apparatus and converts same into a still or condenser for distilling.

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

Regional director (compliance). The principal ATF regional official responsible for administering regulations in this subpart.

Still. Any apparatus capable of being used for separating alcoholic or spirituous vapors, or spiritous solutions, or spirits, from spirituous solutions or mixtures, but shall not include stills used for laboratory purposes or stills used for distilling water or other nonalcoholic materials where the cubic distilling capacity is one gallon or less.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

United States. The several states and the District of Columbia.

U.S.C. The United States Code.

§ 170.47 Notice requirements; manufacture of stills.

(a) *General.* When required by letter issued by the regional director (compliance) and until notified to the contrary by the regional director (compliance), every person who manufactures any still, boiler (double or pot still), condenser, or other apparatus to be used for the purpose of distilling shall give written notice before the still or distilling apparatus is removed from the place of manufacture.

(b) *Preparation.* The notice will be prepared in letter form, executed under the penalties of perjury, and show the following information:

(1) The name and address of the manufacturer;

(2) The name and complete address of the person by whom the apparatus is to be used, and of any other person for, by, or through whom the apparatus is ordered or disposed of;

(3) The distilling purpose for which the apparatus is to be used (distillation of spirits, redistillation of spirits or recovery of spirits, including denatured spirits and articles containing spirits or denatured spirits);

(4) The manufacturer's serial number of the apparatus;

(5) The type and kind of apparatus;

(6) The distilling capacity of the apparatus; and

(7) The date the apparatus is to be removed from the place of manufacture.

(c) *Filing.* The notice will be filed in accordance with the instructions in the letter of the regional director (compliance). A copy of the notice will be retained at the place of manufacture as provided by § 170.59.

(Approved by the Office of Management and Budget under control number 1512–0341)

(Sec. 843, Pub. L. 98–369, 98 Stat. 818 (26 U.S.C. 5101))

§ 170.49 Notice requirement; setup of still.

(a) *General.* When required by letter issued by the regional director (compliance), no still, boiler (double or pot still), condenser, or other distilling apparatus may be set up without the manufacturer of the still or distilling apparatus first giving written notice of that purpose.

(b) *Preparation.* The notice will be prepared by the manufacturer in letter form, executed under the penalties of perjury, and will contain the information specified in the letter of the regional director (compliance).

(c) *Filing.* The notice will be filed in accordance with the instructions in the letter of the regional director (compliance). A copy of the notice will be retained at the manufacturer's place of business as provided by § 170.59.

(Approved by the Office of Management and Budget under control number 1512–0341)

(Sec. 843, Pub. L. 98–369, 98 Stat. 818 (26 U.S.C. 5101))

§ 170.51 Failure to give notice; penalty.

Failure to give notice of manufacture of still or notice of setup of still when required to do so is punishable by a fine of not more than $1,000 or imprisonment for not more than one year, or both, and any still, boiler (double or pot still), condenser, or other distilling apparatus to be used for the purpose of distilling which is removed or set up without the required notice having been given is forfeitable to the Government.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1405, as amended, 1412, as amended (26 U.S.C. 5615, 5687))

§ 170.53 Identification of distilling apparatus.

(a) *General.* Each still or condenser manufactured will be identified by the manufacturer as follows:

(1) Name of manufacturer.

(2) Address of manufacturer.

(3) Manufacturer's serial number for the apparatus.

(b) *Marking requirements.* The apparatus will be identified in a legible and durable manner. The required identification marks will be placed on the apparatus in a location where they will not be obscured or concealed.

§ 170.55 Registry of stills and distilling apparatus.

(a) *General.* Every person having possession, custody, or control of any still or distilling apparatus set up shall, immediately on its being set up, register the still or apparatus, except that stills or distilling apparatus not used or intended for use in the distillation, redistillation, or recovery of distilled spirits are not required to be registered. The registration will be accomplished by describing the still or distilling apparatus on the registration or permit application prescribed in this chapter for qualification under 26 U.S.C. Chapter 51. Approval of the application will constitute registration of the still or distilling apparatus.

(b) *When still is set up.* A still will be regarded as set up and subject to registry when it is in position over a furnace, or connected with a boiler so that heat may be applied, irrespective of whether a condenser is in position. This rule is intended merely as an illustration and should not be construed as covering all types of stills or condensers requiring registration.

