

Sunshine Act Meetings

Federal Register

Vol. 55, No. 220

Wednesday, November 14, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, November 15, 1990, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Waterbed Petition, CP 89-4

The Commission will consider a petition submitted by the Consumer Federation of America, the New York State Attorney General, and the American Academy of Pediatrics requesting a mandatory labeling standard for adult-size waterbeds.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-492-5709

CONTACT PERSON FOR ADDITIONAL

INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Dated: November 8, 1990.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 90-26955 Filed 11-9-90; 1:49 pm]

BILLING CODE 6355-01-M

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, November 20, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Docket No. AB-55 (Sub-No. 352), *CSX Transportation, Inc.—Abandonment—in Ben Hill and Irwin Counties, GA*
Ex Parte No. MC-198, *Transportation Claims and Prevention Council, Inc.—Petition to Institute Rulemaking on Contract Carriers*
Ex Parte No. MC-197, *Limitation of Consumption of Alcoholic Beverages on Buses*

Finance Docket No. 30965 (Sub-No. 1) and (Sub-No. 2), *Delaware & Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company*

CONTACT PERSON FOR MORE

INFORMATION: A. Dennis Watson, Office of External Affairs, Telephone: (202) 275-7252, TDD: (202) 275-1721.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 90-26975 Filed 11-13-90; 3:57 pm]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 12, 19, 26, and December 3, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE DISCUSSED

Week of November 12

Friday, November 16

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 19—Tentative

Wednesday, November 21

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 26—Tentative

There are no meetings scheduled for the Week of November 26

Week of December 3—Tentative

Friday, December 7

10:00 a.m.

Briefing on Level of Design Detail for Part 52 (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492-0290

CONTACT PERSON FOR MORE

INFORMATION: William Hill (301) 492-1661.

Dated: November 8, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90-26961 Filed 11-9-90; 2:09 pm]

BILLING CODE 7590-01-M

POSTAL SERVICE

Board of Governors, Vote to Close Meeting

At its meeting on November 5, 1990, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for December 3, 1990, in New Orleans, Louisiana. The members will discuss possible strategies in collective bargaining negotiations.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Griesemer, Hall, Mackie, Nevin, Pace and Setrakian; Postmaster General Frank, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Hughes.

The Board determined that pursuant to section 552b(c) (3) and (9) of title 5, United States Code, and § 7.3 (b) and (c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)) because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code.

In accordance with section 552b(f)(1) of title 5, United States Code, and § 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c) (3) and (9) of title 5, United States Code; § 410(c)(3) of title 39 United States Code; and § 7.3(b), (c) and (i) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

David F. Harris,
Secretary.

[FR Doc. 90-26974 Filed 11-9-90; 3:57 pm]

BILLING CODE 7710-12-M

Wednesday
November 14, 1990

Final Regulations

Part II

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 24, et al.

Change in Responsibility for Enforced
Collection of Certain Alcohol, Tobacco,
and Firearms Taxes; Final Rule

DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco and Firearms**

27 CFR Parts 19, 24, 25, 70, 170, 179, 194, 197, 250, 270, 275, 285, 290, and 296

[T.D. ATF-301]

Change in Responsibility for Enforced Collection of Certain Alcohol, Tobacco, and Firearms Taxes

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

ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision will transfer from the Internal Revenue Service (IRS) to ATF the functions associated with enforced collection of delinquencies of the special (occupational) tax, the domestic excise tax on distilled spirits, wine, malt beverages, tobacco products, cigarette papers and tubes, and the firearms tax imposed by subtitle E of the Internal Revenue Code. Furthermore, certain procedural and administrative rules are being adopted from IRS regulations in 26 CFR 301 to ATF regulations in 27 CFR part 70. In addition, changes in part 70 are being made to reflect amendments made to 26 U.S.C. 6651 and 6656 by the Omnibus Budget Reconciliation Act, Public Law 101-239.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Jackie White, Coordinator, Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, (202) 586-7802.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1972, ATF was established by Treasury Department Order No. 120-01 (formerly Order No. 221). This Order transferred from IRS to the newly-formed Bureau the functions, powers and duties relating to alcohol, tobacco, firearms, and explosives laws. The Order specifically stated that "all existing activities relating to the collection, processing, depositing, or accounting for taxes * * * shall continue to be performed by the Commissioner of Internal Revenue to the extent not now performed by the Alcohol, Tobacco and Firearms Division until the Director shall otherwise provide with the approval of the Secretary." ATF assumed responsibility for the collection of taxes imposed by subtitle E of the Internal Revenue Code

in July, 1987, by means of T.D. ATF-251, and adopted provisions in 27 CFR part 70 similar to the portions of 26 CFR part 301 which concerned deposit and assessment of taxes. This final rule will transfer the remaining collection functions with respect to taxes administered by ATF. These functions include the use of liens and levies in enforcement of the taxes under ATF's jurisdiction. ATF is adopting regulations similar to those used by IRS in support of enforced collection.

In addition to adopting regulations on enforced collection activities, this final rule also recodifies additional regulations from 26 CFR relating to the examination, assessment, and collection functions. ATF has now determined that these additional regulations are applicable to its tax collection activities.

Existing sections in 27 CFR part 70 will be renumbered to allow insertion of new sections. These sections are redesignated by means of a table in paragraph 13. In some cases, existing sections of 27 CFR part 70 have been expanded to include material related to enforced collections, and amended to show new titles of responsible officials where appropriate. Each section in title 27 of the Code of Federal Regulations which refers to a section in 26 CFR part 301 which has been adopted in 27 CFR part 70 or to a section of 27 CFR part 70 which has been redesignated has been changed to reflect the new reference. References to the old section numbers within 27 CFR part 70 have been updated to show the new section numbers.

Administrative Procedure Act

Because this final rule is a rule of agency management that merely transfers existing requirements relating to enforced collection of taxes to ATF from the Internal Revenue Service, it is found to be unnecessary to issue this Treasury decision for notice and public procedure or subject to a delayed effective date pursuant to 5 U.S.C. 553(a)(2), (b)(3) and (d)(3).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because a general notice of proposed rulemaking is not required under 5 U.S.C. 553 or any other law.

Executive Order 12291

Because this rule relates to agency organization, management and procedure, the provisions of Executive Order 12291 do not apply.

Paperwork Reduction Act

This final rule does not affect any recordkeeping or reporting requirements.

Drafting Information

The principal author of this document is Marjorie Dundas of the Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

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 24

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 25

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 170

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

27 CFR Part 179

Administrative practice and procedure, Arms and munitions, Authority delegation, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Wine.

27 CFR Part 197

Alcohol and alcoholic beverages, Authority delegations, Claims, Drugs, Excise taxes, Foods, Spices and flavorings, Surety bonds, Reporting and recordkeeping requirements.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Electronic fund transfers, Excise taxes, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Puerto Rico, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 285

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses.

27 CFR Part 296

Cigarette papers and tubes, Cigars and cigarettes, Claims, Disaster assistance, Excise taxes, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

Issuance

Title 27 CFR chapter I is amended as follows:

PART 19—[AMENDED]

Par. 1. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111–5113, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9303, 9304, 9306.

§ 19.52 [Amended]

Par. 2. Section 19.52(a) is amended by removing the reference to “§ 70.105” in the last sentence and replacing it with “§ 70.113”.

§ 19.519 [Amended]

Par. 3. Section 19.519 is amended by removing the two references to “§ 70.66” in the second and third sentences and replacing them with “§ 70.61”.

§ 19.520 [Amended]

Par. 4. Section 19.520 is amended by removing the reference to “26 CFR 301.6676–1” in the last sentence and replacing it with “§ 70.113 of this chapter”.

PART 24—[AMENDED]

Par. 5. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502,

7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 24.45 [Amended]

Par. 6. Section 24.45 is amended by removing the reference to “§ 70.105” in the last sentence and replacing it with “§ 70.113”.

§ 24.276 [Amended]

Par. 7. Section 24.276 is amended by removing the reference to “§ 70.66” in the last sentence and replacing it with “§ 70.61”.

PART 25—[AMENDED]

Par. 8. The authority citation for part 25 continues to read as follows:

Authority: 19 U.S.C. 81c, 1309; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

§ 25.121 [Amended]

Par. 9. Section 25.121 is amended by removing the reference to “§ 70.105” in the last sentence and replacing it with “§ 70.113”.

§ 25.168 [Amended]

Par. 10. Section 25.168 is amended by removing the reference to “26 CFR 301.6676–1” in the second sentence and replacing it with “§ 70.113 of this chapter”.

§ 25.173 [Amended]

Par. 11. Section 25.173(b) is amended by removing the reference to “§ 70.66” and replacing it with “§ 70.61 of this chapter”.

PART 70—[AMENDED]

Par. 12. The authority citation for part 70 is revised to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

Par. 13. Part 70 is amended by redesignating the sections in the left-hand column below as the sections in the right-hand column:

Old section No.	New section No.
70.25	70.30
70.26	70.31
70.27	70.32
70.28	70.33
70.35	70.40
70.36	70.41
70.41	70.461
70.42	70.462
70.51	70.65
70.61	70.42
70.62	70.82
70.63	70.71
70.64	70.72
70.65	70.73
70.66	70.61
70.67	70.62
70.68	70.64
70.70	70.121
70.71	70.122
70.72	70.123
70.73	70.124
70.74	70.125
70.75	70.126
70.78	70.131
70.79	70.221
70.80	70.222
70.81	70.223
70.82	70.261
70.83	70.262
70.84	70.263
70.85	70.264
70.86	70.265
70.87	70.266
70.88	70.251
70.89	70.252
70.100	70.101
70.101	70.102
70.102	70.103
70.103	70.111
70.104	70.112
70.105	70.113
70.106	70.114
70.107	70.311
70.108	70.75
70.109	70.321
70.111	70.411
70.112	70.412
70.113	70.413
70.114	70.414
70.115	70.415
70.116	70.416
70.117	70.417
70.118	70.418
70.119	70.419
70.120	70.420
70.131	70.431
70.132	70.432
70.133	70.433
70.134	70.434
70.135	70.435
70.136	70.436
70.137	70.437
70.138	70.438
70.141	70.441
70.142	70.442
70.143	70.443
70.144	70.444
70.145	70.445
70.146	70.446
70.147	70.447
70.148	70.448
70.149	70.449
70.150	70.450
70.151(a)	70.482
70.151(b)	70.483
70.151(c)	70.484
70.152	70.471

Par. 13a. The table of contents for part 70 is revised to read as follows:

PART 70—PROCEDURE AND ADMINISTRATION

Subpart A—Scope

Sec.

70.1 General.

Subpart B—Definitions

70.11 Meaning of terms.

Subpart C—Discovery of Liability and Enforcement of Laws

Examination and Inspection

70.21 Canvass of regions for taxable persons and objects.

70.22 Examination of books and witnesses.

70.23 Service of summonses.

70.24 Enforcement of summonses.

70.25 Special procedures for third-party summonses.

70.26 Third-party recordkeepers.

70.27 Right to intervene; right to institute a proceeding to quash.

70.28 Summonses excepted from 26 U.S.C. 7609 procedures.

70.29 Suspension of statutes of limitation.

70.30 Time and place of examination.

70.31 Entry of premises for examination of taxable objects.

70.32 Examination of records and objects.

70.33 Authority of enforcement officers of the Bureau.

70.34 Listing by regional directors (compliance) of taxable objects owned by nonresidents of ATF regions.

General Powers and Duties

70.40 Authority to administer oaths and to certify.

70.41 Rewards for information relating to violations of tax laws administered by the Bureau.

70.42 Returns prepared or executed by regional directors (compliance) or by other ATF officers.

Subpart D—Procedural and Administrative Rules Relating To Collection of Excise and Special (Occupational) Taxes

Collection—General Provisions

70.51 Collection authority.

70.52 Signature presumed authentic.

Receipt of Payment

70.61 Payment by check or money order.

70.62 Fractional parts of a cent.

70.63 Computations on returns or other documents.

70.64 Receipt for taxes.

70.65 Use of commercial banks.

Assessment

70.71 Assessment authority.

70.72 Method of assessment.

70.73 Supplemental assessments.

70.74 Request for prompt assessment.

70.75 Jeopardy assessment of alcohol, tobacco and firearms taxes.

70.76 Stay of collection of jeopardy assessment; bond to stay collection.

70.77 Collection of jeopardy assessment; stay of sale of seized property pending court decision.

Sec.

Notice and Demand

70.81 Notice and demand for tax.

70.82 Payment on notice and demand.

Interest

70.90 Interest on underpayments.

70.91 Interest on erroneous refund recoverable by suit.

70.92 Interest on overpayments.

70.93 Interest rate.

70.94 Interest compounded daily.

Additions to the Tax, Additional Amounts, and Assessable Penalties

Additions to the Tax and Additional Amounts

70.95 Scope.

70.96 Failure to file tax return or to pay tax.

70.97 Failure to pay tax.

70.98 Penalty for underpayment of deposits.

70.99 Penalty for overstated deposit claims.

70.100 Penalty for fraudulently claiming drawback.

70.101 Bad checks.

70.102 Coordination with title 11.

70.103 Failure to pay tax.

Assessable Penalties

70.111 Rules for application of assessable penalties.

70.112 Failure to collect and pay over tax, or attempt to evade or defeat tax.

70.113 Penalty for failure to supply taxpayer identification number.

70.114 Penalties for aiding and abetting understatement of tax liability.

Abatements, Credits and Refunds

Procedure in General

70.121 Amounts treated as overpayments.

70.122 Authority to make credits or refunds.

70.123 Claims for credit or refund.

70.124 Payments in excess of amounts shown on return.

70.125 Abatements.

70.126 Date of allowance of refund or credit.

70.127 Overpayment of installment.

Rule of Special Application

70.131 Conditions to allowance.

Lien for Taxes

70.141 Lien for taxes.

70.142 Scope of definitions.

70.143 Definitions.

70.144 Special rules.

70.145 Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors.

70.146 45-day period for making disbursements.

70.147 Priority of interest and expenses.

70.148 Place for filing notice; form.

70.149 Refiling of notice of tax lien.

70.150 Release of lien or discharge of property.

70.151 Administrative appeal of liens.

Seizure of Property for Collection of Taxes

70.161 Levy and distraint.

70.162 Levy and distraint on salary and wages.

70.163 Surrender of property subject to levy.

- 70.164 Surrender of property subject to levy in the case of life insurance and endowment contracts.
- 70.165 Production of books.
- 70.166 Levy allowed on principal residence in case of jeopardy or certain approval.
- 70.167 Authority to release levy and return property.
- 70.168 Redemption of property.
- 70.169 Expense of levy and sale.
- 70.170 Application of proceeds of levy.

Disposition of Property

- 70.181 Disposition of seized property.
- 70.182 Disposition of personal property acquired by the United States.
- 70.183 Administration and disposition of real estate acquired by the United States.
- 70.184 Disposition of perishable goods.
- 70.185 Certificate of sale; deed of real property.
- 70.186 Legal effect of certificate of sale of personal property and deed of real property.
- 70.187 Records of sale.
- 70.188 Expense of levy and sale.

Judicial Proceedings

Civil Action by the United States

- 70.191 Authorization.
- 70.192 Action to enforce lien or to subject property to payment of tax.
- 70.193 Disposition of judgments and moneys recovered.

Proceedings by Taxpayers and Third Parties

- 70.201 Exhaustion of administrative remedies.
- 70.202 Intervention.
- 70.203 Discharge of liens; scope and application; judicial proceedings.
- 70.204 Discharge of liens; nonjudicial sales.
- 70.205 Discharge of liens; special rules.
- 70.206 Discharge of liens; redemption by United States.
- 70.207 Civil actions by persons other than taxpayers.
- 70.208 Review of jeopardy and termination assessment or levy procedures; information to taxpayer.
- 70.209 Review of jeopardy assessment procedures; administrative review.
- 70.210 Review of jeopardy assessment procedures; judicial action.
- 70.211 Damages for failure to release lien.
- 70.212 Damages for unauthorized collection actions.
- 70.213 Repayments to officers or employees.

Limitations

Limitations on Assessment and Collection

- 70.221 Period of limitations upon assessment.
- 70.222 Time return deemed filed for purposes of determining limitations.
- 70.223 Exceptions to general period of limitations on assessment and collection.
- 70.224 Collection after assessment.
- 70.225 Suspension of running of period of limitation; assets of taxpayer in control or custody of court.
- 70.226 Suspension of running of period of limitation; taxpayer outside of United States.

- 70.227 Suspension of running of period of limitation; wrongful seizure of property of third party.

Limitations on Liens

- 70.231 Protection for certain interests even though notice filed.
- 70.232 Protection for commercial transactions financing agreements.
- 70.233 Protection for real property construction or improvement financing agreements.
- 70.234 Protection for obligatory disbursement agreements.

Limitations on Levies

- 70.241 Property exempt from levy.
- 70.242 Wages, salary and other income.
- 70.243 Exempt amount.
- 70.244 Payroll period.
- 70.245 Computation of exempt amount and payment of amounts not exempt from levy to the Chief, Tax Processing Center.

Periods of Limitation in Judicial Proceedings

- 70.251 Periods of limitation on suits by taxpayers.
- 70.252 Periods of limitation on suits by the United States.
- 70.253 Periods of limitation on suits by persons other than taxpayers.

Limitations on Credit or Refund

- 70.261 Period of limitation on filing claim.
- 70.262 Limitations on allowance of credits and refunds.
- 70.263 Special rules applicable in case of extension of time by agreement.
- 70.264 Time return deemed filed and tax considered paid.
- 70.265 Credits or refunds after period of limitation.
- 70.266 Credit against barred liability.

Transferees

- 70.271 Procedure in the case of transferred assets.

Bonds

- 70.281 Form of bond and security required.
- 70.282 Single bond in lieu of multiple bonds.

Miscellaneous Provisions

- 70.301 Reproduction of returns and other documents.
- 70.302 Fees and costs for witnesses.
- 70.303 Rules and regulations.
- 70.304 Place for filing documents other than returns.
- 70.305 Timely mailing treated as timely filing.
- 70.306 Time for performance of acts other than payment of tax or filing of any return where last day falls on Saturday, Sunday, or legal holiday.

General Provisions Relating to Stamps, Marks or Labels

- 70.311 Authority for establishment, alternation and distribution of stamps, marks, or labels.

Registration

- 70.321 Registration of persons paying a special tax.

Crimes, Other Offenses, and Forfeitures

- 70.331 Fraudulent returns, statements, or other documents.
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- 70.417 Rulings.
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Provisions Relating to Tobacco Products, and Cigarette Papers and Tubes

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- 70.442 Taxes relating to machine guns, destructive devices, and certain other firearms.
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- 70.450 Seizure and forfeiture of personal property.

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- 70.461 Shipments to the United States.
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- 70.471 Rulings.

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- 70.481 Agreements for payment of liability in installments.
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- 70.483 Offers in compromise of violations of Federal Alcohol Administration Act.
- 70.484 Offers in compromise of forfeiture liabilities.
- 70.485 Closing agreements.

70.486 Managerial review.

70.487 Taxpayer Assistance Orders.

Par. 14. Section 70.1(c) is revised to read as follows:

§ 70.1 General.

(c) The preparing or executing of returns; deposits; payment on notice and demand; assessment; abatements, credits and refunds; limitations on assessment; limitations on credit or refund; periods of limitation in judicial proceedings; interest; additions to the tax, additional amounts, and assessable penalties; enforced collection activities; authority for establishment, alteration, and distribution of stamps, marks, or labels; jeopardy assessment of alcohol, tobacco and firearms taxes, and registration of persons paying a special tax.

Par. 15. Section 70.11 is amended by adding definitions for "Chief, Tax Processing Center", "Enforced collection", "Levy", "Lien", "Person", "Provisions of 26 U.S.C. enforced and administered by the Bureau", and "Seizure" and by revising the definition for "Regional director (compliance)" to read as follows:

§ 70.11 Meaning of terms.

Chief, Tax Processing Center. The ATF officer principally responsible for administering regulations in this part concerning special (occupational) tax, and also responsible for filing tax liens and issuing third-party levies, and for disbursing money due to taxpayers under the provisions of 26 U.S.C. enforced and administered by the Bureau.

Enforced collection. Collection of taxes when a taxpayer neglects or refuses to pay voluntarily. Includes such administrative measures as liens and levies.

Levy. The taking of property by seizure and sale or by collection of money due to the debtor, such as wages.

Lien. A charge upon real or personal property for the satisfaction of some debt or performance of an obligation.

Person. An individual, a trust, estate, partnership, association or other unincorporated organization, fiduciary, company, or corporation, or the District of Columbia, a State, or a political subdivision thereof (including a city, county, or other municipality).

Provisions of 26 U.S.C. enforced and administered by the Bureau. 26 U.S.C.

subtitle E (and subtitle F as it relates to subtitle E).

Regional director (compliance). The ATF regional official principally responsible for administering regulations in this part concerning commodity taxes imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau, and for collecting tax by levy (other than third-party levy).

Seizure. The act of taking possession of property to satisfy a tax liability or by virtue of an execution.

Par. 16. Section 70.22(b) is amended by adding a reference to § 70.302 at the end of the paragraph, to read as follows:

§ 70.22 Examination of books and witnesses.

(b) *** See § 70.302 of this part for rules concerning payments to certain persons who are summoned to give information to the Bureau under 26 U.S.C. 7602 and this section.

Par. 17. The first sentence of § 70.23(b)(2) is revised to read as follows:

§ 70.23 Service of summonses.

(b) ***
(2) Chiefs, field operations, area supervisors, inspectors, regional audit managers and auditors, Compliance Operations; special agents, Internal Affairs; and all special agents, Law Enforcement. ***

Par. 18. Sections 70.25 through 70.29 are added to read as follows:

§ 70.25 Special procedures for third-party summonses.

(a) When the Bureau summons the records of persons defined by 26 U.S.C. 7609(a)(3) as "third-party recordkeepers", the person about whom information is being gathered must be notified in advance, except when:

(1) The summons is served on the person about whom information is being gathered, or any officer or employee of such person, or

(2) The summons is served to determine whether or not records of the business transactions or affairs of an identified person have been made or kept, or

(3) The summons does not identify the person with respect to whose liability the summons is issued (a "John Doe" summons issued under the provisions of 26 U.S.C. 7609(f)), or

(4) The Director petitions, and the court determines, on the basis of the facts and circumstances alleged, that

there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying or production of records.

(b) Within 3 days of the day on which the summons was served, the notice required by paragraph (a) of this section shall be served upon the person entitled to notice, or mailed by certified or registered mail to the last known address of such person, or, in the absence of a last known address, left with the person summoned. No examination of any records required to be produced under a summons as to which notice is required under paragraph (a) of this section may be made:

(1) Before the close of the 23rd day after the day notice with respect to the summons is given in the manner provided in this paragraph, or

(2) Where a proceeding under paragraph (c) of this section was begun within the 20-day period referred to in that paragraph and the requirements of paragraph (c) of this section have been met, except in accordance with an order of the court having jurisdiction of such proceeding or with the consent of the person beginning the proceeding to quash.

(c) If the person about whom information is being gathered has been given notice, that person has the right to institute, until and including the 20th day following the day such notice was served on or mailed, by certified or registered mail, to such notified person, a proceeding to quash the summons. During the time the validity of the summons is being litigated, the statutes of limitation are suspended under 26 U.S.C. 7609(e). Title 26 U.S.C. 7609 does not restrict the authority under 26 U.S.C. 7602 (or under any other provision of law) to examine records and witnesses without serving a summons and without giving notice of an examination.

(26 U.S.C. 7609)

§ 70.26 Third-party recordkeepers.

(a) **Definitions**—(1) **Accountant.** A person is an "accountant" under 26 U.S.C. 7609(a)(3)(F) for purposes of determining whether that person is a third-party recordkeeper if the person is registered, licensed, or certified under State law as an accountant.

(2) **Attorney.** A person is an "attorney" under 26 U.S.C. 7609(a)(3)(E) for purposes of determining whether that person is a third-party recordkeeper

if the person is admitted to the bar of a State or the District of Columbia.

(3) *Credit cards*—(i) *Person extending credit through credit cards*. The term "person extending credit through credit cards or similar devices" under 26 U.S.C. 7609(a)(3)(C) generally includes any person who issues a credit card. It does not include a seller of goods or services that honors credit cards issued by other parties but does not extend credit on the basis of credit cards or similar devices issued by itself.

(iii) *Similar devices to credit cards*. An object is a "similar device" to a credit card under 26 U.S.C. 7609(a)(3)(C) only if it is physical in nature, such as a coupon book, a charge plate, or a letter of credit. Thus, a person who extends credit by requiring credit customers to sign sales slips without requiring use of physical objects issued by that person is not a third-party recordkeeper under 26 U.S.C. 7609(a)(3)(C).

(b) *When third-party recordkeeper status arises*. A person is a "third-party recordkeeper" with respect to a given set of records only if the person made or kept the records in the person's capacity as a third-party recordkeeper. Thus, for instance, an accountant is not a third-party recordkeeper (by reason of being an accountant) with respect to the accountant's records of a sale of property by the accountant to another person. Similarly, a credit card issuer is not a third-party recordkeeper (by reason of being a person extending credit through the use of credit cards or similar devices) with respect to:

(1) Records relating to noncredit card transactions, such as a cash sale by the issuer to a holder of the issuer's credit card; or

(2) Records relating to transactions involving the use of another issuer's credit card.

(c) *Duty of third-party recordkeeper*—

(1) *In General*. Upon receipt of a summons, the third-party recordkeeper ("recordkeeper") must begin to assemble the summoned records. The recordkeeper must be prepared to produce the summoned records on the date which the summons states the records are to be examined regardless of the institution or anticipated institution of a proceeding to quash or the recordkeeper's intervention (as allowed under 26 U.S.C. 7609(a)(3)(C)) into a proceeding to quash.

(2) *Disclosing recordkeepers not liable*—(i) *In general*. A recordkeeper, or an agent or employee thereof, who makes a disclosure of records as required by this section, in good faith reliance on the "Certificate of the Secretary" (as defined in paragraph (c)(2)(ii) of this section) or an order of a

court requiring production of records, will not be liable for such disclosure to any customer, or to any party with respect to whose tax liability the summons was issued, or to any other person.

(ii) *Certificate of the Secretary*. The Director may issue to the recordkeeper a "Certificate of the Secretary" stating both:

(A) That the 20-day period, within which a notified person may institute a proceeding to quash the summons has expired; and

(B) That no proceeding has been properly instituted within that period.

The Director may also issue a "Certificate of the Secretary" to the recordkeeper if the taxpayer, with respect to whose tax liability the summons was issued, expressly consents to the examination of the records summoned.

(3) *Reimbursement of costs*. Recordkeepers may be entitled to reimbursement of their costs of assembling and preparing to produce summoned records, to the extent allowed by 26 U.S.C. 7610, even if the summons ultimately is not enforced.

(26 U.S.C. 7609)

§ 70.27 Right to intervene; right to institute a proceeding to quash.

(a) *Notified person*. Under 26 U.S.C. 7609(a), the Bureau must give a notice of summons to any person, other than the person summoned, who is identified in the description of the books and records contained in the summons in order that such person may contest the right of the Bureau to examine the summoned records by instituting a proceeding to quash the summons. Thus, if the Bureau issues a summons to a bank requesting checking account records of more than one person all of whom are identified in the description of the records contained in the summons, then all such persons are notified persons entitled to notice under 26 U.S.C. 7609(a). Therefore, if the Bureau requests the records of a joint bank account of A and B, both of whom are named in the summons, then both A and B are notified persons entitled to notice under 26 U.S.C. 7609(a).

(b) *Right to institute a proceeding to quash*—(1) *In general*. Title 26 U.S.C. 7609(b) grants a notified person the right to institute a proceeding to quash the summons in the United States district court for the district within which the person summoned resides or is found. Jurisdiction of the court is based on 26 U.S.C. 7609(b). The act of filing a petition in district court does not in and of itself institute a proceeding to quash under 26 U.S.C. 7609(b)(2). Rather, the

filing of the petition must be coupled with notice as required by 26 U.S.C. 7609(b)(2)(B).

(2) *Elements of institution of a proceeding to quash*. In order to institute a proceeding to quash a summons, the notified person (or the notified person's agent, nominee, or other person acting under the direction or control of the notified person) must, not later than the 20th day following the day the notice of the summons was served on or mailed to such notified person:

(i) File a petition to quash in the name of the notified person in a district court having jurisdiction.

(ii) Notify the Bureau by sending a copy of that petition by registered or certified mail to the Bureau employee and office designated to receive the copy in the notice of summons that was given to the notified person, and

(iii) Notify the recordkeeper by sending to that recordkeeper by registered or certified mail a copy of the petition.

Failure to give timely notice to either the summoned party or the Bureau in the manner described in this paragraph means that the notified person has failed to institute a proceeding to quash and the district court has no jurisdiction to hear the proceeding. Thus, for example, if the notified person mails a copy of the petition to the summoned person but not to the designated Bureau employee and office, the notified person has failed to institute a proceeding to quash. Similarly, if the notified person mails a copy of such petition to the summoned person, but instead of sending a copy of the petition by registered or certified mail to the designated employee and office, the notified person gives the designated employee and office the petition by some other means, the notified person has failed to institute a proceeding to quash.

(3) *Failure to institute a proceeding to quash*. If the notified person fails to institute a proceeding to quash within 20 days following the day the notice was served on or mailed to such notified person, the Bureau may examine the summoned records following the 23rd day after notice of the summons was served on or mailed to the notified person (see 26 U.S.C. 7609(d)(1)).

(c) *Presumption no notice has been mailed*. Title 26 U.S.C. 7609(b)(2)(B) permits a notified person to institute a proceeding to quash by filing a petition in district court and notifying both the Bureau and the summoned person. Unless the notified person has notified both the Bureau and the summoned person in the appropriate manner, the

notified person has failed to institute a proceeding to quash. If the copy of the petition has not been delivered to the summoned person or the person and office designated to receive the notice on behalf of the Bureau within 3 days from the close of the 20-day period allowed to institute a proceeding to quash, it is presumed that the notification has not been timely mailed. (26 U.S.C. 7609)

§ 70.28 Summonses excepted from 26 U.S.C. 7609 procedures.

(a) *In aid of the collection of certain liabilities*—(1) *In general.* Title 26 U.S.C. 7609(c)(2)(B) contains an exception to the general notice requirement when a summons is issued to a third-party recordkeeper. That section excepts summonses issued in aid of the collection of the liability of any person against whom an assessment has been made or judgment rendered or the liability at law or in equity of any transferee of such a person.

(2) *Examples.* Examples of summonses referred to in paragraph (a)(1) of this section are:

(i) Summonses issued to determine the amount held in a bank in the name of a person against whom an assessment has been made or judgment rendered;

(ii) Summonses issued to enforce transferee liability for a tax which has been assessed.

(b) *Numbered account (or similar arrangement).* Under 26 U.S.C. 7609(c)(2), a summons issued solely to determine the identity of a person having a numbered account (or similar arrangement) with a bank or other institution is excepted from the requirements of 26 U.S.C. 7609. A "numbered account (or similar arrangement)" under 26 U.S.C. 7609(c)(2) is an account through which a person may authorize transactions solely through the use of a number, symbol, code name, or other device not involving the disclosure of the person's identity. A "person having a numbered account (or similar arrangement)" includes the person who opened the account and any person authorized to use the account or to receive records or statements concerning it.

(26 U.S.C. 7609)

§ 70.29 Suspension of statutes of limitations.

(a) *Suspension while a proceeding under 26 U.S.C. 7609(b) is pending.* Under 26 U.S.C. 7609(e)(1), the statutes of limitations of 26 U.S.C. 6501 and 6531 are suspended if a notified person with respect to whose liability a summons is issued, or the notified person's agent, nominee, or other person acting under

the direction or control of the notified person, takes any action as provided in 26 U.S.C. 7609(b).

(1) *Agent, nominee, etc.* A person is a notified person's agent, nominee, or other person acting under the direction or control of a notified person for purposes of 26 U.S.C. 7609(e) if the person with respect to whose liability the summons is issued has the ability in fact or at law to cause the agent, etc., to take the actions permitted under 26 U.S.C. 7609(b). Thus, in the case of a corporation, direction or control by the notified person may exist even though less than 50 percent of the voting power of the corporation is held by the notified person.

(2) *Period during which a proceeding, etc., is pending.* Under 26 U.S.C. 7609(e), the statute of limitations shall be suspended for the period during which a proceeding and any appeals regarding the enforcement of such summons is pending. This period begins on the date the petition to quash the summons is filed in district court. The period continues until all appeals are disposed of, or until the expiration of the period in which an appeal may be taken or a request for a rehearing may be made. Full compliance, partial compliance, and noncompliance have no effect on the suspension provisions. The periods of limitations which are suspended under 26 U.S.C. 7609(e) are those which apply to the taxable periods to which the summons relates.

(3) *Taking of action as provided in 26 U.S.C. 7609(b).* Title 26 U.S.C. 7609(b) allows intervention by a notified person as a matter of right upon compliance with the Federal Rules of Civil Procedure. The phrase "takes any action as provided in subsection (b)", found in 26 U.S.C. 7609(e), includes any intervention whether or not 26 U.S.C. 7609(b) is specifically mentioned in the order of the court allowing intervention. The phrase also includes the fulfilling of only part of the requirements of 26 U.S.C. 7609(b)(2), relating to the right of a person to institute a proceeding to quash. Thus, for instance, if a notified person notifies a person who has been summoned by sending a copy of the petition by registered or certified mail but does not mail a copy of that notice to the appropriate person and office under 26 U.S.C. 7609(b)(2)(B), the notified person has taken an action under 26 U.S.C. 7609(e).

(b) *Suspension after 6 months of service of summons.* In the absence of the resolution of the third-party recordkeeper's response to the summons described in 26 U.S.C. 7609(c) or the summoned party's response to a summons described in 26 U.S.C. 7609(f)

the running of any period of limitations under 26 U.S.C. 6501 or under 26 U.S.C. 6531 with respect to any person with respect to whose liability the summons is issued (other than a person taking action as provided in 26 U.S.C. 7609(b)) shall be suspended for the period:

(1) Beginning on the date which is 6 months after the service of such summons, and

(2) Ending with the final resolution of such response.

(26 U.S.C. 7609)

Par. 19. Section 70.34 is added to read as follows:

§ 70.34 Listing by regional directors (compliance) of taxable objects owned by nonresidents of ATF regions.

Whenever there are in any ATF region any articles subject to tax, which are not owned or possessed by, or under the care or control of, any person within such region, and of which no list has been transmitted to the regional director (compliance), as required by law or by regulations prescribed pursuant to law, the regional director (compliance), or other authorized ATF officer or employee, shall enter the premises where such articles are situated, shall make such inspection of the articles as may be necessary, and shall make lists of the same according to the forms prescribed. Such list, being subscribed by the regional director (compliance) or other authorized ATF officer or employee, shall be sufficient lists of such articles for all purposes.

(26 U.S.C. 6021)

Par. 20. Section 70.42 is amended by revising paragraphs (a)(1), (b), and (c)(1) to read as follows:

§ 70.42 Returns prepared or executed by regional directors (compliance), the Chief, Tax Processing Center, or by other ATF officers.

(a) *Preparation of returns*—(1) *General.* If any person required by provisions of 26 U.S.C. enforced and administered by the Bureau or by the regulations prescribed thereunder to make a return fails to make such return, it may be prepared by the regional director (compliance), the Chief, Tax Processing Center, or other authorized ATF officer provided the person required to make the return consents to disclose all information necessary for the preparation of such return. The return upon being signed by the person required to make it shall be received by the regional director (compliance) or the Chief, Tax Processing Center, as the return of such person.

* * * * *

(b) *Execution of returns*—(1) *General*. If any person required by provisions of 26 U.S.C. enforced and administered by the Bureau or by the regulations prescribed thereunder to make a return fails to make a return at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the regional director (compliance), the Chief, Tax Processing Center, or other authorized ATF officer shall make such return from the officer's own knowledge and from such information as the officer can obtain through testimony or otherwise.

(2) *Status of returns*. Any return made in accordance with paragraph (b)(1) of this section and subscribed by the regional director (compliance), the Chief, Tax Processing Center, or other authorized ATF officer shall be prima facie good and sufficient for all legal purposes.

(c) *Cross references*. (1) For provisions that the return executed by a regional director (compliance), the Chief, Tax Processing Center, or other authorized ATF officer will not start the running of the period of limitations on assessment and collection, see 26 U.S.C. 6501(b)(3) and § 70.222(b) of this part.

Par. 21. The undesignated centerheading which reads "Possessions" is removed. Subpart D is removed and subpart E is redesignated as subpart D. The heading for newly redesignated subpart D and the undesignated centerheading which immediately follows are revised to read as follows:

Subpart D—Collection of Excise and Special (Occupational) Tax

Collection—General Provisions

Par. 22. Sections 70.51 and 70.52 are added under the undesignated centerheading "Collection—General Provisions", and an undesignated centerheading immediately following them is added to read as follows:

§ 70.51 Collection authority.

The taxes imposed by provisions of 26 U.S.C. enforced and administered by the Bureau shall be collected by regional directors (compliance), the Chief, Tax Processing Center, and other ATF officials designated by the Director of the Bureau.

(26 U.S.C. 6301)

§ 70.52 Signature presumed authentic.

An individual's name signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement or

other document was actually signed by that individual.

(26 U.S.C. 6064)

Receipt of Payment

Par. 23. Section 70.63 is added to read as follows:

§ 70.63 Computations on returns or other documents.

(a) *Amounts shown on forms*. To the extent permitted by any ATF form or instructions prescribed for use with respect to any ATF return, declaration, statement, or other document, or supporting schedules, any amount required to be reported in such form may be entered at the nearest whole dollar amount. The extent to which, and the conditions under which, such whole dollar amounts may be entered on any form will be set forth in the instructions issued with respect to such form. For the purpose of the computation to the nearest dollar, a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case the amount (determined without regard to the fractional part of a dollar) shall be increased by \$1. The following illustrates the application of this paragraph:

Exact amount	To be reported as
\$18.49.....	\$18
\$18.50.....	19
\$18.51.....	19

(b) *Election not to use whole dollar amounts*—(1) *Method of election*. Where any ATF form, or the instructions issued with respect to such form, provide that whole dollar amounts shall be reported, any person making a return, declaration, statement, or other document on such form may elect not to use whole dollar amounts by reporting thereon all amounts in full, including cents.

(2) *Time of election*. The election not to use whole dollar amounts must be made at the time of filing the return, declaration, statement, or other document. Such election may not be revoked after the time prescribed for filing such return, declaration, statement, or other document, including extensions of time granted for such filing. Such election may be made on any return, declaration, statement, or other document which is filed after the time prescribed for filing (including extensions of time), and such an election is irrevocable.

(3) *Effect of election*. The taxpayer's election shall be binding only on the return, declaration, statement, or other document filed for a taxable year or

period, and a new election may be made on the return, declaration, statement, or other document filed for a subsequent taxable year or period.

(4) *Fractional part of a cent*. For treatment of the fractional part of a cent in the payment of taxes, see 26 U.S.C. 6313 and § 70.62 of this part.

(c) *Inapplicability to computation of amount*. The provisions of paragraph (a) of this section apply only to amounts required to be reported on a return, declaration, statement, or other document. They do not apply to items which must be taken into account in making the computations necessary to determine such amounts. For example, each item of liability must be taken into account at its exact amount, including cents, in computing the amount of total liability required to be reported on a tax return or supporting schedule. It is the amount of total liability, so computed, which is to be reported at the nearest whole dollar on the return or supporting schedule.

(26 U.S.C. 6102)

Par. 24. Section 70.64 is revised to read as follows:

§ 70.64 Receipt for taxes.

The regional director (compliance) or the Chief, Tax Processing Center shall, upon request, issue a receipt for each tax payment made (other than a payment for stamps sold or delivered). In addition, the regional director (compliance) or the Chief, Tax Processing Center or other authorized ATF officer or employee shall issue a receipt for each payment of 1 dollar or more made in cash, whether or not requested. In the case of payments made by check, the canceled check is usually a sufficient receipt. No receipt shall be issued in lieu of a stamp representing a tax, whether the payment is in cash or otherwise.

(26 U.S.C. 6314)

Par. 25. Section 70.71 is revised to read as follows:

Assessment

§ 70.71 Assessment authority.

The regional director (compliance) and the Chief, Tax Processing Center are authorized and required to make all inquiries necessary to the determination and assessment of all taxes imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau. The regional director (compliance) and the Chief, Tax Processing Center are further authorized and required to make the determinations and the assessments of such taxes. The

term "taxes" includes interest, additional amounts, additions to the taxes, and assessable penalties. The authority of the regional director (compliance) and the Chief, Tax Processing Center to make assessment includes the following:

(a) *Taxes shown on return.* The regional director (compliance) or the Chief, Tax Processing Center shall assess all taxes determined by the taxpayer or by the regional director (compliance) or by the Chief, Tax Processing Center and disclosed on a return or list.

(b) *Unpaid taxes payable by stamp.* (1) If without use of the proper stamp:

(i) Any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof, or

(ii) Any transaction or act upon which a tax is required to be paid by means of a stamp occurs, the regional director (compliance) or the Chief, Tax Processing Center, upon such information as can be obtained, must estimate the amount of the tax which has not been paid and the regional director (compliance) or the Chief, Tax Processing Center determines to be liable for the tax. However, the regional director (compliance) or the Chief, Tax Processing Center may not assess any tax which is payable by stamp unless the taxpayer fails to pay such tax at the time and in the manner provided by law or regulations.

(2) If a taxpayer gives a check or money order as a payment for stamps but the check or money order is not paid upon presentment, then the regional director (compliance) or the Chief, Tax Processing Center shall assess the amount of the check or money order against the taxpayer as if it were a tax due at the time the check or money order was received by the regional director (compliance) or the Chief, Tax Processing Center.

(26 U.S.C. 6201)

Par. 26. Section 70.72 is amended by revising the first sentence to read as follows:

§ 70.72 Method of assessment.

The regional director (compliance) and the Chief, Tax Processing Center shall appoint one or more assessment officers. * * *

Par. 27. Section 70.73 is revised to read as follows:

§ 70.73 Supplemental assessments.

If any assessment is incomplete or incorrect in any material respect, the regional director (compliance) or the Chief, Tax Processing Center, subject to the applicable period of limitation, may make a supplemental assessment for the purpose of correcting or completing the original assessment.

(26 U.S.C. 6204)

Par. 28. Section 70.74 is added to read as follows:

§ 70.74 Request for prompt assessment.

(a) Except as otherwise provided in § 70.223 of this part, any tax for which a return is required and for which:

(1) A decedent or an estate of a decedent may be liable, or

(2) A corporation which is contemplating dissolution, is in the process of dissolution, or has been dissolved, may be liable, shall be assessed, or a proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after the receipt of a written request for prompt assessment thereof.

(b) The executor, administrator, or other fiduciary representing the estate of the decedent, or the corporation, or the fiduciary representing the dissolved corporation, as the case may be, shall, after the return in question has been filed, file the request for prompt assessment in writing with the regional director (compliance) for the ATF region in which such return was filed or with the Chief, Tax Processing Center in the case of special (occupational) tax. The request, in order to be effective, must be transmitted separately from any other document, must set forth the classes of tax and the taxable periods for which the prompt assessment is requested, and must clearly indicate that it is a request for prompt assessment under the provisions of 26 U.S.C. 6501(d). The effect of such a request is to limit the time in which an assessment of tax may be made, or a proceeding in court without assessment for collection of tax may be begun, to a period of 18 months from the date the request is filed with the proper regional director (compliance) or with the Chief, Tax Processing Center. The request does not extend the time within which an assessment may be made, or a proceeding in court without assessment shall be begun, after the expiration of 3 years from the date the return was filed. This special period of limitations will not apply to any return filed after a request for prompt assessment has been made unless an additional request is filed in the manner provided herein.

(c) In the case of a corporation the 18-month period shall not apply unless:

(1) The written request notifies the regional director (compliance) or the Chief, Tax Processing Center that the corporation contemplates dissolution at or before the expiration of such 18-month period; the dissolution is in good faith begun before the expiration of such 18-month period; and the dissolution so begun is completed either before or after the expiration of such 18-month period; or

(2) The written request notifies the regional director (compliance) or the Chief, Tax Processing Center that a dissolution has in good faith begun, and the dissolution is completed either before or after the expiration of such 18-month period; or

(3) A dissolution has been completed at the time the written request is made.

(26 U.S.C. 6501(d))

Par. 29. Section 70.75 is revised to read as follows:

§ 70.75 Jeopardy assessment of alcohol, tobacco, and firearms taxes.

(a) If the regional director (compliance) or the Chief, Tax Processing Center believes that the collection of any tax imposed under provisions of 26 U.S.C. enforced and administered by the Bureau will be jeopardized by delay, the regional director (compliance) or the Chief, Tax Processing Center shall, whether or not the time otherwise prescribed by law for filing the return or paying such tax has expired, immediately assess such tax, together with all interest, additional amounts and additions to the tax provided by law. A regional director (compliance) or the Chief, Tax Processing Center will make an assessment under this section if collection is determined to be in jeopardy because at least one of the following conditions exists.

(1) The taxpayer is or appears to be designing quickly to depart from the United States or to conceal himself or herself.

(2) The taxpayer is or appears to be designing quickly to place the taxpayer's property beyond the reach of the Government either by removing it from the United States, by concealing it, or by dissipating it, or by transferring it to other persons.

(3) The taxpayer's financial solvency is or appears to be threatened.

(b) The tax, interest, additional amounts, and additions to the tax will, upon assessment, become immediately due and payable, and the regional director (compliance) or the Chief, Tax

processing Center shall, without delay, issue a notice and demand for payment thereof in full.

(c) See 26 U.S.C. 7429 with respect to requesting the regional director (compliance) or the Chief, Tax Processing Center to review the making of the jeopardy assessment.

(d) For provisions relating to stay of collection of jeopardy assessments, see § 70.76 of this part.

(26 U.S.C. 6862 and 6863)

Par. 30. Sections 70.76 and 70.77 are added to read as follows:

§ 70.76 Stay of collection of jeopardy assessment; bond to stay collection.

(a) The collection of taxes assessed under 26 U.S.C. 6862 (referred to as a "jeopardy assessment" for purposes of this section) of any tax may be stayed by filing with the regional director (compliance) or Chief, Tax Processing Center a bond on the form to be furnished by ATF upon request.

(b) The bond may be filed:

(1) At any time before the time collection by levy is authorized under 26 U.S.C. 6331(a), or

(2) After collection by levy is authorized and before levy is made on any property or rights to property, or

(3) In the discretion of the regional director (compliance) or the Chief, Tax Processing Center, after any such levy has been made and before the expiration of the period of limitations on collection.

(c) The bond must be in an amount equal to the portion (including interest thereon to the date of payment as calculated by the regional director (compliance) or the Chief, Tax Processing Center) of the jeopardy assessment collection of which is sought to be stayed. See 26 U.S.C. 7101 and § 70.281, relating to the form of bond and the sureties thereon. The bond shall be conditioned upon the payment of the amount (together with interest thereon), for which the collection is stayed, at the time at which, but for the making of the jeopardy assessment, such amount would be due.