(c) *Change in location or ownership.* Where any distilling apparatus registered under this section is to be removed to another location, sold or otherwise disposed of, the registrant shall, prior to the removal or disposition, file a letter notice with the regional director (compliance) of the region in which the apparatus is located. The letter notice will show the intended method of disposition (sale, destraction, or othewise), the name and complete address of the person to whom disposition will be made, and the purpose for which the apparatus will be used. After removal, sale, or other disposal, the person having possession, custody, or control of any distilling apparatus intended for use in distilling shall immediately register the still or distilling apparatus on its being set up or, if already set up, immediately on obtaining possession, custody, or control. The registrant shall also comply with the procedures prescribed in this chapter for amendment of the registration or permit application.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1355, as amended (26 U.S.C. 5179))

§ 170.57 Failure to register; penalty.

Any person having possession, custody, or control of any still or distilling apparatus set up who fails to register the still or distilling apparatus is subject to a fine of not more than $10,000 or imprisonment of not more than 5 years, or both, and the still or distilling apparatus is forfeitable to the Government.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1398, as amended, 1405, as amended (26 U.S.C. 5601, 5615))

§ 170.59 Records.

A copy of each notice of manufacture, or set up, of still required under the provisions of § 170.47, or 170.49, shall be maintained, in chronological order, by the manufacturer at the premises where the still or distilling apparatus is manufactured. In addition, each manufacturer or vendor of stills shall maintain at their premises a record showing all stills and distilling apparatus (including those to be used for purposes other than distilling) manufactured, received, removed, or otherwise disposed of. The record will also show the name and address of the purchaser and the purpose for which each apparatus is to be used. Any commercial document on which all the required information has been recorded may be used for the record. The records will be kept available for a period of three years for inspection by ATF officers.

(Approved by the Office of Management and Budget under control number 1512-0341)

Subpart D—[Reserved]

Par. 3. Subpart D continues to be reserved.

PART 196—[REMOVED]

Section F. Part 196 is superseded by Subpart C of Part 170 and removed in its entirety effective June 5, 1985.

Signed: April 5, 1985.

Stephen E. Higgins,

Director.

Approved: May 13, 1985.

E.T. Stevenson,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-13421 Filed 6-4-85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Approval of Permanent Program Amendments From the State of Indiana Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of amendments to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSM pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On February 18, 1985, Indiana submitted amendments to its program to amend the Indiana regulations concerning the location of the public office for filing permit applications and to clarify the proper newspaper for publishing notices of permit application.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director, OSM, has determined that the amendments meet the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving those amendments. The Federal rules at 30 CFR Part 914 which codify decisions concerning the Indiana program are being amended to implement these actions.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCA.

EFFECTIVE DATE: June 5, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. NcNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269-2600.

SUPPLEMENTARY INFORMATION:

I. Background

Information regarding the general background on the Indiana State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 Federal Register (47 FR 32071-32108).

On February 18, 1985, the Indiana Department of Natural Resources submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The amendments are based primarily on a (previously approved) 1984 revision to Indiana's law, and revise the Indiana regulations as follows:

1. Indiana rules 310 IAC 12-3-26, 12-3-64, 12-3-106 (b) and (c), 12-3-107(c) and 12-3-108(c) are amended to change the location for permit applications to be filed from the county recorder's office to the county library nearest the location where the mining is proposed to occur.

2. Indiana rule 310 IAC 12-3-106(a) is amended to clarify that if proposed mining operations lie within more than one county, advertisements of permit application filing shall be placed in a local newspaper of general circulation for each county.

3. Indiana rule 310 IAC 12-3-106(a)(4) is added to require that newspaper advertisements of permit applications include the names of the owners of property included in the application.

4. Indiana rule 310 IAC 12-3-106(b) is amended to add the list of the county libraries which qualify for permit application filing locations.

5. Indiana rule 12-3-106(c) is amended to add a requirement for a filing fee, and to establish requirements for retention of the permit application in public files, including the requirement that the application remain on file until bond release.

6. Various non-substantive and editorial changes have been made to Sections 310 IAC 12-3-26, 12-3-64, 12-3-106, 12-3-107 and 12-3-108.

OSM published a notice in the **Federal Register** on March 29, 1985, announcing receipt of the proposed program amendments submitted on February 18, 1985, and procedures for the public comment period and for requesting a public hearing on the substantive adequacy of the proposed amendment (50 FR 12571). The public comment period ended April 29, 1985. One comment was submitted in support of the changes. There was no request for a public hearing and the hearing scheduled for April 23, 1985, was not held.

II. Director's Findings

A. General Findings

The Directors finds, in accordance with SMCRA and 30 CFR 732.17 that the amendments submitted by Indiana on February 18, 1985, meet the requirements of SMCRA and the Federal regulations. All of the amended provisions are cited at the end of this notice in the amendatory language for Section 914.15. Indiana has also made non-substantive changes which the Director finds consistent with Federal requirements.

B. Specific Findings

1. Indiana rules 310 IAC 12–3–26, 12–3–64, 12–3–106(b) and (c), 12–3–107(c) and 12–3–108(c) are amended to change the location for permit applications to be filed from the county recorder's office to the county library nearest the location where the proposed mining is to occur.

The Federal regulations at 30 CFR 773.13(a)(2), specify that permit applications are to be filed with the recorder at the courthouse of the county where the mining is proposed to occur, or an accessible public office approved by the regulatory authority. The Director has determined that libraries provide adequate access to the public and therefore, finds the State's substitution of "library" as an appropriate public office for filing applications, no less effective than the Federal rules.

2. Indiana rule 310 IAC 12–3–106(a) is amended to clarify that if proposed mining operations lie within more than one county, advertisements of permit application filing shall be placed in a local newspaper of general circulation for each county where the mining operation is to occur.

The Federal rule 30 CFR 773.13(a) requires applicants to place an advertisement in the locality of the proposed mining operation. The Director finds the Indiana revision to be no less effective than the requirements at 30 CFR 773.13(a).

3. Indiana rule 310 IAC 12–3–106(a)(4) is added to require that newspaper advertisements of permit applications include the names of the property owners for lands included in the application.

The Federal regulations at 30 CFR 773.13(a) set forth the minimum requirements that a newspaper advertisement shall contain. The Federal rules do not require the names of the property owners of the lands included in the application. However, the State has the authority to require additional information. Therefore, the Director finds the amendment no less effective than 30 CFR 773.13(a).

4. Indiana rule 310 IAC 12–3–106(b) is amended to list libraries which qualify for permit application filing locations.

Since the Director in Finding 1, above, finds that the State's provisions to require the filing of permit applications in the county library where the mining is proposed to occur is no less effective than 30 CFR 773.13(a)(2), the Director also finds that the State's list of libraries which qualify for permit application filing locations is no less effective than the Federal regulations.

5. Indiana rule 310 IAC 12–3–106(c) is amended to require a filing fee, and to establish requirements for retention of the permit application in public files, including the requirement that the application remain on file until final bond release.

The Federal regulations at 30 CFR 773.13(d) require that the permit application "be available, at reasonable times, for public inspection and copying." OSM interprets the Federal rule to mean that the permit application shall be on file until bond release. Therefore, the Director finds the State provisions no less effective than the Federal regulations.

6. Indiana has also made changes to its regulations which are not substantive and are of an editorial nature. The Director finds these changes to be no less effective than the Federal regulations.

III. Public Comments

In response to the March 29, 1985 **Federal Register** notice inviting comments relating to Indiana's proposed modification of its program, one comment was received from the Hoosier Environmental Council (HEC).

The HEC commented that the provisions of the amendment, if approved, would "provide greater public accessibility to decisions affecting surface mining activity in Indiana". Also, the increased public awareness of the surface mining program would help public officials make the most rational decisions when controversial applications are filed. The Director, based on the above findings, has found that the amended State provisions are no less effective than the Federal regulations.

IV. Director's Decision

The Director, based on the above findings, is approving the Indiana regulatory amendments as submitted on February 18, 1985, under the provisions of 30 CFR 732.17. The Federal rules at 30 CFR Part 914 are being amended to implement this decision.

V. Procedural Matters

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM and exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

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

3. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 914

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

Dated: May 30, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

PART 914—INDIANA

30 CFR Part 914 is amended as follows:

1. The authority citation for Part 914 continues to read as follows:

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

2. 30 CFR 914.15 is amended by adding a new paragraph (i) as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(i) The following amendments submitted by the Indiana Department of Natural Resources to OSM on February 18, 1985 are approved effective June 5, 1985: revisions amending Indiana regulations at 310 IAC 12-3-26, 12-3-64, 12-3-106, 12-3-107 and 12-3-108.