(d) Upon the filing of a bond in accordance with this section, the collection of so much of the assessment as is covered by the bond will be stayed. The taxpayer may at any time waive the stay of collection of the whole or of any part of the amount covered by the bond. If as a result of such waiver any part of the amount covered by the bond is paid, or if any portion of the jeopardy assessment is abated by the regional director (compliance) or the Chief, Tax Processing Center, then the bond shall

(at the request of the taxpayer) be proportionately reduced.

(26 U.S.C. 6863)

§ 70.77 Collection of jeopardy assessment; stay of sale of seized property pending court decision.

(a) *General rule.* In the case of an assessment under 26 U.S.C. 6862, and property seized for the collection of such assessment shall not (except as provided in paragraph (b) of this section) be sold until the latest of the following occurs:

(1) The period provided in 26 U.S.C. 7429(a)(2) to request the regional director (compliance) or Chief, Tax Processing Center to review the action taken expires.

(2) The period provided in 26 U.S.C. 7429(b)(1) to file an action in U.S. District Court expires if a request for redetermination is made to the regional director (compliance) or Chief, Tax Processing Center.

(3) The U.S. District Court judgment in such action becomes final, if a civil action is begun in accordance with 26 U.S.C. 7429(b).

(b) *Exceptions.* Notwithstanding the provisions of paragraph (a) of this section, any property seized may be sold:

(1) If the taxpayer files with the regional director (compliance) a written consent to the sale, or

(2) If the regional director (compliance) determines that the expenses of conservation and maintenance of the property will greatly reduce the net proceeds from the sale of such property, or

(3) If the property is of a type to which 26 U.S.C. 6336 (relating to sale of perishable goods) is applicable.

(26 U.S.C. 6863)

Par. 31. Section 70.81 and an undesignated centerheading preceding it are added to read as follows:

Notice and Demand

§ 70.81 Notice and demand for tax.

(a) *General rule.* Where it is not otherwise provided by provisions of 26 U.S.C. enforced and administered by the Bureau, the regional director (compliance) or the Chief, Tax Processing Center shall, after the making of an assessment of a tax pursuant to § 70.71 of this part, give notice to each person liable for the unpaid tax, stating the basis for the tax due, the amount of tax, interest, additional amounts, additions to the tax and assessable penalties, and demanding payment thereof. Such notice shall be given as soon as possible and within 60 days. However, the failure to give notice

within 60 days does not invalidate the notice. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address.

(b) *Assessment prior to last date for payment.* If any tax is assessed prior to the last date prescribed for payment of such tax, demand that such tax be paid will not be made before such last date, except where it is believed collection would be jeopardized by delay.

(26 U.S.C. 6303 and 7521)

Par. 32. Section 70.82 is revised to read as follows:

§ 70.82 Payment on notice and demand.

Upon receipt of notice and demand from the regional director (compliance) or the Chief, Tax Processing Center, there shall be paid at the place and time stated in such notice the amount of any tax (including any interest, additional amounts, additions to the tax, and assessable penalties) stated in such notice and demand.

(26 U.S.C. 6155)

Par. 33. The undesignated centerheadings which read "Abatements, Credits, and Refunds", "Procedure in General", "Rule of Special Application", "Limitations", "Limitations on Assessment", "Limitations on Credit or Refund", and "Periods of Limitation in Judicial Proceedings" are removed.

Par. 34. Section 70.90(a) and the third sentence of 70.90(e)(1) are revised to read as follows:

Interest

§ 70.90 Interest on underpayments.

(a) *General rule.* Interest at the underpayment rate referred to in § 70.93 of this part shall be paid on any unpaid amount of tax from the last date prescribed for payment of the tax (determined without regard to any extension of time for payment) to the date on which payment is received.

(e) * * * Thus, except as provided in paragraph (d) of this section, interest at the underpayment rate referred to in § 70.93 of this part is payable on any unpaid portion of the tax for the period during which such portion remains unpaid by reason of an extension of time for the payment thereof.

Par. 35. Section 70.91 is revised to read as follows:

§ 70.91 Interest on erroneous refund recoverable by suit.

Any portion of an internal revenue tax (or any interest, assessable penalty, additional amount, or addition to tax) which has been erroneously refunded, and which is recoverable by a civil action pursuant to 26 U.S.C. 7405, shall bear interest at the underpayment rate referred to in § 70.93 of this part.

(26 U.S.C. 6602)

Par. 36. The first sentences of sections 70.92(a), 70.92(c) and 70.92(d)(2)(i) are revised to read as follows:

§ 70.92 Interest on overpayments.

(a) *General rule.* Except as otherwise provided, interest shall be allowed on any overpayment of any tax at the overpayment rate referred to in § 70.93 of this part from the date of overpayment of the tax.

(c) *Period for which interest is allowable in case of refunds.* If an overpayment of tax is refunded, interest shall be allowed from the date of the overpayment to a date determined by the regional director (compliance) or the Chief, Tax Processing Center which shall not be more than 30 days prior to the date of the refund check. * * *

(d) * * *

(2) *Determination of due date.*—(i) *General.* The term "due date", as used in this section, means the last day fixed by law or regulations for the payment of the tax (determined without regard to any extension of time), and not the date on which the regional director (compliance) or the Chief, Tax Processing Center makes demand for the payment of the tax. * * *

Par. 37. Section 70.93 is revised to read as follows:

§ 70.93 Interest rate.

(a) *In general.* The interest rate established under 26 U.S.C. 6621(a)(2) shall be:

- (1) On amounts outstanding before July 1, 1975, 6 percent per annum.
- (2) On amounts outstanding:

After	And before	Rate per annum (percent)
June 30, 1975.....	Feb. 1, 1976.....	9
Jan. 31, 1976.....	Feb. 1, 1978.....	7
Jan. 31, 1978.....	Feb. 1, 1980.....	6
Jan. 31, 1980.....	Feb. 1, 1982.....	12
Jan. 31, 1982.....	Jan. 1, 1983.....	20

(3) On amounts outstanding after December 31, 1982, the adjusted rates

for overpayment and underpayment established by the Commissioner of Internal Revenue under 26 U.S.C. 6621. These adjusted rates shall be published by the Commissioner in a Revenue Ruling. See § 70.94 of this part for application of daily compounding in determining interest accruing after December 31, 1982. Because interest accruing after December 31, 1982, accrues at the prescribed rate per annum compounded daily, the effective annual percentage rate of interest will exceed the prescribed rate of interest.

(b) *Applicability of interest rates.* (1) *Computation.* Interest and additions to tax on any amount outstanding on a specific day shall be computed at the annual rate applicable on such day.

(2) *Additions to tax.* Additions to tax under any section of the Internal Revenue Code that refers to the annual rate established under 26 U.S.C. 6621, shall be computed at the same rate per annum as the interest rate set forth under paragraph (a) of this section.

(3) *Interest.* Interest provided for under any section of the Internal Revenue Code that refers to the annual rate established under this section, including 26 U.S.C. 6332(d)(1), 6343(c), 6601(a), 6602, 6611(a), 7426(g), and 28 U.S.C. 1961(c)(1) or 2411, shall be computed at the rate per annum set forth under paragraph (a) of this section.

Par. 38. Section 70.94 is revised to read as follows:

§ 70.94 Interest compounded daily.

(a) *General rule.* Effective for interest accruing after December 31, 1982, in computing the amount of any interest required to be paid under any provision of 26 U.S.C. or under 28 U.S.C. 1961(c)(1) or 2411, by the Director or by the taxpayer, or in computing any other amount determined by reference to such amount of interest, or by reference to the interest rate established under 26 U.S.C. 6621, such interest or such other amount shall be compounded daily by dividing such rate of interest by 365 (366 in a leap year) and compounding such daily interest rate each day.

(b) *Applicability to unpaid amounts on December 31, 1982.* The unpaid interest (or other amount) that shall be compounded daily includes the interest (or other amount) accrued but unpaid on December 31, 1982. (26 U.S.C. 6622)

Par. 39. Section 70.95 is amended by removing the reference to "§ 70.106" and replacing it with § 70.107".

Par. 40. Section 70.96(a)(1), the first sentence of 70.96(a)(2), the first sentence of 70.96(a)(3), paragraph 70.96(a)(4) and the second, third and fourth sentences of

paragraph 70.96(c) are revised to read as follows:

§ 70.96 Failure to file tax return or to pay tax.

(a) *Addition to the tax.* (1) *Failure to file tax return.* In the case of failure to file a return required under authority of:

(i) Title 26 U.S.C. 61, relating to returns and records;

(ii) Title 26 U.S.C. 51, relating to distilled spirits, wines and beer;

(iii) Title 26 U.S.C. 52, relating to tobacco products, and cigarette papers and tubes; or

(iv) Title 26 U.S.C. 53, relating to machine guns, destructive devices, and certain other firearms; and the regulations thereunder, on or before the date prescribed for filing (determined with regard to any extension of time for such filing), there shall be added to the tax required to be shown on the return the amount specified below unless the failure to file the return within the prescribed time is shown to the satisfaction of the regional director (compliance) to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent thereof if the failure is not for more than one month, with an additional 5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate. The amount of any addition under paragraph (a)(1) of this section shall be reduced by the amount of the addition under paragraph (a)(2) of this section for any month to which an addition to tax applies under both paragraphs (a)(1) and (a)(2) of this section.

(2) *Failure to pay tax shown on return.* In case of failure to pay the amount shown as tax on any return required to be filed after December 31, 1989 (without regard to any extension of time for filing thereof), specified in paragraph (a)(1) of this section, on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), there shall be added to the tax shown on the return the amount specified below unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the regional director (compliance) to be due to reasonable cause and not to willful neglect. * * *

(3) *Failure to pay tax not shown on return.* In case of failure to pay any amount in respect of any tax required to be shown on a return specified in paragraph (a)(1) of this section, which is not so shown (including an assessment made pursuant to 26 U.S.C. 6213(b)) within 10 days from the date of the

notice and demand therefor, there shall be added to the amount shown in the notice and demand the amount specified below unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the regional director (compliance) to be due to reasonable cause and not to willful neglect. * * *

(4) *Increases in penalties in certain cases.* For increases in penalties for failure to file a return or pay tax in certain cases, see 26 U.S.C. 6651(d) or (f).

(c) *Showing of reasonable cause.* * * * Such statement should be filed with the regional director (compliance) with jurisdiction over the state in which the liability was incurred. In addition, where special tax returns of liquor dealers are delivered to an ATF officer working under the supervision of the regional director (compliance), such statement may be delivered with the return. If the regional director (compliance) determines that the delinquency was due to a reasonable cause and not to willful neglect, the addition to the tax will not be assessed. * * *

Par. 41. Section 70.98(a) is amended by revising the first two sentences to read as follows:

§ 70.98 Penalty for underpayment of deposits.

(a) *General rule.* If any person is required by the provisions of 26 U.S.C. enforced and administered by the Bureau or regulations prescribed thereunder to deposit any tax in a government depository that is authorized under 26 U.S.C. 6302(c) to receive the deposit, and fails to deposit the tax within the time prescribed therefor, a penalty shall be imposed on such person unless the failure is shown to be due to reasonable cause and not due to willful neglect. The penalty shall be:

(1) For penalties assessed before October 22, 1986, 5 percent of the amount of the underpayment without regard to the period during which the underpayment continues.

(2) For penalties assessed after October 21, 1986, on deposits of taxes required to be made before January 1, 1990, 10 percent of the amount of the underpayment without regard to the period during which the underpayment continues.

(3) For deposits of taxes required to be made after December 31, 1989.

(i) 2 percent of the amount of the underpayment if the failure is for not more than 5 days,

(ii) 5 percent of the amount of the underpayment if the failure is for more than 5 days but not more than 15 days,

(iii) 10 percent of the amount of the underpayment if the failure is for more than 15 days,

(iv) 15 percent of the amount of the underpayment if the tax is not deposited before the earlier of:

(A) The day 10 days after the date of the first delinquency notice to the taxpayer under section 6303, or

(B) The day on which notice and demand for immediate payment is given under 26 U.S.C. 6062 or the last sentence of 26 U.S.C. 6331(a). * * *

Par. 42. Section 70.100 is added to read as follows:

§ 70.100 Penalty for fraudulently claiming drawback.

Whenever any person fraudulently claims or seeks to obtain an allowance of drawback on goods, wares, or merchandise on which no internal revenue tax shall have been paid, or fraudulently claims any greater allowance of drawback than the tax actually paid, that person shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of \$500, at the election of the regional director (compliance).

(26 U.S.C. 7304)

Par. 43. Section 70.101 is amended by revising the last sentence to read as follows:

§ 70.101 Bad checks.

* * * This section shall not apply if the person establishes to the satisfaction of the regional director (compliance) or the Chief, Tax Processing Center that such check was tendered in good faith and that such person had reasonable cause to believe that such check would be duly paid.

(26 U.S.C. 6657)

Par. 44. Section 70.113 is amended by removing from paragraph (a) the amount "\$5" and replacing it with "\$50"; by removing from paragraph (a) the amount "\$50,000" and replacing it with "\$100,000"; by removing from paragraph (b) the phrase "regional director (compliance)" and replacing it with "regional director (compliance) or the Chief, Tax Processing Center" and the informational cite immediately following the section is amended by replacing the number "6676" with the number "6723".

Par. 45. The undesignated centerheadings which read "General Provisions Relating to Stamps, Marks, or Labels", "Jeopardy Assessment" and "Registration" are removed, and two

undesignated centerheadings are added immediately preceding § 70.121 to read as follows:

Abatements, Credits and Refunds

Procedure in General

Par. 46. Section 70.122 is revised to read as follows:

§ 70.122 Authority to make credits or refunds.

The regional director (compliance) or the Chief, Tax Processing Center, within the applicable period of limitations, may credit any overpayment of tax, including interest thereon, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the person making the overpayment and the balance, if any, shall be refunded, subject to 26 U.S.C. 6402 (c) and (d) and the regulations thereunder, to such person by the regional director (compliance) or the Chief, Tax Processing Center.

(26 U.S.C. 6402)

Par. 47. Section 70.123 is amended by revising the first sentence of paragraph (a)(2), the second sentence of paragraph (b)(1), and paragraph (b)(2), and by adding the OMB control number immediately following the informational cite at the end of the section to read as follows:

§ 70.123 Claims for credit or refund.

(a) * * *

(2) All claims relating to provisions of 26 U.S.C. enforced and administered by the Bureau, together with appropriate supporting evidence, shall be filed with the regional director (compliance), for the region in which the claimant is located, or, in the case of special (occupational) tax, with the Chief, Tax Processing Center. * * *

(b) * * *

(1) * * * The claim must set forth in detail each ground upon which credit or refund is claimed and facts sufficient to apprise the regional director (compliance) or the Chief, Tax Processing Center of the exact basis thereof. * * *

(2) The regional director (compliance) and the Chief, Tax Processing Center do not have authority to refund on equitable grounds penalties or other amounts legally collected.

(Approved by the Office of Management and Budget under control number 1512-0141)

Par. 48. Section 70.124 is revised to read as follows:

§ 70.124 Payments in excess of amounts shown on return.

In certain cases, the taxpayer's payments in respect of a tax liability, made before the filing of the taxpayer's return, may exceed the amount of tax shown on the return. In any case in which the regional director (compliance) or the Chief, Tax Processing Center determines that the payments by the taxpayer (made within the period prescribed for payment and before the filing of the return) are in excess of the amount of tax shown on the return, the regional director (compliance) or the Chief, Tax Processing Center may make credit or refund of such overpayment without awaiting examination of the completed return and without awaiting filing of a claim for refund. However, the provisions of § 70.123 of this part are applicable to such overpayment, and taxpayers should submit claims for refund to protect themselves in the event the regional director (compliance) or the Chief, Tax Processing Center fails to make such determination and credit or refund.

(26 U.S.C. 6402)

(Approved by the Office of Management and Budget under control number 1512-0141)

Par. 49. Section 70.125 is revised to read as follows:

§ 70.125 Abatements.

(a) The regional director (compliance) or the Chief, Tax Processing Center may abate the unpaid portion of any assessment or liability, if the assessment is in excess of the correct tax liability, if the assessment is made subsequent to the expiration of the period of limitation applicable thereto, or if the assessment has been erroneously or illegally made.

(b) If more than the correct amount of tax, interest, additional amount, addition to the tax, or assessable penalty is assessed but not paid to ATF, the person against whom the assessment is made may file a claim for abatement of such overassessment. Each claim for abatement under this section shall be made on Form 2635 (5020.8), Claim—Alcohol, Tobacco and Firearms Taxes, in accordance with the instructions on the form. All such claims shall be filed with the ATF official who made demand for the amount assessed.

(c) The Director may issue uniform instructions to regional directors (compliance) and the Chief, Tax Processing Center authorizing them, to the extent permitted in such instructions, to abate amounts the collection of which is not warranted because of the administration and collection costs.

(26 U.S.C. 6404)

(Approved by the Office of Management and Budget under control number 1512-0141)

Par. 50. Section 70.126 is revised to read as follows:

§ 70.126 Date of allowance of refund or credit.

The date on which the regional director (compliance) or the Chief, Tax Processing Center, or an authorized certifying officer designated by the regional director (compliance) or the Chief, Tax Processing Center, first certifies the allowance of an overassessment in respect of any internal revenue tax imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau shall be considered as the date of allowance of refund or credit in respect of such tax.

(26 U.S.C. 6407)

Par. 51. Section 70.127 is added to read as follows:

§ 70.127 Overpayment of installment.

If any installment of tax is overpaid, the overpayment shall first be applied against any outstanding installments of such tax. If the overpayment exceeds the correct amount of tax due, the overpayment shall be credited or refunded as provided in §§ 70.122 to 70.124 of this part, inclusive.

(26 U.S.C. 6403)

Par. 52. Two undesignated centerheadings are added immediately preceding § 70.131 to read as follows:

Rule of Special Application

Par. 53. New §§ 70.141 through 70.151 and an undesignated centerheading preceding them are added to read as follows:

Lien for Taxes**§ 70.141 Lien for taxes.**

If any person liable to pay any tax under provisions of 26 U.S.C. enforced and administered by the Bureau neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, tangible or intangible, belonging to such person. The lien attaches to all property and rights to property belonging to such person at any time during the period of the lien, including any property or rights to property acquired by such person after the lien arises. Solely for purposes of this section and §§ 70.161 and 70.162 of

this part, any interest in restricted land held in trust by the United States for an individual noncompetent Indian (and not for a tribe) shall not be deemed to be property, or a right to property, belonging to such Indian.

(26 U.S.C. 6321)

§ 70.142 Scope of definitions.

Except as otherwise provided by § 70.143 of this part, the definitions provided by §§ 70.143 apply for purposes of § 70.142 through 70.149 and §§ 70.231 through 70.234 of this part.

§ 70.143 Definitions.

(a) *Security interest*—(1) *In general.* The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time:

(i) If, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien (as provided in paragraph (a)(2) of this section) arising out of an unsecured obligation; and

(ii) To the extent that, at such time, the holder has parted with money or money's worth (as defined in paragraph (a)(3) of this section). For purposes of paragraph (a)(1) of this section, a contract right (as defined in § 70.232(c)(2)(i) of this part) is in existence when the contract is made. An account receivable (as defined in § 70.232(c)(2)(ii) of this part) is in existence when, and to the extent, a right to payment is earned by performance. A security interest must be in existence, within the meaning of paragraph (a) of this section, at the time as of which its priority against a tax lien is determined. For example, to be afforded priority under the provisions of § 70.145(a) of this part, a security interest must be in existence within the meaning of paragraph (a) of this section before a notice of lien is filed.

(2) *Protection against a subsequent judgment lien.* For purposes of paragraph (a) of this section, a security interest is deemed to be protected against a subsequent judgment lien on:

(i) The date on which all actions required under local law to establish the priority of a security interest against a judgment lien have been taken, or

(ii) If later, the date on which all required actions are deemed effective, under local law, to establish the priority of the security interest against a judgment lien.

For purposes of paragraph (a)(2) of this section, the dates described in

paragraphs (a)(2) (i) and (ii) of this section shall be determined without regard to any rule or principle of local law which permits the relation back or the making of any requisite action retroactive to a date earlier than the date on which the action is actually performed. For purposes of paragraph (a) of this section, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of this section.

(3) *Money or money's worth.* For purposes of paragraph (a) of this section, the term "money or money's worth" includes money, a security (as defined in paragraph (d) of this section), tangible or intangible property, services, and other consideration reducible to a money value. Money or money's worth also includes any consideration which otherwise would constitute money or money's worth under the preceding sentence which was parted with before the security interest would otherwise exist if, under local law, past consideration is sufficient to support an agreement giving rise to a security interest. A relinquishing or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights is not a consideration in money or money's worth. Nor is love and affection, promise of marriage, or any other consideration not reducible to a money value a consideration in money or money's worth.

(4) *Holder of a security interest.* For purposes of paragraph (a) of this section, the holder of a security interest is the person in whose favor there is a security interest. For provisions relating to the treatment of a purchaser of commercial financing security as a holder of a security interest, see § 70.232(e) of this part.

(b) *Mechanic's lienor.* The term "mechanic's lienor" means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement (including demolition) of the property. A mechanic's lienor is treated as having a lien on the later of:

(1) The date on which the mechanic's lien first becomes valid under local law against subsequent purchasers of the real property without actual notice, or

(2) The date on which the mechanic's lienor begins to furnish the services, labor, or materials.

(c) *Motor vehicle.* (1) The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State, the District of Columbia, or a foreign country.

(2) A motor vehicle is "registered for highway use" at the time of a sale if immediately prior to the sale it is so registered under the laws of any State, the District of Columbia, or a foreign country. Where immediately prior to the sale of a motor vehicle by a dealer, the dealer is permitted under local law to operate it under a dealer's tag, license, or permit issued to the dealer, the motor vehicle is considered to be registered for highway use in the name of the dealer at the time of the sale.

(d) *Security.* The term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(e) *Tax lien filing.* The term "tax lien filing" means the filing of notice of the lien imposed by 26 U.S.C. 6321 in accordance with § 70.148 of this part.

(f) *Purchaser—(1) In general.* The term "purchaser" means a person who, for adequate and full consideration in money or money's worth (as defined in paragraph (f)(3) of this section), acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice.

(2) *Interest in property.* For purposes of paragraph (f) of this section, each of the following interests is treated as an interest in property, if it is not a lien or security interest:

- (i) A lease of property,
- (ii) A written executory contract to purchase or lease property,
- (iii) An option to purchase or lease property and any interest therein, or
- (iv) An option to renew or extend a lease of property.

(3) *Adequate and full consideration in money or money's worth.* For purposes of paragraph (f) of this section, the term "adequate and full consideration in money or money's worth" means a consideration in money or money's worth having a reasonable relationship to the true value of the interest in property acquired. See paragraph (a)(3) of this section for definition of the term "money or money's worth." Adequate and full consideration in money or money's worth may include the consideration in a bona fide bargain purchase. The term also includes the consideration in a transaction in which the purchaser has not completed

performance of an obligation, such as the consideration in an installment purchase contract where the purchaser has not completed the installment payments.