[FR Doc. 85-13508 Filed 6-4-85; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 917

Extension of Staffing Deadlines for the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSM is announcing the extension of staffing deadlines established in the Federal Register dated December 31, 1984, "Disapproval of Permanent Program Amendment From the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977" (SMCRA). (49 FR 50718) In that notice OSM announced the disapproval of Kentucky's proposed amendment to reduce budget and staffing levels and established required actions Kentucky must take to bring staffing levels to the level previously approved in the State regulatory program. Kentucky was required: to announce position vacancies by February 1, 1985; to have reached the approved permanent program staffing level (408) by May 1, 1985; and, by the fifth of each month beginning on February 5, 1985, to provide a report to OSM describing the actions taken to achieve the approved program staffing levels by May 1, 1985.

Since the publication of the rule denying the proposed amendment, Kentucky has made substantial effort to locate funds and personnel in order to comply with the Director's decision, but has indicated that the deadlines imposed cannot be met. The Director has determined that the best interests of Kentucky's program will be served by extending the hiring period to August 31, 1985, to allow the State additional time to meet approved staffing levels so that qualified personnel can be recruited and selected.

Accordingly, the Director is granting an extension of time to allow Kentucky to reach the approved permanent program staffing level. The Federal rules at 30 CFR Part 917 which codify decisions concerning the Kentucky program are being amended to implement this action.

EFFECTIVE DATE: April 5, 1985. This rule became effective upon publication of the interim final rule in the April 5, 1985 Federal Register (50 FR 13567).

ADDRESSES: Copies of the Kentucky program and the Administrative Record for the Kentucky program are available for public inspection and copying at the OSM offices and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m. excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room 5124, 1100 L Street NW., Washington, D.C. 20240

Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504

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

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

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 Federal Register (47 FR 21404-21435).

Information pertinent to the general background on the Kentucky State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982 Federal Register notice.

By a transmittal dated June 29, 1984, Kentucky submitted to OSM pursuant to 30 CFR 732.17, an amendment to the Kentucky program to change approved levels of staffing and budget. Kentucky submitted a justification for proposed staffing levels by program area which gave an explanation of and reasons for the changes.

OSM published a notice in the Federal Register on July 24, 1984, announcing receipt of the amendment (49 FR 29804). The public comment period ended August 23, 1984. Since no one requested a public hearing, the hearing, scheduled for August 20, 1984, was not held.

OSM subsequently published a notice in the Federal Register on December 31, 1984, (49 FR 50718) announcing disapproval of the proposed budget and staffing amendment based on the Director's finding that the proposal failed to meet the requirements of SMCRA and the Federal regulations. Section 503(a)(3) of SMCRA requires that the State regulatory authority have sufficient administrative and technical personnel and sufficient funding to regulate mining in accordance with the Act. The Federal regulations require sufficient legal, administrative, and technical staff and sufficient funding to implement the approved program. The State's justification for the reduced levels relied heavily on the assertion that it has been demonstrated that Kentucky has adequately administered all aspects of the State program with existing staff. However, OSM's oversight program previously documented that Kentucky was encountering problems with the Kentucky State Program and, therefore, the Director disapproved the amendment.

In the December 31, 1984 notice, the Director also established required actions Kentucky must take to bring staffing levels to the level previously approved in the State regulatory program. The State was required: to announce position vacancies by February 1, 1985; to have reached the approved permanent staffing levels by May 1, 1985; and, by the fifth of each month beginning on February 5, 1985, to provide a report to OSM describing actions taken to achieve the approved program staffing levels by May 1, 1985.

II. Extension of Deadline

Following publication of the notice of disapproval of Kentucky's proposed staffing agreement in the December 31, 1984 Federal Register, the Director, OSM and the Governor of Kentucky met several times to discuss Kentucky's ability to meet staffing requirements imposed in that notice. The Governor made clear in these meetings that Kentucky wished to retain program primacy but would be unable to meet the deadlines imposed by the Director for staff increases. The State expects to be able to achieve the required staffing