(g) *Judgment lien creditor.* The term "judgment lien creditor" means a person who has obtained a valid judgment, in a court of record and of competent jurisdiction, for the recovery of specifically designated property or for a certain sum of money. In the case of a judgment for the recovery of a certain sum of money, a judgment lien creditor is a person who has perfected a lien under the judgment on the property involved. A judgment lien is not perfected until the identity of the lienor, the property subject to the lien, and the amount of the lien are established. Accordingly, a judgment lien does not include an attachment or garnishment lien until the lien has ripened into judgment, even though under local law the lien of the judgment relates back to an earlier date. If recording or docketing is necessary under local law before a judgment becomes effective against third parties acquiring liens on real property, a judgment lien under such local law is not perfected with respect to real property until the time of such recording or docketing. If, under local law, levy or seizure is necessary before a judgment lien becomes effective against third parties acquiring liens on personal property, then a judgment lien under such local law is not perfected until levy or seizure of the personal property involved. The term "judgment" does not include the determination of a quasi-judicial body or of an individual acting in a quasi-judicial capacity such as the action of State taxing authorities. (26 U.S.C. 6323)

§ 70.144 Special rules.

(a) *Actual notice or knowledge.* For purposes of 26 U.S.C. 6321 through 6327, an organization is deemed, in any transaction, to have actual notice or knowledge of any fact from the time the fact is brought to the attention of the individual conducting the transaction, and in any event from the time the fact would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of the individual's regular duties

or unless the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(b) *Subrogation*: Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by 26 U.S.C. 6321 or 6324. Thus, if a tax lien imposed by 26 U.S.C. 6321 or 6324 is not valid with respect to a particular interest as against the holder of that interest, then the tax lien also is not valid with respect to that interest as against any person who, under local law, is a successor in interest to the holder of that interest.

(c) *Disclosure of amount of outstanding lien*. If a notice of lien has been filed (see § 70.148 of this part), the amount of the outstanding obligation secured by the lien is authorized to be disclosed as a matter of public record on ATF Form 5651.2 "Notice of Federal Tax Lien Under Internal Revenue Laws." The amount of the outstanding obligation secured by the lien remaining unpaid at the time of an inquiry is authorized to be disclosed to any person who has a proper interest in determining this amount. Any person who has a right in the property or intends to obtain a right in the property by purchase or otherwise will, upon presentation of satisfactory evidence, be considered to have a proper interest. Any person desiring this information may make a request to the office of the Bureau named on the notice of lien with respect to which the request is made. The request should clearly describe the property subject to the lien, identify the applicable lien, and give the reasons for requesting the information. (26 U.S.C. 6323)

§ 70.145 Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors.

(a) *Invalidity of lien without notice*. The lien imposed by 26 U.S.C. 6321 is not valid against any purchaser (as defined in § 70.143(f) of this part), holder of a security interest (as defined in § 70.143(a) of this part), mechanic's lienor (as defined in § 70.143(b) of this part), or judgment lien creditor (as defined in § 70.143(g) of this part) until a notice of lien is filed in accordance with § 70.148 of this part. Except as provided by 26 U.S.C. 6323, if a person becomes a purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor after a notice of lien is filed in accordance with § 70.148 of this part, the interest acquired by such person is subject to the lien imposed by 26 U.S.C. 6321.

(b) *Cross references*. For provisions relating to the protection afforded a security interest arising after tax lien filing, which interest is covered by a commercial transactions financing agreement, real property construction or improvement financing agreement, or an obligatory disbursement agreement, see §§ 70.232, 70.233, and 70.234 of this part, respectively. For provisions relating to the protection afforded to a security interest coming into existence by virtue of disbursements, made before the 46th day after the date of tax lien filing, see § 70.146 of this part. For provisions relating to priority afforded to interest and certain other expenses with respect to a lien or security interest having priority over the lien imposed by 26 U.S.C. 6321, see § 70.147 of this part. For provisions relating to certain other interests arising after tax lien filing, see § 70.231 of this part.

(26 U.S.C. 6323)

§ 70.146 45-day period for making disbursements.

Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.149 of this part, the lien is not valid with respect to a security interest which comes into existence, after tax lien filing, by reason of disbursements made before the 46th day after the date of tax lien filing, or if earlier, before the person making the disbursements has actual notice or knowledge of the tax lien filing, but only if the security interest is:

(a) In property which is subject, at the time of tax lien filing, to the lien imposed by 26 U.S.C. 6321 and which is covered by the terms of a written agreement entered into before tax lien filing, and

(b) Protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

For purposes of paragraph (a) of this section, a contract right (as defined in § 70.232(c)(2)(i) of this part) is subject, at the time of tax lien filing, to the lien imposed by 26 U.S.C. 6321 if the contract has been made by such time. An account receivable (as defined in § 70.232(c)(2)(ii) of this part) is subject, at the time of tax lien filing, to the lien imposed by 26 U.S.C. 6321 if, and to the extent, a right to payment has been earned by performance at such time. For purposes of paragraph (b) of this section, a judgment lien is a lien held by a judgment lien creditor as defined in § 70.143(g) of this part. For purposes of this section, it is immaterial that the written agreement provides that the disbursements are to be made at the

option of the person making the disbursements. See § 70.143 (a) and (e) of this part for definitions of the terms "security interest" and "tax lien filing," respectively. See § 70.144(a) of this part for certain circumstances under which a person is deemed to have actual notice or knowledge of a fact.

(26 U.S.C. 6323)

§ 70.147 Priority of interest and expenses.

(a) *In general*. If the lien imposed by 26 U.S.C. 6321 is not valid as against another lien or security interest, the priority of the other lien or security interest also extends to each of the following items to the extent that under local law the item has the same priority as the lien or security interest to which it relates:

(1) Any interest or carrying charges (including finance, service, and similar charges) upon the obligation secured,

(2) The reasonable charges and expenses of an indenture trustee (including, for example, the trustee under a deed of trust) or agent holding the security interest for the benefit of the holder of the security interest,

(3) The reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) The reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) The reasonable costs of insuring payment of the obligation secured (including amounts paid by the holder of the security interest for mortgage insurance, such as that issued by the Federal Housing Administration), and

(6) Amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by 26 U.S.C. 6321.

(b) *Collection expenses*. The reasonable expenses described in paragraph (a)(3) of this section include expenditures incurred by the protected holder of the lien or security interest to establish the priority of the holder's interest or to collect, by foreclosure or otherwise, the amount due the holder from the property subject to the protected holder's lien. Accordingly, the amount of the encumbrance which is protected is increased by the amounts so expended by the holder of the security interest.

(c) *Costs of insuring, preserving, etc.* The reasonable costs of insuring, preserving, or repairing described in paragraph (a)(4) of this section include expenditures by the holder of a security interest for fire and casualty insurance

on the property subject to the security interest and amounts paid by the holder of the lien or security interest to repair the property. Such reasonable costs also include the amounts paid by the holder of the lien or security interest in a leasehold to the lessor of the leasehold to preserve the leasehold subject to the lien or security interest. Accordingly, the amount of the lien or security interest which is protected is increased by the amounts so expended by the holder of the lien or security interest.

(d) *Satisfaction of liens.* The amounts described in paragraph (a)(6) of this section include expenditures incurred by the protected holder of a lien or security interest to discharge a statutory lien for State sales taxes on the property subject to the lien or security interest if both the lien or security interest and the sales tax lien have priority over a Federal tax lien. Accordingly, the amount of the lien or security interest is increased by the amounts so expended by the holder of the lien or security interest even though under local law the holder of the lien or security interest is not subrogated to the rights of the holder of the State sales tax lien. However, if the holder of the lien or security interest is subrogated, within the meaning of § 70.144(b) of this part, to the rights of the holder of the sales tax lien, the holder of the lien or security interest will also be entitled to any additional protection afforded by 26 U.S.C. 6323(i)(2).

(26 U.S.C. 6323).

§ 70.148 Place for filing notice; form.

(a) *Place for filing.* The notice of lien referred to in § 70.145 of this part shall be filed as follows:

(i) *Under State laws—(i) Real property.* In the case of real property, notice shall be filed in one office within the State (or the county or other governmental subdivision), as designated by the laws of the State, in which the property subject to the lien is deemed situated under the provisions of paragraph (b)(1) of this section.

(ii) *Personal property.* In the case of personal property, whether tangible or intangible, the notice shall be filed in one office within the State (or the county or other governmental subdivision), as designated by the laws of the State, in which the property subject to the lien is deemed situated under the provision of paragraph (b)(2) of this section, except that State law merely conforming to or reenacting Federal law establishing a national filing system does not constitute a second office for filing as designated by the laws of such State.

(2) *With the clerk of the United States district court.* Whenever a State has not by law designated one office which meets the requirements of paragraph (a)(1) (i) or (ii) of this section, the notice shall be filed in the office of the clerk of the U.S. district court for the judicial district in which the property subject to the lien is deemed situated under the provisions of paragraph (b) of this section. For example, a State has not by law designated one office meeting the requirements of paragraph (a)(1)(i) of this section, if more than one office is designated within the State, county, or other governmental subdivision for filing notices with respect to all property located in such State, county or other governmental subdivision. A State has not by law designated one office meeting the requirements of paragraph (a)(1)(ii) of this section, if more than one office is designated in the State, county, or other governmental subdivision for filing notices with respect to all of the personal property of a particular taxpayer.

(3) *With the Recorder of Deeds of the District of Columbia.* If the property subject to the lien imposed by 26 U.S.C. 6321 is deemed situated, under the provision of paragraph (b) of this section, in the District of Columbia, the notice shall be filed in the office of the Recorder of Deeds of the District of Columbia.

(b) *Situs of property subject to lien.* For purposes of paragraph (a) of this section, property is deemed situated as follows:

(1) *Real property.* Real property is deemed situated at its physical location.

(2) *Personal property.* Personal property, whether tangible or intangible, is deemed situated at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (b)(2) of this section, the residence of a corporation or partnership is deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is not within the United States is deemed to be in the District of Columbia.

(c) *Form—(1) In general.* The notice referred to in § 70.145 of this part shall be filed on ATF Form 5651.2, "Notice of Federal Tax Lien under Internal Revenue Laws". Such notice is valid notwithstanding any other provision of law regarding the form or content of a notice of lien. For example, omission from the notice of lien of a description of the property subject to the lien does not affect the validity thereof even though State law may require that the notices

contain a description of the property subject to the lien.

(2) *ATF Form 5651.2 defined.* The term "ATF Form 5651.2" generally means a paper form. However, if a State in which a notice referred to in § 70.145 of this part is filed permits a notice of Federal tax lien to be filed by the use of an electronic or magnetic medium the term "ATF Form 5651.2" includes an ATF Form 5651.2 filed by the use of any electronic or magnetic medium permitted by that State. An ATF Form 5651.2 must identify the taxpayer, the tax liability giving rise to the lien, and the date the assessment arose regardless of the method used to file the notice of Federal tax lien.

(26 U.S.C. 6323)

§ 70.149 Refiling of notice of tax lien.

(a) *In general—(1) Requirement to refile.* In order to continue the effect of a notice of lien, the notice must be refiled in the place described in paragraph (b) of this section during the required refiling period (described in paragraph (c) of this section). In the event that two or more notices of lien are filed with respect to a particular tax assessment, the failure to comply with the provision of paragraphs (b)(1) (i) and (c) of this section in respect of one of the notices of lien does not affect the effectiveness of the refiling of any other notice of lien. Except for the filing of a notice of lien required by paragraph (b)(1)(ii) of this section (relating to a change of residence), the validity of any refiling of a notice of lien is not affected by the refiling or nonrefiling of any other notice of lien.

(2) *Effect of refiling.* A timely refiled notice of lien is effective as of the date on which the notice of lien to which it relates was effective.

(3) *Effect of failure to refile.* Except as provided below, if the Chief, Tax Processing Center or the regional director (compliance) fails to refile a notice of lien in the manner described in paragraphs (b) and (c) of this section, the notice of lien is not effective, after the expiration of the required refiling period, as against any person without regard to when the interest of the person in the property subject to the lien was acquired. However, the failure of the Chief, Tax Processing Center or the regional director (compliance) to refile a notice of lien during the required refiling period will not, following the expiration of the refiling period, affect the effectiveness of the notice with respect to:

(i) Property which is the subject matter of a suit, to which the United States is a party, commenced prior to

the expiration of the required refiling period, or

(ii) Property which has been levied upon by the United States prior to the expiration of the refiling period. However, if a suit or levy referred to in the preceding sentence is dismissed or released, respectively, and property is subject to the lien at such time, a notice of lien with respect to the property is not effective after the suit or levy is dismissed or released unless refiled during the required refiling period. Failure to refile a notice of lien does not affect the existence of the lien.

(4) *Filing of new notice.* If a notice of lien is not refiled, and if the lien remains in existence, the Bureau may nevertheless file a new lien either on the prescribed form for the filing of a notice of lien or on the form prescribed for refiling a notice of lien. This new filing must meet the requirements of 26 U.S.C. 6323(f) and § 70.148 of this part and is effective from the date on which such filing is made.

(b) *Place for refiling notice of lien—*

1) *In general.* A notice of lien refiled during the required refiling period (described in paragraph (c) of this section) shall be effective only:

(i) If the notice of lien is refiled in the office in which the prior notice of lien (including a refiled notice) was filed under the provisions of 26 U.S.C. 6323; and

(ii) In any case in which 90 days or more prior to the date the refiling of the notice of lien under paragraph (a)(1)(i) of this section is completed, the Bureau receives written information (in the manner described in paragraph (b)(2) of this section) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with 26 U.S.C. 6323(f)(1)(A)(ii) in the State in which such new residence is located (or, if such new residence is located in the District of Columbia or outside the United States, in the District of Columbia).

A notice of lien is considered as refiled in the office in which the prior notice or refiled notice was filed under the provisions of 26 U.S.C. 6323 if it is refiled in the office which, pursuant to a change in the applicable local law, assumed the functions of the office in which the prior notice or refiled notice was filed. If on or before the 90th day referred to in paragraph (b)(1)(ii) of this section, more than one written notice is received concerning a change in the taxpayer's residence, a notice of lien is required by this subdivision to be filed only with respect to the residence shown on the written notice received on the most recent date. Paragraph (b)(1)(ii)

of this section is applicable regardless of whether the taxpayer resides at the new residence on the date the refiling of notice of lien under paragraph (b)(1)(i) of this section is completed.

(2) *Notice of change of taxpayer's residence—(i) In general.* For purposes of this section, a notice of change of a taxpayer's residence will be effective only if it:

(A) is received, in writing, from the taxpayer or the taxpayer's representative by the Chief, Tax Processing Center or the regional director (compliance) who filed the original notice of lien.

(B) relates to an unpaid tax liability of the taxpayer, and

(C) states the taxpayer's name and the address of the taxpayer's new residence.

Although it is not necessary that a written notice contain the taxpayer's identifying number authorized by section 6109, it is preferable that it include such number. A return or amended return filed by the taxpayer with the Bureau which on its face indicates that there is a change in the taxpayer's address and correctly states the taxpayer's name, the address of the taxpayer's new residence, and the taxpayer's identifying number required by 26 U.S.C. 6109 is sufficient notice under this paragraph.

(ii) *Other rules applicable.* Except as provided in paragraph (b)(2)(i) of this section, no communication (either written or oral) to the Bureau will be considered effective as notice of a change of a taxpayer's residence under this section, whether or not the Bureau has actual notice or knowledge of the taxpayer's new residence. For the purpose of determining the date on which a notice of change of a taxpayer's residence is received under this section, the notice shall be treated as received on the date it is actually received by the Bureau without reference to the provisions of 26 U.S.C. 7502.

(c) *Required refiling period.* For the purpose of this section, the term "required refiling period" means:

(1) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(2) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(26 U.S.C. 6323)

§ 70.150 Release of lien or discharge of property.

(a) *Release of lien.* Generally, the Chief, Tax Processing Center is the ATF official charged with releasing liens or discharging property from liens, but

whenever necessary to protect the interests of the government, a regional director (compliance) may also release a lien or discharge property from a lien, following the procedures set forth in this section. The Chief, Tax Processing Center shall issue a certificate of release of a lien imposed with respect to any tax imposed by a provision of 26 U.S.C. enforced and administered by the Bureau, not later than 30 days after the day on which either:

(1) The Chief, Tax Processing Center finds that the entire liability for the tax has been satisfied or has become unenforceable as a matter of law (and not merely uncollectible or unenforceable as a matter of fact). Tax liabilities frequently are unenforceable in fact for the time being, due to the temporary nonpossession by the taxpayer of discoverable property or property rights. In all cases the liability for the payment of the tax continues until satisfaction of the tax in full or until the expiration of the statutory period for collection, including such extension of the period for collection as may be agreed upon in writing by the taxpayer and the Chief, Tax Processing Center.

(2) The Chief, Tax Processing Center is furnished and accepts a bond that is conditioned upon the payment of the amount assessed (together with all interest in respect thereof and any expenses to which the Government has been put in the matter), within the time agreed upon in the bond, but not later than 6 months before the expiration of the statutory period for collection, including any period for collection agreed upon in writing by the Chief, Tax Processing Center and the taxpayer. For provisions relating to bonds, see 26 U.S.C. 7101 and 7102 and §§ 70.281 and 70.282 of this part.

(b) *Discharge of specific property from the lien—(1) Property double the amount of the liability.* The Chief, Tax Processing Center may, in that official's discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under 26 U.S.C. 64 if the Bureau determines that the fair market value of that part of the property remaining subject to the lien is at least double the sum of the amount of the unsatisfied liability secured by the lien and of the amount of all other liens upon the property which have priority over the lien. In general, fair market value is that amount which one ready and willing but not compelled to buy would pay to another ready and willing but not compelled to sell the property.

(2) *Part payment; interest of United States valueless—(i) Part payment.* The

Chief, Tax Processing Center may, in that official's discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under 26 U.S.C. 64 if there is paid over to the Bureau in partial satisfaction of the liability secured by the lien an amount determined by the Bureau to be not less than the value of the interest of the United States in the property to be so discharged. In determining the amount to be paid, the Chief, Tax Processing Center will take into consideration all the facts and circumstances of the case, including the expenses to which the Government has been put in the matter. In no case shall the amount to be paid be less than the value of the interest of the United States in the property with respect to which the certificate of discharge is to be issued.

(ii) *Interest of the United States valueless.* The Chief, Tax Processing Center may, in that official's discretion, issue a certificate of discharge of any part of the property subject to the lien if the Bureau determines that the interest of the United States in the property to be so discharged has no value.

(iii) *Valuation of interest of United States.* For purposes of this paragraph (b)(2), in determining the value of the interest of the United States in the property, or any part thereof, with respect to which the certificate of discharge is to be issued, the Chief, Tax Processing Center shall give consideration to the value of the property and the amount of all liens and encumbrances thereon having priority over the Federal tax lien. In determining the value of the property, the Chief, Tax Processing Center may, in that official's discretion, give consideration to the forced sale value of the property in appropriate cases.

(3) *Discharge of property by substitution of proceeds of sale.* The Chief, Tax Processing Center may, in that official's discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under 26 U.S.C. 64 if such part of the property is sold and, pursuant to a written agreement with the Chief, Tax Processing Center, the proceeds of the sale are held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as the lien or claim had with respect to the discharged property. This subparagraph does not apply unless the sale divests the taxpayer of all right, title, and interest in the property sought to be discharged. Any reasonable and necessary expenses incurred in connection with the sale of the property and the administration of the sale

proceeds shall be paid by the applicant or from the proceeds of the sale before satisfaction of any lien or claim of the United States.

(4) *Application for certificate of discharge.* Any person desiring a certificate of discharge under this paragraph shall submit an application in writing to the Chief, Tax Processing Center. The application shall contain such information as the Chief, Tax Processing Center may require.

(c) *Subordination of lien—(1) By payment of the amount subordinated.* The Chief, Tax Processing Center may, in that official's discretion, issue a certificate of subordination of a lien imposed under 26 U.S.C. 64 upon any part of the property subject to the lien if there is paid over to the Chief, Tax Processing Center an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States. For this purpose, the tax lien may be subordinated to another lien or interest on a dollar-for-dollar basis. For example, if a notice of a Federal tax lien is filed and a delinquent taxpayer secures a mortgage loan on a part of the property subject to the tax lien and pays over the proceeds of the loan to the Chief, Tax Processing Center after an application for a certificate of subordination is approved, the Chief, Tax Processing Center will issue a certificate of subordination. This certificate will have the effect of subordinating the tax lien to the mortgage.

(2) *To facilitate tax collection.* The Chief, Tax Processing Center may, in that official's discretion, issue a certificate of subordination of a lien imposed under 26 U.S.C. 64 upon any part of the property subject to the lien if the Chief, Tax Processing Center believes that the subordination of the lien will ultimately result in an increase in the amount realized by the United States from the property subject to lien and will facilitate the ultimate collection of the tax liability.

(3) *Application for certificate of subordination.* Any person desiring a certificate of subordination under this paragraph shall submit an application therefor in writing to the Chief, Tax Processing Center. The application shall contain such information as the Chief, Tax Processing Center may require.

(d) *Nonattachment of lien.* If the Chief, Tax Processing Center determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed in

accordance with § 70.148 of this part refers to such person, the Chief, Tax Processing Center may issue a certificate of nonattachment. Such certificate shall state that the lien, notice of which has been filed, does not attach to the property of such person. Any person desiring a certificate of nonattachment under this paragraph shall submit an application therefor in writing to the Chief, Tax Processing Center. The application shall contain such information as the Chief, Tax Processing Center may require.

(e) *Effect of certificate—(1) Conclusiveness.* Except as provided in paragraphs (e) (2) and (3) of this section, if a certificate is issued under 26 U.S.C. 6325 by the Chief, Tax Processing Center and the certificate is filed in the same office as the notice of lien to which it relates (if the notice of lien has been filed), the certificate shall have the following effect:

(i) In the case of a certificate of release issued under paragraph (a) of this section, the certificate shall be conclusive that the tax lien referred to in the certificate is extinguished;

(ii) In the case of a certificate of discharge issued under paragraph (b) of this section, the certificate shall be conclusive that the property covered by the certificate is discharged from the tax lien;

(iii) In the case of a certificate of subordination issued under paragraph (c) of this section, the certificate shall be conclusive that the lien or interest to which the Federal tax lien is subordinated is superior to the tax lien; and

(iv) In the case of a certificate of nonattachment issued under paragraph (d) of this section, the certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in the certificate.

(2) *Revocation of certificate of release or nonattachment—(i) In general.* If the Chief, Tax Processing Center determines that either:

(A) A certificate of release or a certificate of nonattachment of the general tax lien imposed by 26 U.S.C. 6321 was issued erroneously or inadvertently, or

(B) A certificate of release of such lien was issued in connection with a compromise agreement under 26 U.S.C. 7122 which has been breached, and if the period of limitation on collection after assessment of the tax liability has not expired, the Chief, Tax Processing Center may revoke the certificate and reinstate the tax lien.

(ii) *Method of revocation and reinstatement.* The revocation and

reinstatement described in paragraph (e)(2)(i) of this section is accomplished by:

(A) Mailing notice of the revocation to the taxpayer at the taxpayer's last known address, and

(B) Filing notice of the revocation of the certificate in the same office in which the notice of lien to which it relates was filed (if the notice of lien has been filed).

(iii) *Effect of reinstatement—(A) Effective date.* A tax lien reinstated in accordance with the provisions of this paragraph (e)(2) is effective on and after the date the notice of revocation is mailed to the taxpayer in accordance with the provisions of paragraph (e)(2)(ii)(A) of this section, but the reinstated lien is not effective before the filing of notice of revocation, in accordance with the provisions of paragraph (e)(2)(ii)(B) of this section, if the filing is required by reason of the fact that a notice of the lien had been filed.

(B) *Treatment of reinstated lien.* As of the effective date of reinstatement, a reinstated lien has the same force and effect as a general tax lien imposed by 26 U.S.C. 6321 which arises upon assessment of a tax liability. The reinstated lien continues in existence until the liability is satisfied or until the expiration of the period of limitation on collection after assessment of the tax liability to which it relates. The reinstatement of the lien does not retroactively reinstate a previously filed notice of lien. The reinstated lien is not valid against any holder of a lien or interest described in § 70.145 of this part until notice of the reinstated lien has been filed in accordance with the provisions of § 70.148 of this part subsequent to or concurrent with the time the reinstated lien became effective.

(3) *Certificates void under certain conditions.* Notwithstanding any other provisions of 26 U.S.C. subtitle F, any lien for Federal taxes attaches to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires the property after the certificate has been issued. Thus, if property subject to a Federal tax lien is discharged therefrom and is later reacquired by the delinquent taxpayer at a time when the lien is still in existence, the tax lien attaches to the reacquired property and is enforceable against it as in the case of after-acquired property generally.

(f) *Filing of certificates and notices.* If a certificate or notice described in this section may not be filed in the office designated by State law in which the notice of lien imposed by 26 U.S.C. 6321

(to which the certificate or notice relates) is filed, the certificate or notice is effective if filed in the office of the clerk of the United States district court for the judicial district in which the State office where the notice of lien is filed is situated.

(26 U.S.C. 6325)

§ 70.151 Administrative appeal of liens.

(a) *In general.* After the filing of a notice of a lien on the property or rights to property of a person, such person shall be allowed to appeal to the official who filed the lien for release of such lien alleging an error in the filing of the notice of such lien.

(b) *Certificate of release.* If the official who filed the lien determines that the filing of the notice of any lien was erroneous, that official shall expeditiously (and, to the extent practicable, within 14 days after such determination) issue a certificate of release of such lien and shall include in such certificate a statement that such filing was erroneous.

(c) *Exception.* Whenever necessary to protect the interests of the government, a regional director (compliance) or Chief, Tax Processing Center other than the official who filed the lien, may receive and act on an administrative appeal of a lien in accordance with this section.

(20 U.S.C. 6326)

Par. 54. Sections 70.161 through 70.170 and an undesignated centerheading preceding them are added to read as follows:

Seizure of Property for Collection of Taxes

§ 70.161 Levy and distraint.

(a) *Authority to levy—(1) In general.* If any person liable to pay any tax neglects or refuses to pay the tax within 10 days after notice and demand, the regional director (compliance) or Chief, Tax Processing Center who initiated the assessment (or, on that official's request, any other regional director (compliance) or the Chief, Tax Processing Center) may proceed to collect the tax by levy, provided the taxpayer has been furnished the notice described in § 70.162(a) of this part. The regional director (compliance) or the Chief, Tax Processing Center may levy upon any property, or rights to property, whether real or personal, tangible or intangible, belonging to the taxpayer. The regional director (compliance) or the Chief, Tax Processing Center may also levy upon property with respect to which there is a lien provided by 26 U.S.C. 6321 for the payment of the tax. For exemption of

certain property from levy, see 26 U.S.C. 6334 and §§ 70.241 through 70.245 of this part. As used in 26 U.S.C. 6331 and this section, the term "tax" includes any interest, additional amount, addition to tax, or assessable penalty, together with costs and expenses. Property subject to a Federal tax lien which has been sold or otherwise transferred by the taxpayer may be seized while in the hands of the transferee or any subsequent transferee. However, see 26 U.S.C. 6323(i)(2) and § 70.144 of this part concerning the subrogation rights of certain transferees. Levy may be made by serving a Notice of Levy on any person in possession of, or obligated with respect to, property or rights to property subject to levy, including receivables, bank accounts, evidences of debt, securities, and salaries, wages, commissions, or other compensation. Except as provided in § 70.162(c) of this part with regard to a levy on salary or wages, a levy extends only to property possessed and obligations which exist at the time of the levy. Obligations exist when the liability of the obligor is fixed and determinable although the right to receive payment thereof may be deferred until a later date. For example, if on the first day of the month a delinquent taxpayer sold personal property subject to an agreement that the buyer remit the purchase price on the last day of the month, a levy made on the buyer on the 10th day of the month would reach the amount due on the sale, although the buyer need not satisfy the levy by paying over the amount to the regional director (compliance) or the Chief, Tax Processing Center until the last day of the month. Similarly, a levy only reaches property in the possession of the person levied upon at the time the levy is made. For example, a levy made on a bank with respect to the account of a delinquent taxpayer is satisfied if the bank surrenders the amount of the taxpayer's balance at the time the levy is made, including interest thereon to the date of surrender. The levy has no effect upon any subsequent deposit made in the bank by the taxpayer. Subsequent deposits may be reached only by a subsequent levy on the bank.

(2) *Jeopardy cases.* If the regional director (compliance) or the Chief, Tax Processing Center finds that the collection of any tax is in jeopardy, that official may make notice and demand for immediate payment of such tax and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in 26 U.S.C. 6331(a) or the 30-day period provided in 26 U.S.C. 6331(d).

(3) Bankruptcy or receivership cases.

During a bankruptcy proceeding or a receivership proceeding in either a Federal or a State court, the assets of the taxpayer are in general under the control of the court in which such proceeding is pending. Taxes cannot be collected by levy upon assets in the custody of a court, whether or not such custody is incident to a bankruptcy or receivership proceeding, except where the proceeding has progressed to such a point that the levy would not interfere with the work of the court or where the court grants permission to levy. Any assets which under applicable provisions of law are not under the control of the court may be levied upon, for example, property exempt from court custody under State law or the bankrupt's earnings and property acquired after the date of bankruptcy. However, levy upon such property is not mandatory and the Government may rely upon payment of taxes in the proceeding.

(4) Certain types of compensation.—

(i) *Federal employees.* Levy may be made upon the salary or wages of any officer or employee (including members of the Armed Forces), or elected or appointed official, of the United States, the District of Columbia, or any agency or instrumentality of either, by serving a notice of levy on the employer of the delinquent taxpayer. As used in this paragraph, the term "employer" means:

(A) The officer or employee of the United States, the District of Columbia, or of the agency or instrumentality of the United States or the District of Columbia, who has control of the payment of the wages, or

(B) Any other officer or employee designated by the head of the branch, department, or agency, or instrumentality of the United States or of the District of Columbia as the party upon whom service of the notice of levy may be made.

If the head of such branch, department, agency or instrumentality designates an officer or employee other than one who has control of the payment of the wages, as the party upon whom service of the notice of levy may be made, such head shall promptly notify the Director of the name and address of each officer or employee so designated and the scope or extent of the authority of such designee.

(ii) State and municipal employees.

Salaries, wages, or other compensation of any officer, employee, or elected or appointed official of a State or Territory, or of any agency, instrumentality, or political subdivision thereof, are also

subject to levy to enforce collection of any Federal tax.

(iii) *Seamen.* Notwithstanding the provisions of section 12 of the Seamen's Act of 1915 (46 U.S.C. 601), wages of seamen, apprentice seamen, or fishermen employed on fishing vessels are subject to levy. See 26 U.S.C. 6334(c).

(5) *Noncompetent Indians.* Solely for purposes of 26 U.S.C. 6321 and 6331, any interest in restricted land held in trust by the United States for an individual noncompetent Indian (and not for a tribe) shall not be deemed to be property, or a right to property, belonging to such Indian.

(b) *Successive seizures.* Whenever any property or rights to property upon which a levy has been made are not sufficient to satisfy the claim of the United States for which the levy is made, the regional director (compliance) or the Chief, Tax Processing Center may thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property or rights to property subject to levy of the person against whom such claim exists or on which there is a lien imposed by 26 U.S.C. 6321 (or the corresponding provision of prior law) for the payment of such claim until the amount due from such person, together with all costs and expenses, is fully paid.

(c) *Service of notice of levy by mail.* A notice of levy may be served by mailing the notice to the person upon whom the service of a notice of levy is authorized under paragraph (a)(1) of this section. In such a case the date and time the notice is delivered to the person to be served is the date and time the levy is made. If the notice is sent by certified or registered mail, return receipt requested, the date of delivery on the receipt is treated as the date the levy is made. If, after receipt of a notice of levy, an officer or other person authorized to act on behalf of the person served signs and notes the date and time of receipt on the notice of levy, the date and time so noted will be presumed to be, in the absence of proof to the contrary, the date and time of delivery. Any person may upon written notice to the Chief, Tax Processing Center or to the regional director (compliance) having jurisdiction over such person, have all notices of levy by mail sent to one designated office. After such a notice is received by the Chief, Tax Processing Center or the regional director (compliance), notices of levy by mail will sent to the designated office until a written notice withdrawing the request or a written notice designating a difference office is received by the Chief, Tax Processing Center or the regional director (compliance).

(26 U.S.C. 6331 and 6332)

§ 70.162 Levy and distraint on salary and wages.

(a) *Notice of intent to levy.* Levy may be made for any unpaid tax only after the regional director (compliance) or the Chief, Tax Processing Center has notified the taxpayer in writing of the intent to levy. The notice must be given in person, left at the dwelling or usual place of business of the taxpayer, or be sent by certified or registered mail to the taxpayer's last known address, no less than 30 days before the day of levy. The notice of intent to levy is in addition to, and may be given at the same time as, the notice and demand described in § 70.161 of this part.

(b) *Jeopardy.* Paragraph (a) of this section does not apply to a levy if the regional director (compliance) or the Chief, Tax Processing Center has made a finding under § 70.161(a)(2) of this part that the collection of tax is in jeopardy.

(c) *Continuing effect of levy on salary or wages.* A levy on salary or wages is continuous from the time of the levy until the liability out of which the levy arose is released under 26 U.S.C. 6343 and § 70.167 of this part. For this purpose, the term "salary or wages" includes compensation for services paid in the form of fees, commissions, bonuses, and similar items. The levy attaches to both salary or wages earned but not yet paid at the time of the levy, and salary or wages earned and becoming payable (or paid in the form of an advance) subsequent to the date of the levy, until the levy is released pursuant to paragraph (d) of this section. In general, salaries or wages that are the subject of a continuing levy, if not exempt from levy under 26 U.S.C. 6334(a) (8) or (9), become payable to the official who made the levy as the payor would otherwise be obligated to pay over the money to the taxpayer. For example, if the wage earner is paid on the Wednesday following the close of each workweek, a levy made upon the taxpayer's employer on any Monday would reach both the wages due for the prior workweek and the wages for succeeding workweeks as such wages become payable. In such a case the levy would be satisfied if the employer, on the first Wednesday after the levy and on each Wednesday thereafter, pays over to the official who made the levy wages which would otherwise be paid to the employee on such Wednesday, until the employer receives a notice of release from levy described in paragraph (d) of this section. See, however, § 70.245(d) of this part for

rules which permit a delayed payment to the official who made the levy in certain cases where amounts payable to the taxpayer are exempt from levy under 26 U.S.C. 6334 (a)(9) and (d).

(d) *Release and notice of release from levy.* The official who made the levy will promptly release a continuing levy on salary or wages when the conditions of 26 U.S.C. 6343 are met. The official who made the levy will also promptly notify the person upon whom the levy was made that it has been released.

(26 U.S.C. 6331)

§ 70.163 Surrender of property subject to levy.

(a) *Requirement—(1) In general.* Except as otherwise provided in 26 U.S.C. 6332, relating to levy in the case of banks or life insurance and endowment contracts, any person in possession of (or obligated with respect to) property or rights to property subject to levy and upon which a levy has been made shall, upon demand of the official who made the levy, surrender the property or rights (or discharge the obligation) to the official who made the levy, except that part of the property or rights (or obligation) which, at the time of the demand, is actually or constructively under the jurisdiction of a court because of an attachment or execution under any judicial process.

(2) *Property held by banks.* (i) Any bank shall surrender any deposits (including interest thereon) in such bank only after 21 days after service of levy.

(ii) Notwithstanding paragraph (a)(1) of this section, if a levy has been made upon property or rights to property subject to levy which a bank engaged in the banking business in the United States or a possession of the United States is in possession of (or obligated with respect to), the Director shall not enforce the levy with respect to any deposits held in an office of the bank outside the United States or a possession of the United States, unless the notice of levy specifies that the regional director (compliance) or the Chief, Tax Processing Center intends to reach such deposits. The notice of levy shall not specify that the regional director (compliance) or the Chief, Tax Processing Center intends to reach such deposits unless that official believes:

(A) That the taxpayer is within the jurisdiction of a U.S. court at the time the levy is made and that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States; or

(B) That the taxpayer is not within the jurisdiction of a U.S. court at the time the levy is made, that the bank is in

possession of (or obligated with respect to) deposits of the taxpayer in an office outside the United States or a possession of the United States, and that such deposits consist, in whole or in part, of funds transferred from the United States or a possession of the United States in order to hinder or delay the collection of a tax imposed by provisions of 26 U.S.C. enforced and administered by the Bureau.

(b) *Enforcement of levy.—(1) Extent of personal liability.* Any person who, upon demand of the regional director (compliance) or the Chief, Tax Processing Center, fails or refuses to surrender any property or right to property subject to levy is liable in his/her own person and estate in a sum equal to the value of the property or rights not so surrendered, together with costs and interests. The liability, however, may not exceed the amount of the taxes for the collection of which the levy was made. Interest is to be computed at the annual rate referred to in regulations under 26 U.S.C. 6221 from the date of the levy, or, in the case of a continuing levy on salary or wages (see 26 U.S.C. 6331(e)), from the date the person would otherwise have been obligated to pay over the wages or salary to the taxpayer. Any amount recovered, other than cost, will be credited against the tax liability for the collection of which the levy was made.

(2) *Penalty for violation.* In addition to the personal liability described in paragraph (b)(1) of this section, any person who is required to surrender property or rights to property and who fails or refuses to surrender them without reasonable cause is liable for a penalty equal to 50 percent of the amount recoverable under 26 U.S.C. 6332(d)(2). No part of the penalty described in this subparagraph shall be credited against the tax liability for the collection of which the levy was made. The penalty described in this subparagraph is not applicable in cases where a bona fide dispute exists concerning the amount of the property to be surrendered pursuant to a levy or concerning the legal effectiveness of the levy. However, if a court in a later enforcement suit sustains the levy, then reasonable cause would usually not exist to refuse to honor a later levy made under similar circumstances.

(c) *Effect of honoring levy.* Any person in possession of, or obligated with respect to, property or rights to property subject to levy and upon which a levy has been made who, upon demand by the regional director (compliance) or the Chief, Tax Processing Center, surrenders the property or rights to property, or

discharges the obligation, to that official, or who pays a liability described in paragraph (b)(1) of this section, is discharged from any obligation or liability to the delinquent taxpayer with respect to the property or rights to property arising from the surrender or payment. If an insuring organization satisfies a levy with respect to a life insurance or endowment contract in accordance with § 70.164 of this part, the insuring organization is discharged from any obligation or liability to any beneficiaries of the contract arising from the surrender or payment. Also, it is discharged from any obligation or liability to the insured or other owner. Any person who mistakenly surrenders to the United States property or rights to property not properly subject to levy is not relieved from liability to a third party who owns the property. The owners of mistakenly surrendered property may, however, secure from the United States the administrative relief provided for in 26 U.S.C. 6343(b) or may bring suit to recover the property under 26 U.S.C. 7426.

(d) *Person defined.* In addition to the definition given in § 70.11 of this part, the term "person," as used in 26 U.S.C. 6332(a) and this section, includes an officer or employee of a corporation or a member or employee of a partnership, who is under a duty to surrender the property or rights to property or to discharge the obligation. In the case of a levy upon the salary or wages of an officer, employee, or elected or appointed official of the United States, the District of Columbia, or any agency or instrumentality of either, the term "person" includes the officer or employee of the United States, of the District of Columbia, or of such agency or instrumentality who is under a duty to discharge the obligation. As to the officer or employee who is under such duty, see § 70.161(a)(4)(i) of this part.

(26 U.S.C. 6332)

§ 70.164 Surrender of property subject to levy in the case of life insurance and endowment contracts.

(a) *In general.* This section provides special rules relating to the surrender of property subject to levy in the case of life insurance and endowment contracts. The provisions of § 70.163 of this part which relate generally to the surrender of property subject to levy apply, to the extent not inconsistent with the special rules set forth in this section, to a levy in the case of life insurance and endowment contracts.

(b) *Effect of service of notice of levy.—(1) In general.* A notice of levy served by a regional director

(compliance) or the chief, Tax Processing Center on an insuring organization with respect to a life insurance or endowment contract issued by the organization shall constitute:

(i) A demand by the official who made the levy for the payment of the cash loan value of the contract adjusted in accordance with paragraph (c) of this section, and

(ii) The exercise of the right of the person against whom the tax is assessed to the advance of such cash loan value.

It is unnecessary for the official who made the levy to surrender the contract document to the insuring organization upon which the levy is made. However, the notice of levy will include a certification by the official who made the levy that a copy of the notice of levy has been mailed to the person against whom the tax is assessed at that person's last known address. At the time of service of the notice of levy, the levy is effective with respect to the cash loan value of the insurance contract, subject to the condition that if the levy is not satisfied or released before the 90th day after the date of service, the levy can be satisfied only by payment of the amount described in paragraph (c) of this section. Other than satisfaction or release of the levy, no event during the 90-day period subsequent to the date of service of the notice of levy shall release the cash loan value from the effect of the levy. For example, the termination of the policy by the taxpayer or by the death of the insured during such 90-day period shall not release the levy. For the rules relating to the time when the insuring organization is to pay over the required amount, see paragraph (c) of this section.

(2) *Notification of amount subject to levy—(i) Full payment before the 90th day.* In the event that the unpaid liability to which the levy relates is satisfied at any time during the 90-day period subsequent to the date of service of the notice of levy, the official who filed the notice of levy will promptly give the insuring organization written notification that the levy is released.

(ii) *Notification after the 90th day.* In the event that notification is not given under paragraph (b)(2)(i) of this section, the official who filed the notice of levy will, promptly following the 90th day after service of the notice of levy, give the insuring organization written notification of the current status of all accounts listed on the notice of levy, and of the total payments received since service of the notice of levy. This notification will be given to the insuring organization whether or not there has

been any change in the status of the accounts.

(c) *Satisfaction of levy.* The levy described in paragraph (b) of this section with respect to a life insurance or endowment contract shall be deemed to be satisfied if the insuring organization pays over to the official who made the levy the amount which the person against whom the tax is assessed could have had advanced by the organization on the 90th day after service of the notice of levy on the organization. However, this amount is increased by the amount of any advance (including contractual interest thereon), generally called a policy loan, made to the person on or after the date the organization has actual notice or knowledge, within the meaning of 26 U.S.C. 6323(i)(1), of the existence of the tax lien with respect to which the levy is made. The insuring organization may, nevertheless, make an advance (including contractual interest thereon), generally called an automatic premium loan, made automatically to maintain the contract in force under an agreement entered into before the organization has such actual notice or knowledge. In any event, the amount paid to the Chief, Tax Processing Center by the insuring organization is not to exceed the amount of the unpaid liability shown on the notification described in paragraph (b)(2) of this section. The amount determined in accordance with the provisions of this section, subject to the levy, shall be paid to the Chief, Tax Processing Center by the insuring organization promptly after receipt of the notification described in paragraph (b)(2) of this section. The satisfaction of a levy with respect to a life insurance or endowment contract will not discharge the contract from the tax lien. However, see 26 U.S.C. 6323(b)(9)(C) and § 70.231(i) of this part concerning the liability of an insurance company after satisfaction of a levy with respect to a life insurance or endowment contract. If the person against whom the tax is assessed so directs, the insuring organization, on a date before the 90th day after service of the notice of levy, may satisfy the levy by paying over an amount computed in accordance with the provisions of this subparagraph substituting such date for the 90th day. In the event of termination of the policy by the taxpayer or by the death of the insured on a date before the 90th day after service of the notice of levy, the amount to be paid over to the Chief, Tax Processing Center by the insuring organization in satisfaction of the levy shall be an amount computed in accordance with the provisions of this subparagraph substituting the date of

termination of the policy or the date of death for the 90th day.

(d) *Other enforcement proceedings.* The satisfaction of the levy described in paragraph (b) of this section by an insuring organization shall be without prejudice to any civil action for the enforcement of any Federal tax lien with respect to a life insurance or endowment contract. Thus, this levy procedure is not the exclusive means of subjecting the life insurance and endowment contracts of the person against whom a tax is assessed to the collection of the person's unpaid assessment. The United States may choose to foreclose the tax lien in any case where it is appropriate, as, for example, to reach the cash surrender value (as distinguished from cash loan value) of a life insurance or endowment contract.

(e) *Cross references.* (1) For provisions relating to priority of certain advances with respect to a life insurance or endowment contract after satisfaction of a levy pursuant to 26 U.S.C. 6332(b), see 26 U.S.C. 6323(b)(9) and § 70.231(i) of this part.

(2) For provisions relating to the issuance of a certificate of discharge of a life insurance or endowment contract subject to a tax lien, see 26 U.S.C. 6325(b) and § 70.150(b) of this part. (26 U.S.C. 6332)

§ 70.165 Production of books.

If a levy has been made or is about to be made on any property or rights to property, any person, having custody or control of any books or records containing evidence or statements relating to the property or rights to property subject to levy, shall, upon demand of the ATF officer who has made or is about to make the levy, exhibit such books or records to such officer.

(26 U.S.C. 6333)

§ 70.166 Levy allowed on principal residence in case of jeopardy or certain approval.

Property described in 26 U.S.C. 6334(a)(13) shall not be exempt from levy if:

(a) The regional director (compliance) personally approves (in writing) the levy of such property, or

(b) The Director finds that the collection of tax is in jeopardy.

(26 U.S.C. 6334(e))

§ 70.167 Authority to release levy and return property.

(a) *Release of levy—(1) Authority.* A regional director (compliance) or the Chief, Tax Processing Center may release the levy upon all or part of the

property or rights to property levied upon as provided in paragraphs (a) (2), (3) and (4) of this section. Generally, the official who made the levy will receive and act on requests for release of a levy and return of property, but whenever necessary to protect the interests of the government, any regional director (compliance) or the Chief, Tax Processing Center may release a levy and return property seized by another ATF official. A levy may be released under paragraph (a)(3) of this section only if the delinquent taxpayer complies with such of the conditions thereunder as a regional director (compliance) or the Chief, Tax Processing Center may require and if the regional director (compliance) or the Chief, Tax Processing Center determines that such action will facilitate the collection of the liability. A release pursuant to paragraph (a)(4) of this section is considered to facilitate the collection of the liability. The release under this section shall not operate to prevent any subsequent levy.

(2) *Conditions for mandatory release.* (i) A regional director (compliance) or the Chief, Tax Processing Center shall release the levy as authorized under paragraph (a)(1) of this section, if any of the following conditions exist:

(A) The liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time,

(B) Release of such levy will facilitate the collection of such liability,

(C) The taxpayer has entered into an agreement under 26 U.S.C. 6159 to satisfy such liability by means of installment payments, unless such agreement provides otherwise (a regional director (compliance) or the Chief, Tax Processing Center is not required to release the levy in this case if release of such levy would jeopardize the secured creditor status of the United States).

(D) A regional director (compliance) or the Chief, Tax Processing Center has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer, or

(E) The fair market value of the property exceeds such liability and release of the levy on a part of such property could be made without hindering the collection of such liability.

(ii) In the case of any tangible personal property essential in carrying on the trade or business of the taxpayer, the regional director (compliance) or the Chief, Tax Processing Center shall provide for an expedited determination under paragraph (a)(2)(i) if levy on such tangible personal property would

prevent the taxpayer from carrying on such trade or business.

(3) *Conditions for discretionary release.* A regional director (compliance) or the Chief, Tax Processing Center may release the levy as authorized under paragraph (a)(1) of this section, if:

(i) *Escrow arrangement.* The delinquent taxpayer offers a satisfactory arrangement, which is accepted by a regional director (compliance) or the Chief, Tax Processing Center, for placing property in escrow to secure the payment of the liability (including the expenses of levy) which is the basis of the levy.

(ii) *Bond.* The delinquent taxpayer delivers an acceptable bond to a regional director (compliance) or the Chief, Tax Processing Center conditioned upon the payment of the liability (including the expenses of levy) which is the basis of the levy. Such bond shall be in the form provided in 26 U.S.C. 7101 and § 70.281 of this part.

(iii) *Payment of amount of U.S. interest in the property.* There is paid to a regional director (compliance) or the Chief, Tax Processing Center an amount determined by ATF to be equal to the interest of the United States in the seized property or the part of the seized property to be released.

(iv) *Assignment of salaries and wages.* The delinquent taxpayer executes an agreement directing the taxpayer's employer to pay to a regional director (compliance) or the Chief, Tax Processing Center amounts deducted from the employee's wages on a regular, continuing, or periodic basis, in such manner and in such amount as is agreed upon with a regional director (compliance) or the Chief, Tax Processing Center, until the full amount of the liability is satisfied, and such agreement is accepted by the employer.

(v) *Extension of statute of limitations.* The delinquent taxpayer executes an agreement to extend the statute of limitations in accordance with 26 U.S.C. 6502(a)(2) and § 70.224 of this part.

(4) *Release where value of interest of United States is insufficient to meet expenses of sale.* A regional director (compliance) may release the levy as authorized under paragraph (a)(1) of this section if that official determines that the value of the interest of the United States in the seized property, or in the part of the seized property to be released is insufficient to cover the expenses of the sale of such property.

(b) *Return of property—(1) General rule.* If a regional director (compliance) or the Chief, Tax Processing Center determines that property has been wrongfully levied upon, the regional

director (compliance) or the Chief, Tax Processing Center may return:

(i) The specific property levied upon,
(ii) An amount of money equal to the amount of money levied upon (together with interest thereon at the overpayment rate from the date ATF receives the money to a date not more than 30 days before the date of return), or

(iii) An amount of money equal to the amount of money received by the United States from a sale of the property (together with interest thereon at the overpayment rate from the date of the sale of the property to a date not more than 30 days before the date of return).

If the United States is in possession of specific property, the property may be returned at any time. An amount equal to the amount of money levied upon or received from a sale of the property may be returned at any time before the expiration of 9 months from the date of the levy. When a request described in paragraph (b)(2) of this section is filed for the return of property before the expiration of 9 months from the date of levy, an amount of money may be returned after a reasonable period of time subsequent to the expiration of the 9-month period if necessary for the investigation and processing of such request. In cases where money is specifically identifiable, as in the case of a coin collection which may be worth substantially more than its face value, the money will be treated as specific property and, whenever possible, this specific property will be returned. For purposes of paragraph (b)(1)(iii) of this section, if property is declared purchased by the United States at a sale pursuant to 26 U.S.C. 6335(e), the United States is treated as having received an amount of money equal to the minimum price determined by the regional director (compliance) before the sale or, if larger, the amount received by the United States from the resale of the property.

(2) *Request for return of property.* A written request for the return of property wrongfully levied upon shall be addressed to the official who authorized the levy. The written request shall contain the following information:

(i) The name and address of the person submitting the request,

(ii) A detailed description of the property levied upon,

(iii) A description of the claimant's basis for claiming an interest in the property levied upon, and

(iv) The name and address of the taxpayer, the originating ATF office, and the date of lien or levy as shown on the Notice of Tax Lien, Notice of Levy, or, in

lieu thereof, a statement of the reasons why such information cannot be furnished.

(3) *Inadequate request.* A request shall not be considered adequate unless it is a written request containing the information required by paragraph (b)(2) of this section. However, unless a notification is mailed by the official who received the request to the claimant within 30 days of receipt of the request to inform the claimant of the inadequacies, any written request shall be considered adequate. If the official who received the request timely notifies the claimant of the inadequacies of the request, the claimant shall have 30 days from the receipt of the notification of inadequacy to supply in writing any omitted information. Where the omitted information is so supplied within the 30-day period, the request shall be considered to be adequate from the time the original request was made for purposes of determining the applicable period of limitation upon suit under 26 U.S.C. 6532(c).

(26 U.S.C. 6343)

§ 70.168 Redemption of property.

(a) *Before sale.* Any person whose property has been levied upon shall have the right to pay the amount due, together with costs and expenses of the proceeding, if any, to the regional director (compliance) at any time prior to the sale of the property. Upon such payment the regional director (compliance) shall restore such property to the owner and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

(b) *Redemption of real estate after sale—(1) Period.* The owner of any real estate sold as provided in 26 U.S.C. 6335, the owner's heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property, at any time within 180 days after the sale thereof.

(2) *Price.* Such property or tract of property may be redeemed upon payment to the purchaser, or in case the purchaser cannot be found in the county in which the property to be redeemed is situated, then to the regional director (compliance) for the ATF region in which the property is situated, for the use of the purchaser, the purchaser's heirs, or assigns, the amount paid by such purchaser and interest thereon at the rate of 20 percent per annum. In case real and personal property (or several tracts of real property) are purchased in

the aggregate, the redemption price of the real property (or of each of the several tracts) shall be determined on the basis of the ratio, as of the time of sale, of the value of the real property (or tract) to the value of the total property purchased. For this purpose the minimum price or the highest bid price, whichever is higher, offered for the property separately or in groups shall be treated as the value.

(c) *Record.* When any real property is redeemed, the regional director (compliance) shall cause entry of the fact to be made upon the record of sale kept in accordance with 26 U.S.C. 6340 and § 70.187 of this part, and such entry shall be evidence of such redemption. The party who redeems the property shall notify the regional director (compliance) of the ATF region in which the property is situated of the date of such redemption and of the transfer of the certificate of sale, the amount of the redemption price, and the name of the party to whom such redemption price was paid.

(26 U.S.C. 6337)

§ 70.169 Expense of levy and sale.

The regional director (compliance) shall determine the expenses to be allowed in all cases of levy and sale. Such expenses shall include the expenses of protection and preservation of the property during the period subsequent to the levy, as well as the actual expenses incurred in connection with the sale thereof. In case real and personal property (or several tracts of real property) are sold in the aggregate, the regional director (compliance) shall properly apportion the expenses to the real property (or to each tract).

(26 U.S.C. 6341)

§ 70.170 Application of proceeds of levy.

(a) *Collection of liability.* Any money realized by proceedings under 26 U.S.C. 6331 through 6344, or by sale of property redeemed by the United States (if the interest of the United States in the property was a lien arising under the provisions of 26 U.S.C. enforced and administered by the Bureau), is applied in the manner specified in paragraphs (a)(1), (2), and (3) of this section. Money realized by proceedings under 26 U.S.C. 6331 through 6344, includes money realized by seizure, by sale of seized property, or by surrender under 26 U.S.C. 6332 except money realized by the imposition of a 50 percent penalty pursuant to 26 U.S.C. 6332(d)(2)).

(1) *Expense of levy and sale.* First, against the expenses of the proceedings or sale, including expenses allowable

under 26 U.S.C. 6341 and amounts paid by the United States to redeem property.

(2) *Specific tax liability on seized property.* If the property seized and sold is subject to a tax imposed by any provision of 26 U.S.C. which has not been paid, the amount remaining after applying paragraph (a)(1) of this section, shall then be applied against such tax liability (and, if such tax was not previously assessed, it shall then be assessed):

(3) *Liability of delinquent taxpayer.* The amount, if any, remaining after applying paragraphs (a)(1) and (2) of this section, shall then be applied against the liability in respect of which the levy was made or the sale of redeemed property was conducted.

(b) *Surplus proceeds.* Any surplus proceeds remaining after the application of paragraph (a) of this section shall, upon application and satisfactory proof in support thereof, be credited or refunded by the Chief, Tax Processing Center to the person or persons legally entitled thereto. The delinquent taxpayer is the person entitled to the surplus proceeds unless another person establishes a superior claim thereto.

(26 U.S.C. 6342)

Par. 55. Sections 70.181 through 70.188 and an undesignated center heading preceding them are added to read as follows:

Disposition of Property

§ 70.181 Disposition of seized property.

(a) *Notice of seizure.* As soon as practicable after seizure of property, the ATF officer seizing the property shall give notice in writing to the owner of the property (or, in the case of personal property, to the possessor thereof). The written notice shall be delivered to the owner (or to the possessor, in the case of personal property) or left at the owner's usual place of abode or business, if located within the ATF region where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such region, the notice may be mailed to the owner's last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, a list sufficient to identify the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) *Notice of sale.* (1) As soon as practicable after seizure of the property, the regional director (compliance) shall give notice of sale in writing to the owner. Such notice shall be delivered to the owner or left at the owner's usual

place of abode or business if located within the ATF region where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such region, the notice may be mailed to the owner's last known address. The notice shall specify the property to be sold, and the time, place, manner, and conditions of the sale thereof, and shall expressly state that only the right, title, and interest of the delinquent taxpayer in and to such property is to be offered for sale. The notice shall also be published in some newspaper published in the county wherein the seizure is made or in a newspaper generally circulated in that county. For example, if a newspaper of general circulation in a county but not published in that county will reach more potential bidders for the property to be sold than a newspaper published within the county, or if there is a newspaper of general circulation within the county but no newspaper published within the county, the regional director (compliance) may cause public notice of the sale to be given in the newspaper of general circulation within the county. If there is no newspaper published or generally circulated in the county, the notice shall be posted at the post office nearest the place where the seizure is made, and in not less than two other public places.

(2) The regional director (compliance) may use other methods of giving notice of sale and of advertising seized property in addition to those referred to in paragraph (b)(1) of this section, when the regional director (compliance) believes that the nature of the property to be sold is such that a wider or more specialized advertising coverage will enhance the possibility of obtaining a higher price for the property.

(3) Whenever levy is made without regard to the 10-day period provided in 26 U.S.C. 6331(a) (relating to cases in which collection is in jeopardy), a public notice of sale of the property seized shall not be made within such 10-day period unless 26 U.S.C. 6336 (relating to perishable goods) is applicable.

(c) *Time, place, manner, and conditions of sale.* The time, place, manner, and conditions of sale of property seized by levy shall be as follows:

(1) *Time and place of sale.*—(i) *In general.* The time of sale shall not be less than 10 days nor more than 40 days from the time of giving public notice under 26 U.S.C. 6335(b) (see paragraph (b) of this section). The place of sale shall be within the county in which the property is seized, except that if it appears to the regional director (compliance) under whose supervision

the seizure was made that substantially higher bids may be obtained for the property if the sale is held at a place outside such county, the regional director (compliance) may order that the sale be held in such other place. The sale shall be held at the time and place stated in the notice of sale.

(ii) *Right to request sale of seized property within 60 days.* The owner of any property seized by levy may request that the regional director (compliance) sell such property within 60 days after such request (or within such longer period as may be specified by the owner). The regional director (compliance) shall comply with such request unless it is determined (and the owner is notified within such period) that such compliance would not be in the best interests of the United States.

(2) *Adjournment of sale.* When it appears to the regional director (compliance) that an adjournment of the sale will best serve the interest of the United States or that of the taxpayer, the regional director (compliance) may adjourn, or cause the ATF officer conducting the sale to adjourn, the sale from time to time, but the date of the sale shall not be later than one month after the date fixed in the original notice of sale.

(3) *Minimum price.* (i) Before the sale of property seized by levy, the regional director (compliance) shall determine:

(A) A minimum price, taking into account the expenses of levy and sale, for which the property shall be sold, and

(B) Whether the purchase of such property by the United States at such minimum price would be in the best interest of the United States.

If, at the sale, one or more persons offer to purchase such property for not less than the amount of the minimum price, the property shall be declared to be sold to the highest bidder. If no person offers for such property at the sale the amount of the minimum price and the regional director (compliance) has determined that the purchase of such property by the United States would be in the best interest of the United States, the property shall be declared to be sold to the United States at such minimum price. If, at the sale, the property is not declared sold to the highest bidder or the United States, the property shall be released to the owner thereof and the expense of the levy and sale shall be added to the amount of tax for the collection of which the levy was made. Any property released to the owner under these circumstances shall remain subject to any lien imposed by 26 U.S.C. chapter 64, subchapter C.

(ii) The ATF officer conducting the sale shall either announce the minimum price before the sale begins or defer announcement of the minimum price until after the receipt of the highest bid, and, if the highest bid is greater than the minimum price, no announcement of the minimum price shall be made.

(4) *Offering of property.*—(i) *Sale of indivisible property.* If any property levied upon is not divisible, so as to enable the regional director (compliance) by sale of a part thereof to raise the whole amount of the tax and expenses of levy and sale, the whole of such property shall be sold. For application of surplus proceeds of sale, see 26 U.S.C. 6342(b).

(ii) *Separately, in groups, or in the aggregate.* The seized property may be offered for sale:

(A) As separate items, or

(B) As groups of items, or

(C) In the aggregate, or

(D) Both as separate items (or in groups) and in the aggregate. In such cases, the property shall be sold under the method which produces the highest aggregate amount.

The regional director (compliance) shall select whichever of the foregoing methods of offering the property for sale as is most feasible under all the facts and circumstances of the case, except that if the property to be sold includes both real and personal property, only the personal property may be grouped for the purpose of offering such property for sale. However, real and personal property may be offered for sale in the aggregate, provided the real property, as separate items, and the personal as a group, or as groups, or as separate items, are first offered separately.

(iii) *Condition of title and of property.* Only the right, title, and interest of the delinquent taxpayer in and to the property seized shall be offered for sale, and such interest shall be offered subject to any prior outstanding mortgages, encumbrances, or other liens in favor of third parties which are valid as against the delinquent taxpayer and are superior to the lien of the United States. All seized property shall be offered for sale "as is" and "where is" and without recourse against the United States. No guaranty or warranty, express or implied, shall be made by the ATF officer offering the property for sale, as to the validity of the title, quality, quantity, weight, size, or condition of any of the property, or its fitness for any use or purpose. No claim shall be considered for allowance or adjustment or for rescission of the sale based upon failure of the property to

conform with any representation, express or implied.

(iv) *Terms of payment.* The property shall be offered for sale upon whichever of the following terms is fixed by the regional director (compliance) in the public notice of sale:

(A) Payment in full upon acceptance of the highest bid, without regard to the amount of such bid, or

(B) If the aggregate price of all property purchased by a successful bidder at the sale is more than \$200, an initial payment of \$200 or 20 percent of the purchase price, whichever is the greater, and payment of the balance (including all costs incurred for the protection or preservation of the property subsequent to the sale and prior to final payment) within a specified period, not to exceed 1 month from the date of the sale.

(5) *Method of sale.* The regional director (compliance) shall sell the property either:

(i) At public auction, at which open competitive bids shall be received, or

(ii) At public sale under sealed bids. The following rules, in addition to the other rules provided in this paragraph, shall be applicable to public sale under sealed bids:

(A) *Invitation to bidders.* Bids shall be solicited through a public notice of sale.

(B) *Form for use by bidders.* A bid shall be submitted on a form which will be furnished by the regional director (compliance) upon request. The form shall be completed in accordance with the instructions thereon.

(C) *Remittance with bid.* If the total bid is \$200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than \$200, 20 percent of such bid or \$200, whichever is greater, shall be submitted therewith. (In the case of alternative bids submitted by the same bidder for items of property offered separately, or groups, or in the aggregate, the bidder shall remit the full amount of the highest alternative bid submitted, if the bid is \$200 or less. If the highest alternative bid submitted is more than \$200, the bidder shall remit 20 percent of the highest alternative bid or \$200, whichever is greater.) Such remittance shall be by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(D) *Time for receiving and opening bids.* Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope the bidder's

name and address and the time and place of sale as announced in the public notice of sale. A bid will not be considered unless it is received by the ATF officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice or sale, or at the time fixed in the announcement of the adjournment of the sale.

(E) *Consideration of bids.* The public notice of sale shall specify whether the property is to be sold separately, by groups, or in the aggregate or by a combination of these methods, as provided in paragraph (c)(4)(ii) of this section. If the notice specifies an alternative method, bidders may submit bids under one or more of the alternatives. In case of error in the extension of prices in any bid, the unit price will govern. The ATF officer conducting the sale shall have the right to waive any technical defects in a bid. In the event two or more highest bids are equal in amount, the ATF officer conducting the sale shall determine the successful bidder by drawing lots. After the opening, examination, and consideration of all bids, the ATF officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders. Any remittance submitted in connection with an unsuccessful bid shall be returned at the conclusion of the sale.

(F) *Withdrawal of bids.* A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of his bid after it has been opened.

(6) *Payment of bid price.* All payments for property sold under this section shall be made by cash or by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(7) *Delivery and removal of personal property.* Responsibility of the United States for the protection or preservation of seized personal property shall cease immediately upon acceptance of the

highest bid. The risk of loss is on the purchaser of personal property upon acceptance of his bid. Possession of any personal property shall not be delivered to the purchaser until the purchase price has been paid in full. If payment of part of the purchase price for personal property is deferred, the United States will retain possession of such property as security for the payment of the balance of the purchase price and, as agent for the purchaser, will cause the property to be cared for until the purchase price has been paid in full or the sale is declared null and void for failure to make full payment of the purchase price. In such case, all charges and expenses incurred in caring for the property after the acceptance of the bid shall be borne by the purchaser.

(8) *Default in payment.* If payment in full is required upon acceptance of the bid and is not then and there paid, the ATF officer conducting the sale shall forthwith proceed again to sell the property in the manner provided in 26 U.S.C. 6335(e) and this section. If the conditions of the sale permit part of the payment to be deferred, and if such part is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or such part thereof as has not been paid, together with interest at the rate of 6 percent per annum from the date of the sale; or, in the discretion of the regional director (compliance), the sale may be declared by the regional director (compliance) to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in 26 U.S.C. 6335(b), (c), and (e) and this section. In the event of such readvertisement and sale, any new purchaser shall receive such property or rights to property free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by such defaulting purchaser shall be forfeited to the United States.

(26 U.S.C. 6335)

§ 70.182 Disposition 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 regional director (compliance) who acquired such property for the United States. United States saving bonds shall not be sold by the regional director (compliance), 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 Director.

(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 regional director (compliance) may use such other methods of advertising as the regional director (compliance) believes will result in obtaining the highest price for the property. The place of sale shall be within the region where the property was originally acquired by the United States. However, if the regional director (compliance) believes that a substantially higher price may be obtained, the sale may be held outside the region.

(ii) *Rejection of bids and adjournment of sale.* The ATF officer conducting the sale reserves the right to reject any and all bids and withdraw the property from the sale. When it appears to the ATF officer conducting the sale that an adjournment of the sale will best serve the interest of the United States, that officer may order the sale adjourned from time to time. If the sale is adjourned for more than 30 days in the aggregate, public notice of the sale must again be given in accordance with paragraph (a)(2)(i) of this section.

(iii) *Liquidated damages.* The notice shall state whether, in the case of default in payment of the bid price, any amount deposited with the United States will be retained as liquidated damages. In case liquidated damages are provided, the amount thereof shall not exceed \$200.

(3) *Agreement to bid.* The regional director (compliance) may, before giving notice of sale, solicit offers from prospective bidders and enter into agreements with such persons that they will bid at least a specified amount in case the property is offered for sale. In such cases, the regional director (compliance) may also require such persons to make deposits to secure the performance of their agreements. Any such deposit, but not more than \$200, shall be retained as liquidated damages in case such person fails to bid the specified amount and the property is not sold for as much as the amount specified in such agreement.

(4) *Terms of payment.* The property shall be offered for sale upon whichever of the following terms is fixed by the regional director (compliance) in the public notice of sale:

(i) Payment in full upon acceptance of the highest bid, without regard to the amount of such bid, or

(ii) If the aggregate price of all property purchased by a successful bidder at the sale is more than \$200, an initial payment of \$200 or 20 percent of the purchase price, whichever is the greater, and payment of the balance (including all costs incurred for the protection or preservation of the property subsequent to the sale and prior to final payment) within a specified period, not to exceed one month from the date of the sale.

(5) *Method of sale.* The property may be sold either:

(i) At public auction, at which open competitive bids shall be received, or

(ii) At public sale under sealed bids.

(6) *Sales under sealed bids.* The following rules, in addition to the other rules provided in this paragraph, shall be applicable to public sales under sealed bids.

(i) *Invitation to bidders.* Bids shall be solicited through a public notice of sale.

(ii) *Form for use by bidders.* A bid shall be submitted on a form which will be furnished by the regional director (compliance) upon request. The form shall be completed in accordance with the instructions thereon.

(iii) *Remittance with bid.* If the total bid is \$200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than \$200, 20 percent of such bid or \$200, whichever is greater, shall be submitted therewith. Such remittance shall be by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(iv) *Time for receiving and opening bids.* Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope the bidder's name and address and the time and place of sale as announced in the public notice of sale. A bid will not be considered unless it is received by the ATF officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice of sale, or at the time fixed in the announcement of the adjournment of the sale.

(v) *Consideration of bids.* The ATF officer conducting the sale shall have

the right to waive any technical defects in a bid. After the opening, examination, and consideration of all bids, the ATF officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders, unless in the opinion of the officer a higher price can be obtained for the property than has been bid. In the event the highest bids are equal in amount (and unless in the opinion of the ATF officer conducting the sale a higher price can be obtained for the property than has been bid), the officer shall determine the successful bidder by drawing lots. Any remittance submitted in connection with an unsuccessful bid shall be returned to the bidder at the conclusion of the sale.

(vi) *Withdrawal of bids.* A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of the bid after it has been opened.

(7) *Payment of bid price.* All payments for property sold pursuant to this section shall be made by cash or by a certified, cashier's or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If payment in full is not made at such time, the ATF officer conducting the sale may forthwith proceed again to sell the property in the manner provided in paragraph (a)(5) of this section. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(8) *Delivery and removal of personal property.* The risk of loss is on the purchaser of the property upon acceptance of the purchaser's bid. Possession of any property shall not be delivered to the purchaser until the purchase price has been paid in full. If payment of part of the purchase price for the property is deferred, the United States will retain possession of such property as security for the payment of the balance of the purchase price and, as agent for the purchaser, will cause the property to be cared for until the purchase price has been paid in full or the sale is declared null and void for failure to make full payment of the

purchase price. In such case, all charges and expenses incurred in caring for the property after acceptance of the bid shall be borne by the purchaser.

(9) *Certificate of sale.* The ATF officer conducting the sale shall issue a certificate of sale to the purchaser upon payment in full of the purchase price.

(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 by the regional director (compliance) a distinct account of all charges incurred in such sale. For additional accounting rules, see 26 U.S.C. 7809.

(26 U.S.C. 7505)

§ 70.183 Administration and disposition of real estate acquired by the United States.

(a) *Persons charged with.* The regional director (compliance) for the region in which the property is situated shall have charge of all real estate which has been or shall be assigned, set off, or otherwise conveyed by purchase or otherwise to the United States in payment of debts or penalties arising under provisions of 26 U.S.C. enforced and administered by the Bureau 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 for payment of or as security for debts arising under provisions of 26 U.S.C. enforced and administered by the Bureau, and of all trusts created for the use of the United States in payment of such debts due the United States.

(b) *Sale.* The regional director (compliance) for the region in which the property is situated may sell any real estate owned or held by the United States as aforesaid, subject to the following rules:

(1) *Property purchased at sale under levy.* If the property was acquired as a result of being declared purchased for the United States at a sale under 26 U.S.C. 6335, relating to sale of seized property, the property shall not be sold until after the expiration of 180 days after such sale under levy.

(2) *Notice of sale.* A notice of sale shall be published in some newspaper published or generally circulated within the county where the property is situated, or a notice shall be posted at the post office nearest the place where the property is situated 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 regional director (compliance) may use other methods of

advertising and of giving notice of the sale if the regional director (compliance) believes such methods will enhance the possibility of obtaining a higher price for the property.

(3) *Time and place of sale.* The time of the sale shall be not less than 20 days from the date of giving public notice of sale under paragraph (b)(2) of this section. The place of sale shall be within the county where the property is situated. However, if the regional director (compliance) believes a substantially better price may be obtained, the sale may be held outside such county.

(4) *Rejection of bids and adjournment of sale.* The ATF officer conducting the sale reserves the right to reject any and all bids and withdraw the property from the sale. When it appears to the ATF officer conducting the sale that an adjournment of the sale will best serve the interest of the United States, that officer may order the sale adjourned from time to time. If the sale is adjourned for more than 30 days in the aggregate, public notice of the sale must be given again in accordance with paragraph (b)(2) of this section.

(5) *Liquidated damages.* The notice shall state whether, in the case of default in payment of the bid price, any amount deposited with the United States will be retained as liquidated damages. In case liquidated damages are provided, the amount thereof shall not exceed \$200.

(6) *Agreement to bid.* The regional director (compliance) may, before giving notice of sale, solicit offers from prospective bidders and enter into agreements with such persons that they will bid at least a specified amount in case the property is offered for sale. In such cases, the regional director (compliance) may also require such persons to make deposits to secure the performance of their agreements. Any such deposit, but not more than \$200, shall be retained as liquidated damages in case such person fails to bid the specified amount and the property is not sold for as much as the amount specified in such agreement.

(7) *Terms.* The property shall be offered for sale upon whichever of the following terms is fixed by the regional director (compliance) in the public notice of sale:

(i) Payments in full upon acceptance of the highest bid, or

(ii) If the price of the property purchased by a successful bidder at the sale is more than \$200, an initial payment of \$200 or 20 percent of the purchase price, whichever is the greater, and payment of the balance within a specified period, not to exceed one month from the date of the sale.

(8) *Method of sale.* The property may be sold either:

(i) At public auction, at which open competitive bids shall be received, or

(ii) At public sale under sealed bids.

(9) *Sales under sealed bids.* The following rules, in addition to the other rules provided in this paragraph (b), shall be applicable to public sales under sealed bids.

(i) *Invitation to bidders.* Bids shall be solicited through a public notice of sale.

(ii) *Form for use by bidders.* A bid shall be submitted on a form which will be furnished by the regional director (compliance) upon request. The form shall be completed in accordance with the instructions thereon.

(iii) *Remittance with bid.* If the total bid is \$200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than \$200, 20 percent of such bid or \$200, whichever is greater, shall be submitted therewith. Such remittance shall be by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(iv) *Time for receiving and opening bids.* Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope the bidder's name and address and the time and place of sale as announced in the public notice of sale. A bid shall not be considered unless it is received by the ATF officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice of sale, or at the time fixed in the announcement of the adjournment of the sale.

(v) *Consideration of bids.* The ATF officer conducting the sale shall have the right to waive any technical defects in a bid. After the opening, examination, and consideration of all bids, the ATF officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders, unless in the opinion of the officer a higher price can be obtained for the property than has been bid. In the event the highest bids are equal in amount (and unless in the opinion of the ATF officer conducting the sale a higher price can be obtained for the property than has been bid), the officer shall determine the successful bidder by drawing lots. Any remittance submitted in connection with an unsuccessful bid shall be returned to the bidder at the conclusion of the sale.

(vi) *Withdrawal of bid.* A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of the bid after it has been opened.

(10) *Payment of bid price.* All payments for property sold pursuant to this section shall be made by cash or by a certified cashier's or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If payment in full is not made at such time, the ATF officer conducting the sale may forthwith proceed again to sell the property in the manner provided in paragraph (b)(8) of this section. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(11) *Deed.* Upon payment in full of the purchase price, the regional director (compliance) shall execute a quitclaim deed to the purchaser.

(c) *Lease.* Until real estate is sold, the regional director (compliance) for the region in which the property is situated may lease such property.

(d) *Release to debtor.* In cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon (at the rate of 1 percent per month), to the United States within 2 years from the date of the acquisition of such real estate, the regional director (compliance) for the region in which the property is located may release by deed or otherwise convey such real estate to the debtor from whom it was taken, or to the debtor's heirs or other legal representatives. If property is declared purchased by the United States under 26 U.S.C. 6335, then, for the purpose of this paragraph, the date of such declaration shall be deemed to be the date of acquisition of such real estate.

(e) *Accounting.* The regional director (compliance) for the region in which the property is situated shall, in accordance with 26 U.S.C. 7809, account for the proceeds of all sales or leases of the

property and all expenses connected with the maintenance, sale, or lease of the property.

(f) *Authority of Director.* Notwithstanding the other paragraphs of this section, the Director may, when the Director deems it advisable, take charge of and assume responsibility for any real estate to which this section is applicable. In such case, the Director will notify in writing the regional director (compliance) for the region in which the property is situated. In any case where a single parcel of real estate is situated in more than one region, the Director may designate in writing a regional director (compliance) who shall have charge of and be responsible for the entire property.

(26 U.S.C. 7506)

§ 70.184 Disposition of perishable goods.

(a) *Appraisal of certain seized property.* If the regional director (compliance) determines that any property seized by levy is liable to perish or become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense, the regional director (compliance) shall appraise the value of such property and return it to the owner if the owner complies with the conditions prescribed in paragraph (b) of this section or, if the owner does not comply with such conditions, dispose of the property in accordance with paragraph (c) of this section.

(b) *Return to owner.* If the owner of the property can be readily found, the regional director (compliance) shall give the owner written notice of the regional director (compliance)'s determination of the appraised value of the property. However, if the regional director (compliance) determines that the circumstances require immediate action, the regional director (compliance) may give the owner an oral notice of the determination of the appraised value of the property, which notice shall be confirmed in writing prior to sale. The property shall be returned to the owner if, within the time specified in the notice, the owner:

(1) Pays to the regional director (compliance) an amount equal to the appraised value, or

(2) Gives an acceptable bond as prescribed by 26 U.S.C. 7101 and § 70.281 of this part. Such bond shall be in an amount not less than the appraised value of the property and shall be conditioned upon the payment of such amount at such time as the regional director (compliance) determines to be appropriate in the circumstances.

(c) *Immediate sale.* If the owner does not pay the amount of the appraised value of the seized property within the time specified in the notice, or furnish bond as provided in paragraph (b) of this section within such time, the regional director (compliance) shall as soon as practicable make public sale of the property in accordance with the following terms and conditions:

(1) *Notice of sale.* If the owner can readily be found, a notice shall be given to the owner. A notice of sale also shall be posted in two public places in the county which the property is to be sold. The notice shall specify the time and place of sale, the property to be sold, and the manner and conditions of sale. The regional director (compliance) may give such other notice and in such other manner as the regional director (compliance) deems advisable under the circumstances.

(2) *Sale.* The property shall be sold at public auction to the higher bidder.

(3) *Terms.* The purchase price shall be paid in full upon acceptance of the highest bid. The payment shall be made by cash, or by a certified, cashier's or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(26 U.S.C. 6336)

§ 70.185 Certificate of sale; deed of real property.

(a) *Certificate of sale.* In the case of property sold as provided in 26 U.S.C. 6335 (relating to sale of seized property), the regional director (compliance) shall give to the purchaser a certificate of sale upon payment in full of the purchase price. A certificate of sale of real property shall set forth the real property purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor.

(b) *Deed to real property.* In case of any real property sold as provided in 26 U.S.C. 6335 and not redeemed in the manner and within the time prescribed in 26 U.S.C. 6337, the regional director (compliance) shall execute (in accordance with the laws of the State in which the real property is situated pertaining to sales of real property under execution) to the purchaser of such real property at the sale or his assigns, upon surrender of the certificate of sale, a deed of the real property so purchased, reciting the facts set forth in the certificate.

(c) *Deed to real property purchased by the United States.* If real property is

declared purchased by the United States at a sale pursuant to 26 U.S.C. 6335, the regional director (compliance) shall at the proper time execute a deed therefor and shall, without delay, cause the deed to be duly recorded in the proper registry of deeds.

(26 U.S.C. 6338)

§ 70.186 Legal effect of certificate of sale of personal property and deed of real property.

(a) *Certificate of sale of property other than real property.* In all cases of sale pursuant to 26 U.S.C. 6335 of property (other than real property), the certificate of such sale.

(1) *As evidence.* Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of the officer's proceedings in making the sale; and

(2) *As conveyance.* Shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold; and

(3) *As authority for transfer of corporate stock.* If such property consists of corporate stocks, shall be notice, when received, to any corporation, company, or association of such transfer, and shall be authority to such corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the stock certificate, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

(4) *As receipts.* If the subject of sale is securities or other evidence of debt, shall be a good and valid receipt to the person holding the certificate of sale as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

(5) *As authority for transfer of title to motor vehicle.* If such property consists of a motor vehicle, shall be notice, when received, to any public official charged with the registration of title to motor vehicles, of such transfer and shall be authority to such official to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle were transferred or assigned by the party holding the certificate of title, in lieu of any original or prior certificate, which shall be null and void, whether canceled or not.

(b) *Deed to real property.* In the case of the sale of real property pursuant to 26 U.S.C. 6335:

(1) *Deed as evidence.* The deed of sale given pursuant to 26 U.S.C. 6338 shall be prima facie evidence of the facts therein stated; and

(2) *Deed as conveyance of title.* If the proceedings of the regional director (compliance) as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

(c) *Effect of junior encumbrances.* A certificate of sale of personal property given or a deed to real property executed pursuant to 26 U.S.C. 6338 discharges the property from all liens, encumbrances, and titles over which the lien of the United States, with respect to which the levy was made, has priority. For example, a mortgage on real property executed after a notice of a Federal tax lien has been filed is extinguished when the regional director (compliance) executes a deed to the real property to a purchaser thereof at a sale pursuant to 26 U.S.C. 6335 following the seizure of the property by the United States. The proceeds of such a sale are distributed in accordance with priority of the liens, encumbrances, or titles. See 26 U.S.C. 6342(b) and 7426(a)(2) and §§ 70.170 and 70.207(a)(2) of this part with respect to surplus proceeds.

(26 U.S.C. 6339)

§ 70.187 Records of sale.

(a) *Requirement.* Each regional director (compliance) shall make a record of all sales under 26 U.S.C. 6335 of real property situated within that region and of redemptions of such property. The records shall set forth the tax for which any such sale was made, the dates of seizures and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers, and the date of the deed. In the case of redemption of the property, the records shall additionally set forth the date of such redemption and of the transfer of the certificate of sale, the amount of the redemption price, and the name of the party to whom such redemption price was paid. The original record shall be retained by the Chief, Tax Processing Center.

(b) *Copy as evidence.* A copy of such record, or any part thereof, certified by the Chief, Tax Processing Center shall be evidence in any court of the truth of the facts therein stated.

(26 U.S.C. 6340)

§ 70.188 Expense of levy and sale.

The regional director (compliance) shall determine the expenses to be allowed in all cases of levy and sale. Such expenses shall include the

expenses of protection and preservation of the property during the period subsequent to the levy, as well as the actual expenses incurred in connection with the sale thereof. In case real and personal property (or several tracts of real property) are sold in the aggregate, the regional director (compliance) shall properly apportion the expenses to the real property (or to each tract).

(26 U.S.C. 6341)

Par. 56. Sections 70.191 through 70.193 and 70.201 through 70.213 with their undesignated centerheadings, are added to read as follows:

Judicial Proceedings

Civil Action by the United States

§ 70.191 Authorization.

(a) *In general.* No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) shall be commenced unless the Director, Bureau of Alcohol, Tobacco and Firearms, or designated delegate, or the Chief Counsel for the Bureau, or designated delegate, directs that the action be commenced.

(b) *Property held by banks.* The Director shall not authorize or sanction any civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, from any deposits held in a foreign office of a bank engaged in the banking business in the United States or a possession of the United States unless the Director believes:

(1) That the taxpayer is within the jurisdiction of a U.S. court at the time the civil action is authorized or sanctioned and that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States; or

(2) That the taxpayer is not within the jurisdiction of a U.S. court at the time the civil action is authorized or sanctioned, that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States, and that such deposits consist, in whole or in part, of funds transferred from the United States or a possession of the United States in order to hinder or delay the collection of a tax imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau.

(26 U.S.C. 7401)

§ 70.192 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 (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or designated delegate at the request of the Director, Bureau of Alcohol, Tobacco and Firearms, or the Chief Counsel for the Bureau or designated delegate, may direct a civil action to be filed in any court of the United States to enforce the lien of the United States under the Internal Revenue Code with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which the delinquent 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 Director or the Chief Counsel for the Bureau 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. 3715.

(26 U.S.C. 7403)

§ 70.193 Disposition of judgments and moneys recovered.

All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) shall be paid to the Bureau as collections of taxes imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau.

(26 U.S.C. 7406)

Proceedings by Taxpayers and Third Parties**§ 70.201 Exhaustion of administrative remedies.**

(a) *In general.* Title 26 U.S.C. 7430(b)(1) provides that a court shall not award reasonable litigation costs in any civil tax proceeding in court under 26 U.S.C. 7430(a) unless the court determines that the prevailing party has exhausted the administrative remedies available to the party within the Bureau. This section sets forth the circumstances in which the Bureau normally will

consider such administrative remedies exhausted.

(b) *Tax, penalty and addition to tax—*
(1) *In general.* A party has not exhausted its administrative remedies available within the Bureau with respect to any tax matter for which a managerial review is available under § 70.486 of this part unless:

(i) The party, prior to filing a civil action for refund in a court of the United States:

(A) Participates, either in person or through a qualified representative described in 31 CFR part 8, in a managerial review; and

(B) Agrees under 26 U.S.C. 6501(c)(4) to extend the time for an assessment of tax if necessary to provide the appropriate manager with a reasonable time period to consider the tax matter; or

(ii) The party, if no managerial review is granted, and, prior to the issuance of a statutory notice of disallowance in the case of a civil action for refund in a court of the United States:

(A) Requests a managerial review in accordance with § 70.486 of this part;

(B) Files a written protest if a written protest is required to obtain a managerial review; and

(C) Agrees under 26 U.S.C. 6501(c)(4) to extend the time for an assessment of tax if necessary to provide the appropriate manager with a reasonable time period to consider the tax matter.

(2) *Participates.*—For purposes of this paragraph a party or qualified representative of the party described in 31 CFR part 8 participates in a managerial review if the party or qualified representative discloses to the appropriate manager all relevant information regarding the party's tax matter to the extent such information and its relevance were known or should have been known to the party or qualified representative at the time of such conference.

(c) *Actions involving summonses, levies, liens, jeopardy assessments, etc.*

(1) A party has not exhausted its administrative remedies available within the Bureau with respect to a matter other than one to which paragraph (b) of this section applies (including summonses, levies, liens and jeopardy assessments) unless, prior to filing an action in a court of the United States:

(i) The party submits to the ATF officer who has jurisdiction over the dispute a written claim for relief reciting facts and circumstances sufficient to show the nature of the relief requested and that the party is entitled to such relief; and

(ii) The ATF officer has denied the claim for relief in writing or failed to act on the claim within a reasonable period after such claim is received by that officer.

(2) For purposes of this paragraph, a reasonable period is:

(i) The 5-day period preceding the filing of a petition to quash an administrative summons issued under 26 U.S.C. 7609;

(ii) The 5-day period preceding the filing of a wrongful levy action in which a demand for the return of property is made;

(iii) The period expressly provided for administrative review of the party's claim by an applicable provision of 26 U.S.C. that expressly provides for the pursuit of administrative remedies (such as the 18-day period provided under 26 U.S.C. 7429(b)(1)(B) relating to review of jeopardy assessment procedures); or

(iv) The 60-day period following receipt of the claim for relief in all other cases.

(d) *Tax matter.* For purposes of this section "tax matter" means a matter in connection with the determination, collection or refund of any tax, interest or penalty under provisions of 26 U.S.C. enforced and administered by the Bureau.

(e) *Exception to requirement that party pursue administrative remedies.* A party's administrative remedies within the Bureau are considered exhausted for purposes of 26 U.S.C. 7430 if the Bureau notifies the party in writing that the pursuit of administrative remedies in accordance with paragraphs (b) and (c) of this section is unnecessary.

(26 U.S.C. 7430)

§ 70.202 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 provisions of 26 U.S.C. enforced and administered by the Bureau on the property which is the subject of such action or suit. The provisions of 28 U.S.C. 2410 (except subsection (b)) and of 28 U.S.C. 1444 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.

(26 U.S.C. 7424)

§ 70.203 Discharge of liens; scope and application; judicial proceedings.

(a) *In general.* A tax lien of the United States, or a title derived from the

enforcement of a tax lien of the United States, may be discharged or divested under local law only in the manner prescribed in 26 U.S.C. 2410 or in the manner prescribed in 26 U.S.C. 7425. Title 26 U.S.C. 7425(a) contains provisions relating to the discharge of a lien when the United States is not joined as a party in the judicial proceedings described in subsection (a) of 26 U.S.C. 2410. These judicial proceedings are plenary in nature and proceed on formal pleadings. Title 26 U.S.C. 7425(b) contains provisions relating to the discharge of a lien or a title derived from the enforcement of a lien in the event of a nonjudicial sale with respect to the property involved. Title 26 U.S.C. 7425(c) contains special rules relating to the notice of sale requirements contained in 26 U.S.C. 7425(b).

(b) *Judicial proceedings*—(1) *In general.* Title 26 U.S.C. 7425(a) provides rules, where the United States is not joined as a party, to determine the effect of a judgment in any civil action or suit described in subsection (a) of 26 U.S.C. 2410 (relating to joinder of the United States in certain proceedings), or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of 26 U.S.C. If the United States is improperly named as a party to a judicial proceeding, the effect is the same as if the United States were not joined.

(2) *Notice of lien filed when the proceeding is commenced.* Where the United States is not properly joined as a party in the court proceeding and a notice of lien has been filed in accordance with 26 U.S.C. 6323(f) or (g) in the place provided by law for such filing at the time the action or suit is commenced, a judgment or judicial sale pursuant to such a judgment shall be made subject to and without disturbing the lien of the United States.

(3) *Notice of lien not filed when the proceeding is commenced.* Where the United States is not joined as a party in the court proceeding and either a notice of lien has not been filed in accordance with 26 U.S.C. 6323(f) or (g) in the place provided by law for such filing at the time the action or suit is commenced, or the law makes no provision for that filing, a judgment or judicial sale pursuant to such a judgment shall have the same effect with respect to the discharge or divestment of the lien of the United States as may be provided with respect to these matters by the local law of the place where the property is situated.

(4) *Proceeds of a judicial sale.* If a judicial sale of property pursuant to a judgment in any civil action or suit to

which the United States is not a party discharges a lien of the United States arising under the provisions of 26 U.S.C., the United States may claim the proceeds of the sale (exclusive of costs) prior to the time that distribution of the proceeds is ordered. The claim of the United States in such a case is treated as having the same priority with respect to the proceeds as the lien had with respect to the property which was discharged from the lien by the judicial sale.

[26 U.S.C. 7425(a)]

§ 70.204 Discharge of liens; nonjudicial sales.

(a) *In general.* Title 26 U.S.C. 7425(b) contains provisions with respect to the effect on the interest of the United States in property in which the United States has or claims a lien, or a title derived from the enforcement of a lien, of a sale made pursuant to:

(1) An instrument creating a lien on the property sold.

(2) A confession of judgment on the obligation secured by an instrument creating a lien on the property sold, or

(3) A statutory lien on the property sold.

For purposes of this section, such a sale is referred to as a "nonjudicial sale." The term "nonjudicial sale" includes, but is not limited to, the divestment of the taxpayer's interest in property which occurs by operation of law, by public or private sale, by forfeiture, or by termination under provisions contained in a contract for a deed or a conditional sales contract. Under 26 U.S.C. 7425(b)(1), if a notice of lien is filed in accordance with 26 U.S.C. 6323(f) or (g), or the title derived from the enforcement of a lien is recorded as provided by local law, more than 30 days before the date of sale and the appropriate ATF official is not given notice of the sale (in the manner prescribed in § 70.205 of this part), the sale shall be made subject to and without disturbing the lien or title of the United States. Under 26 U.S.C. 7425(b)(2)(C), in any case in which notice of the sale is given to the appropriate ATF official not less than 25 days prior to the date of sale (in the manner prescribed in 26 U.S.C. 7425(c)(1)), the sale shall have the same effect with respect to the discharge or divestment of the lien or title as may be provided by local law with respect to other junior liens or other titles derived from the enforcement of junior liens. A nonjudicial sale pursuant to a lien which is junior to a tax lien does not divest the tax lien, even though notice of the nonjudicial sale is given to the appropriate ATF official. However,

under the provisions of 26 U.S.C. 6325(b) and § 70.150 of this part, designated ATF officers may discharge the property from a tax lien, including a tax lien which is senior to another lien upon the property.

(b) *Date of sale.* In the case of a nonjudicial sale subject to the provisions of 26 U.S.C. 7425(b), in order to compute any period of time determined with reference to the date of sale, the date of sale shall be determined in accordance with the following rules:

(1) In the case of divestment of junior liens on property resulting directly from a public sale, the date of sale is deemed to be the date the public sale is held, regardless of the date under local law on which junior liens on the property are divested or the title to the property is transferred.

(2) In the case of divestment of junior liens on property resulting directly from a private sale, the date of sale is deemed to be the date title to the property is transferred, regardless of the date junior liens on the property are divested under local law, and

(3) In the case of divestment of junior liens on property not resulting directly from a public or private sale, the date of sale is deemed to be the date on which junior liens on the property are divested under local law. For provisions relating to the right of redemption of the United States, see 26 U.S.C. 7425(d) and § 70.206 of this part.

[26 U.S.C. 7425(b)]

§ 70.205 Discharge of liens; special rules.

(a) *Notice of sale requirements*—(1) *In general.* Except in the case of the sale of perishable goods described in paragraph (c) of this section, a notice (as described in paragraph (d) of this section) of a nonjudicial sale shall be given, in writing by registered or certified mail or by personal service, not less than 25 days prior to the date of sale (determined under the provisions of § 70.204(b) of this part), to the Chief, Tax Processing Center. The provisions of 26 U.S.C. 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance of acts where the last day falls on Saturday, Sunday, or legal holiday) apply in the case of notices required to be made under this paragraph.

(2) *Postponement of scheduled sale*—(i) *Where notice of sale is given.* In the event that notice of a sale is given in accordance with paragraph (a)(1) of this section, with respect to a scheduled sale which is postponed to a later time or date, the seller of the property is required to give notice of the

postponement to the Chief, Tax Processing Center, in the same manner as is required under local law with respect to other secured creditors. For example, assume that in State M local law requires that in the event of a postponement of a scheduled foreclosure sale of real property, an oral announcement of the postponement at the place and time of the scheduled sale constitutes sufficient notice to secured creditors of the postponement.

Accordingly, if at the place and time of a scheduled sale in State M an oral announcement of the postponement is made, the Bureau is considered to have notice of the postponement for the purpose of this paragraph (a)(2).

(ii) *Where notice of sale is not given.* In the event that:

(A) Notice of a nonjudicial sale would not be required under paragraph (a)(1) of this section, if the sale were held on the originally scheduled date,

(B) Because of a postponement of the scheduled sale, more than 30 days elapse between the originally scheduled date of the sale and the date of the sale, and

(C) A notice of lien with respect to the property to be sold is filed more than 30 days before the date of the sale, notice of the sale is required to be given to the Chief, Tax Processing Center in accordance with the provisions of paragraph (a)(1) of this section. In any case in which notice of sale is required to be given with respect to a scheduled sale, and notice of the sale is not given, any postponement of the scheduled sale does not affect the rights of the United States under 26 U.S.C. 7425(b).

(b) *Consent to sale—(1) In general.* Notwithstanding the notice of sale provisions of paragraph (a) of this section a nonjudicial sale of property shall discharge or divest the property of the lien or title of the United States if the Chief, Tax Processing Center consents to the sale of the property free of the lien or title. Pursuant to 26 U.S.C. 7425(c)(2), where adequate protection is afforded the lien or title of the United States, the Chief, Tax Processing Center may, in that official's discretion, consent with respect to the sale of property in appropriate cases. Such consent shall be effective only if given in writing and shall be subject to such limitations and conditions as the Chief, Tax Processing Center may require. However, the Chief, Tax Processing Center may not consent to a sale of property under this section after the date of sale, as determined under § 70.204(b) of this part. For provisions relating to the authority of the Chief, Tax Processing Center and the regional director (compliance) to release a lien or discharge property subject to a

tax lien, see 26 U.S.C. 6325 and § 70.150 of this part.

(2) *Application for consent.* Any person desiring the Chief, Tax Processing Center's consent to sell property free of a tax lien or a title derived from the enforcement of a tax lien of the United States in the property shall submit to the Chief, Tax Processing Center a written application, in triplicate, declaring that it is made under penalties of perjury, and requesting that such consent be given. The application shall contain the information required in the case of a notice of sale, as set forth in paragraph (d)(1) of this section, and, in addition, shall contain a statement of the reasons why the consent is desired.

(c) *Sale of perishable goods—(1) In general.* A notice (as described in paragraph (d) of this section) of a nonjudicial sale of perishable goods (as defined in paragraph (c)(2) of this section) shall be given in writing, by registered or certified mail or delivered by personal service, at any time before the sale, to the Chief, Tax Processing Center. If a notice of a nonjudicial sale is timely given in the manner described in this paragraph the nonjudicial sale shall discharge or divest the tax lien, or a title derived from the enforcement of a tax lien, of the United States in the property. The provisions of 26 U.S.C. 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday) apply in the case of notices required to be made under this paragraph. The seller of the perishable goods shall hold the proceeds (exclusive of costs) of the sale as a fund, for not less than 30 days after the date of the sale, subject to the liens and claims of the United States, in the same manner and with the same priority as the liens and claims of the United States had with respect to the property sold. If the seller fails to hold the proceeds of the sale in accordance with the provisions of this paragraph and if the Chief, Tax Processing Center asserts a claim to the proceeds within 30 days after the date of sale, the seller shall be personally liable to the United States for an amount equal to the value of the interest of the United States in the fund. However, even if the proceeds of the sale are not so held by the seller, but all the other provisions of this paragraph are satisfied, the buyer of the property at the sale takes the property free of the liens and claims of the United States. In the event of a postponement of the scheduled sale of perishable goods, the seller is not required to notify the Chief, Tax Processing Center of the postponement. For provisions relating to the authority

of the Chief, Tax Processing Center and the regional director (compliance) to release a lien or discharge property subject to a tax lien, see 26 U.S.C. 6325 and § 70.150 of this part.

(2) *Definition of perishable goods.* For the purpose of this paragraph, the term "perishable goods" means any tangible personal property which, in the reasonable view of the person selling the property, is liable to perish or become greatly reduced in price or value by keeping, or cannot be kept without great expense.

(d) *Forfeiture of land sales contract.* For purposes of paragraph (a) of this section, a nonjudicial sale of property includes any forfeiture of a land sales contract.

(e) *Content of notice of sale—(1) In general.* With respect to a notice of sale described in paragraph (a) or (c) of this section, the notice will be considered adequate if it contains the information described in paragraph (d)(1) (i), (ii), (iii), and (iv) of this section.

(i) The name and address of the person submitting the notice of sale;

(ii) A copy of each Notice of Federal Tax Lien (ATF Form 5551.2) affecting the property to be sold, or the following information as shown on each such Notice of Federal Tax Lien:

(A) The initiating office named thereon,

(B) The name and address of the taxpayer, and

(C) The date and place of filing of the notice;

(iii) With respect to the property to be sold the following information:

(A) A detailed description, including location of the property affected by the notice (in the case of real property, the street address, city, and State and the legal description contained in the title or deed to the property and, if available, a copy of the abstract of title),

(B) The date, time, place, and terms of proposed sale of the property, and

(C) In case of a sale of perishable property described in paragraph (c) of this section, a statement of the reasons why the property is believed to be perishable; and

(iv) The approximate amount of the principal obligation, including interest, secured by the lien sought to be enforced and a description of the other expenses (such as legal expenses, selling costs, etc.) which may be charged against the sale proceeds.

(2) *Inadequate notice.* Except as otherwise provided in this subparagraph, a notice of sale described in paragraph (a) of this section which does not contain the information described in paragraph (d)(1) of this

section shall be considered inadequate by the Chief, Tax Processing Center. If the Chief, Tax Processing Center determines that the notice is inadequate, that official will give written notification of the items of information which are inadequate to the person who submitted the notice. A notice of sale which does not contain the name and address of the person submitting such notice shall be considered to be inadequate for all purposes without notification of any specific inadequacy. In any case where a notice of sale, does not contain the information required under paragraph (d)(1)(ii) of this section with respect to a Notice of Federal Tax Lien, the Chief, Tax Processing Center may give written notification of such omission without specification of any other inadequacy and such notice of sale shall be considered inadequate for all purposes. In the event the Chief, Tax Processing Center gives notification that the notice of sale is inadequate, a notice complying with the provisions of this section (including the requirement that the notice be given not less than 25 days prior to the sale in the case of a notice described in paragraph (a) of this section) must be given. However, in accordance with the provisions of paragraph (b)(1) of this section, in such a case the Chief, Tax Processing Center may, in that official's discretion, consent to the sale of the property free of the lien or title of the United States even though notice of the sale is given less than 25 days prior to the sale. In any case where the person who submitted a timely notice which indicates the person's name and address does not receive, more than 5 days prior to the date of the sale, written notification from the Chief, Tax Processing Center that the notice is inadequate, the notice shall be considered adequate for purposes of this section.

(3) *Acknowledgment of notice.* If a notice of sale described in paragraph (a) or (c) of this section is submitted in duplicate to the Chief, Tax Processing Center with a written request that receipt of the notice be acknowledged and returned to the person giving the notice, this request will be honored by the Chief, Tax Processing Center. The acknowledgment by the Chief, Tax Processing Center will indicate the date and time of the receipt of the notice.

(4) *Disclosure of adequacy of notice.* The Chief, Tax Processing Center is authorized to disclose, to any person who has a proper interest, whether an adequate notice of sale was given under paragraph (d)(1) of this section insofar as disclosure is authorized under 26 U.S.C. 6103. Any person desiring this

information should submit to the Chief, Tax Processing Center a written request which clearly describes the property sold or to be sold, identifies the applicable notice of lien, gives the reasons for requesting the information, and states the name and address of the person making the request.

(26 U.S.C. 7425(c))

§ 70.206 Discharge of liens; redemption by United States.

(a) *Right to redeem—(1) In general.* In the case of a nonjudicial sale of real property to satisfy a lien prior to the tax lien or a title derived from the enforcement of a tax lien, the regional director (compliance) may redeem the property within the redemption period (as described in paragraph (a)(2) of this section). The right of redemption of the United States exists under 26 U.S.C. 7425(d) even though the Chief, Tax Processing Center has consented to the sale under 26 U.S.C. 7425(c)(2) and § 70.205(b) of this part. For purposes of this section, the term "nonjudicial sale" shall have the same meaning as used in § 70.204(a) of this part.

(2) *Redemption period.* For purposes of this section, the redemption period shall be:

(i) The period beginning with the date of the sale (as determined under § 70.204(b)) and ending with the 120th day after such date, or

(ii) The period for redemption of real property allowable with respect to other secured creditors, under the local law of the place where the real property is located, whichever expires later.

Which ever period is applicable, 26 U.S.C. 7425 and this section shall govern the amount to be paid and the procedure to be followed.

(3) *Limitations.* In the event a sale does not ultimately discharge the property from tax lien (whether by reason of local law or the provisions of 26 U.S.C. 7425(b)), the provisions of this section do not apply because the tax lien will continue to attach to the property after the sale. In a case in which the Bureau is not entitled to a notice of sale under 26 U.S.C. 7425(b) and § 70.205 of this part, the United States does not have a right of redemption under 26 U.S.C. 7425(d). However, in such a case, if a tax lien has attached to the property at the time of sale, the United States has the same right of redemption, if any, which is afforded similar creditors under the local law of the place in which the property is situated.

(b) *Amount to be paid—(1) In general.* In any case in which a regional director (compliance) exercises the right to

redeem real property under 26 U.S.C. 7425(d), the amount to be paid is the sum of the following amounts:

(i) The actual amount paid for the property (as determined under paragraph (b)(2) of this section) being redeemed (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent legally satisfied by reason of the sale);

(ii) Interest on the amount paid (described in paragraph (b)(1)(i) of this section) at the sale by the purchaser of the real property computed at the rate of 6 percent per annum for the period from the date of the sale (as determined under § 70.204(b) of this part) to the date of redemption;

(iii) The amount, if any, equal to the excess of the expenses necessarily incurred to maintain such property (as determined under paragraph (b)(3) of this section) by the purchaser (and the purchaser's successor in interest, if any) over the income from such property realized by the purchaser (and the purchaser's successor in interest, if any) plus a reasonable rental value of such property (to the extent the property is used by or with the consent of the purchaser or the purchaser's successor in interest or is rented at less than its reasonable rental value); and

(iv) The amounts, if any, of a payment made by the purchaser or the purchaser's successor in interest after the foreclosure sale to a holder of a senior lien (to the extent provided under paragraph (b)(4) of this section).

(2) *Actual amount paid.* (i) The actual amount paid for property by a purchaser, other than holder of the lien being foreclosed, is the amount paid by the purchaser at the sale. For purposes of this paragraph, the amount paid by the purchaser at the sale includes deferred payments upon the bid price. The actual amount paid does not include costs and expenses incurred prior to the foreclosure sale by the purchaser except to the extent such expenses are included in the amount bid and paid for the property. For example, the actual amount paid does not normally include the expenses of the purchaser such as title searches, professional fees, or interest on debt incurred to obtain funds to purchase the property.

(ii) In the case of a purchaser who is the holder of the lien being foreclosed, the actual amount paid is the sum of:

(A) The amount of the obligation secured by such lien to the extent legally satisfied by reason of the sale and

(B) Any additional amount bid and paid at the sale.

For purposes of this section, a purchaser who acquires title as a result of a nonjudicial foreclosure sale is treated as the holder of the lien being foreclosed if a lien (or any interest reserved, created, or conveyed as security for the payment of a debt or fulfillment of other obligation) held by the purchaser is partially or fully satisfied by reason of the foreclosure sale. For example, a person whose title is derived from a tax deed issued under local law shall be treated as a purchaser who is the holder of the lien foreclosed in a case where a tax certificate, evidencing a lien on the property arising from the payment of property taxes, ripens into title. The amount paid by a purchaser at the sale includes deferred payments upon any portion of the bid price which is in excess of the amount of the lien being foreclosed. The actual amount paid does not include costs and expenses incurred prior to the foreclosure sale by the purchaser except to the extent such expenses are included in the amount of the lien being foreclosed which is legally satisfied by reason of the sale or in the amount bid and paid at the sale. Where the lien being foreclosed attaches to other property not subject to the foreclosure sale, the amount legally satisfied by reason of the sale does not include the amount of such lien that attaches to the other property. However, for purposes of the preceding sentences, the amount of the lien that attaches to the other property shall be considered to be equal to the amount by which the value of the other property exceeds the amount of any other senior lien on that property. Where, after the sale, the holder of the lien being foreclosed has the right to the unpaid balance of the amount due the holder, the amount legally satisfied by reason of the sale does not include the amount of such lien to the extent a deficiency judgment may be obtained therefor. However, for purposes of the preceding sentence, an amount, with respect to which the holder of the lien being foreclosed would otherwise have a right to a deficiency judgment, shall be considered to be legally satisfied by reason of the foreclosure sale to the extent that the holder has waived the holder's right to a deficiency judgment prior to the foreclosure sale. For this purpose, the waiver must be in writing and legally binding upon the foreclosing lienholder as of the time the sale is concluded. If, prior to the foreclosure, payments have been made by the foreclosing lienholder to a holder of a superior lien, the payments are included in the actual amount paid to the extent they give rise

to an interest which is legally satisfied by reason of the foreclosure sale.

(3) *Excess expenses incurred by purchaser.* (i) Expenses necessarily incurred in connection with the property after the foreclosure sale and before redemption by the United States are taken into account in determining if there are excess expenses payable under paragraph (b)(1)(iii) of this section. Expenses incurred by the purchaser prior to the foreclosure sale are not considered under paragraph (b)(3) of this section. (See paragraph (b)(2)(ii) of this section for circumstances under which such expenses may be included in the amount to be paid.) Expenses necessarily incurred in connection with the property include, for example, rental agent commissions, repair and maintenance expenses, utilities expenses, legal fees incurred after the foreclosure sale and prior to redemption in defending the title acquired through the foreclosure sale, and a proportionate amount of casualty insurance premiums and ad valorem taxes. Improvements made to the property are not considered as an expense unless the amounts incurred for such improvements are necessarily incurred to maintain the property.

(ii) At any time prior to the expiration of the redemption period applicable under paragraph (a)(2) of this section, the regional director (compliance) may, by certified or registered mail or hand delivery, request a written itemized statement of the amount claimed by the purchaser or the purchaser's successor in interest to be payable under paragraph (b)(1)(iii) of this section. Unless the purchaser or the purchaser's successor in interest furnishes the written itemized statement within 15 days after the request is made by the regional director (compliance), it shall be presumed that no amount is payable for expenses in excess of income and the Bureau shall tender only the amount otherwise payable under paragraph (b)(1) of this section. If a purchaser or the purchaser's successor in interest has failed to furnish the written itemized statement within 15 days after the request therefor is made by the regional director (compliance), or there is a disagreement as to the amount properly payable under paragraph (b)(1)(iii) of this section, a payment for excess expenses shall be made after the redemption within a reasonable time following the verification by the regional director (compliance) of a written itemized statement submitted by the purchaser or the purchaser's successor in interest or the resolution of the

disagreement as to the amount properly payable for excess expenses.

(4) *Payments made by purchaser or the purchaser's successor in interest to a senior lienor.* (i) The amount to be paid upon a redemption by the United States shall include the amount of a payment made by the purchaser or the purchaser's successor in interest to a holder of a senior lien to the extent a request for the reimbursement thereof (made in accordance with paragraph (b)(4)(ii) of this section) is approved as provided under paragraph (b)(4)(iii) of this section. This paragraph applies only to a payment made after the foreclosure sale and before the redemption to a holder of a lien that was, immediately prior to the foreclosure sale, superior to the lien foreclosed. A payment of principal or interest to a senior lienor shall be taken into account. Generally, the portion, if any, of a payment which is to be held in escrow for the payment of an expense, such as hazard insurance or real property taxes, is not considered under this paragraph. However, a payment by the escrow agent of a real property tax or special assessment lien, which was senior to the lien foreclosed, shall be considered to be a payment made by the purchaser or the purchaser's successor in interest for purposes of this paragraph. With respect to real property taxes assessed after the foreclosure sale, see paragraph (b)(3)(i) of this section, relating to excess expenses incurred by the purchaser.

(ii) Before the expiration of the redemption period applicable under paragraph (a)(2) of this section, the regional director (compliance) shall, in any case where a redemption is contemplated, send notice to the purchaser (or the purchaser's successor in interest of record) by certified or registered mail or hand delivery of the right under paragraph (b)(4) of this section to request reimbursement (payable in the event the right to redeem under 28 U.S.C. 7425(d) is exercised) for a payment made to a senior lienor. No later than 15 days after the notice from the regional director (compliance) is sent, the request for reimbursement shall be mailed or delivered to the office specified in such notice and shall consist of:

(A) A written itemized statement, signed by the claimant, of the amount claimed with respect to a payment made to a senior lienor, together with the supporting evidence requested in the notice from the regional director (compliance), and

(B) A waiver or other document that will be effective upon redemption by the United States to discharge the property

from, or transfer to the United States, any interest in or lien on the property that may arise under local law with respect to the payment made to a senior lienor.

Upon a showing of reasonable cause, a regional director (compliance) may, in that official's discretion and at any time before the expiration of the applicable period for redemption, grant an extension for a reasonable period of time to submit, amend, or supplement a request for reimbursement. Unless a request for reimbursement is timely submitted (determined with regard to any extension of time granted), no amount shall be payable to the purchaser or the purchaser's successor in interest on account of a payment made to a senior lienor if the right to redeem under 26 U.S.C. 7425(d) is exercised. A waiver or other document submitted pursuant to paragraph (b)(4)(ii) of this section shall be treated as effective only to the extent of the amount included in the redemption price under this paragraph. If the right to redeem is not exercised or a request for reimbursement is withdrawn, the regional director (compliance) shall, by certified or registered mail or hand delivery, return to the purchaser or the purchaser's successor any waiver or other document submitted pursuant to paragraph (b)(4)(ii) of this section as soon as is practicable.

(iii) A request for reimbursement submitted in accordance with paragraph (b)(4)(ii) of this section shall be considered to be approved for the total amount claimed by the purchaser, and payable in the event the right to redeem is exercised, unless the regional director (compliance) sends notice to the claimant, by certified or registered mail or hand delivery, of the denial of the amount claimed within 30 days after receipt of the request of 15 days before expiration of the applicable period for redemption, whichever is later. The notification of denial shall state the grounds for denial. If such notice of denial is given, the request for reimbursement for a payment made to a senior lienor shall be treated as having been withdrawn by the purchaser or the purchaser's successor and the Bureau shall tender only the amount otherwise payable under paragraph (b)(1) of this section. If a request for reimbursement is treated as having been withdrawn under the preceding sentence, payment for amounts described in paragraph (b)(4) of this section may, in the discretion of the regional director (compliance), be made after the redemption upon the resolution of the disagreement as to the amount properly

payable under paragraph (b)(1)(iv) of this section.

(c) *Certificate of redemption*—(1) *In general.* If a regional director (compliance) exercises the right of redemption of the United States described in paragraph (a) of this section, the regional director (compliance) shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to the redeemed property in the name of the United States. If no such officer has been designated by local law or if the officer designated by local law fails to issue the necessary documents, the regional director (compliance) is authorized to issue a certificate of redemption for the property redeemed by the United States.

(2) *Filing.* The regional director (compliance) shall, without delay, cause either the documents issued by the local officer or the certificate of redemption executed by the regional director (compliance) to be filed with the local office where certificates of redemption are generally filed. If a certificate of redemption is issued by the regional director (compliance) and if the State in which the real property redeemed by the United States is situated has no office with which certificates of redemption may be filed, the regional director (compliance) shall file the certificate of redemption in the office of the clerk of the United States district court for the judicial district in which the redeemed property is situated.

(3) *Effect of certificate of redemption.* A certificate of redemption executed pursuant to paragraph (c)(1) of this section, shall constitute prima facie evidence of the regularity of the redemption. When a certificate of redemption is recorded, it shall transfer to the United States all the rights, title, and interest in and to the redeemed property acquired by the person, from whom the regional director (compliance) redeemed the property, by virtue of the sale of the property. Therefore, if under local law the purchaser takes title free of liens junior to the lien of the foreclosing lienholder, the United States takes the title free of such junior liens upon redemption of the property. If a certificate of redemption has been erroneously prepared and filed because the redemption was not effective, the regional director (compliance) shall issue a document revoking such certificate of redemption and such document shall be conclusively binding upon the United States against a purchaser of the property or a holder of a lien upon the property.

(4) *Application for release of right of redemption.* Upon application of a party with a proper interest in the real property sold in a nonjudicial sale described in 26 U.S.C. 7425(b) and § 70.204 of this part, which real property is subject to the right of redemption of the United States described in this section, the regional director (compliance) may, in that official's discretion, release the right of redemption with respect to the property. The application for the release shall be submitted in writing to a regional director (compliance) and shall contain such information as the regional director (compliance) may require. If the regional director (compliance) determines that the right of redemption of the United States is without value, no amount shall be required to be paid with respect to the release of the right of redemption.

(26 U.S.C. 7425(d))

§ 70.207 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 the person 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 26 U.S.C. 7426(a)(1) unless there has been a levy upon the property claimed.

(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 the claim that the person:

(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 26 U.S.C. 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 26 U.S.C. 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, with interest thereon at the overpayment rate established under 26 U.S.C. 6621 from the date that the official who made the levy receives the money wrongfully levied upon to the date of payment of such judgment, 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 26 U.S.C. 6335(e) or the amount received by the United States from the resale of such property), or the fair market value of such property immediately before the levy, with interest thereon at the overpayment rate established under 26 U.S.C. 6621 from the date of the sale of the property to the date of payment of such judgment.

For purposes of paragraph (b)(1) of this section, a levy is wrongful against a person (other than the taxpayer against whom the assessment giving rise to the levy is made), if the levy is upon property exempt from levy under 26 U.S.C. 6334, or the levy is upon property in which the taxpayer had no interest at the time the lien arose or thereafter, or the levy is upon property with respect to which such person is a purchaser against whom the lien is invalid under 26 U.S.C. 6323 or 6324(a)(2) or (b), or 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 the holder's 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 the holder's 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: The nature of the property, the number of purchasers, the value of each unit sold or to be sold, 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 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) *Surplus proceeds*. If the court determines that the interest or lien of any party to an action under 26 U.S.C. 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 property remaining after application of the provisions of 26 U.S.C. 6342(a).

(3) *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 26 U.S.C. 6325(b)(3), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

(26 U.S.C. 7426)

§ 70.208 Review of jeopardy assessment or jeopardy levy procedures; information to taxpayer.

Not later than 5 days after the day on which an assessment is made under 26 U.S.C. 6862 or when a levy is made less than 30 days after the notice and demand described in 26 U.S.C. 6331(a), the official who authorized the assessment or levy shall provide the taxpayer a written statement setting forth the information upon which that official relies in authorizing such assessment or levy.

(26 U.S.C. 7429(a)(1))

§ 70.209 Review of jeopardy assessment or levy procedures; administrative review.

(a) *Request for administrative review*. Any request for the review of a jeopardy assessment or levy provided for by 26 U.S.C. 7429(a)(2) shall be filed with the official who authorized the assessment

or levy, within 30 days after the statement described in § 70.208 of this part is given to the taxpayer. However, if no statement is given within the 5-day period described in § 70.208, any request for review of the jeopardy assessment shall be filed within 35 days after the date the assessment is made. Such request shall be in writing, shall state fully the reasons for the request, and shall be supported by such evidence as will enable the reviewing official to make the redetermination described in 26 U.S.C. 7429(a)(3).

(b) *Administrative review*. In determining whether the assessment or levy is reasonable and the amount assessed appropriate, the reviewing official shall take into account not only information available at the time the assessment is made but also information which subsequently becomes available.

(26 U.S.C. 7429(a)(2))

§ 70.210 Review of jeopardy assessment or levy procedures; judicial action.

(a) *Time for bringing judicial action*. An action for judicial review described in 26 U.S.C. 7429(b) may be instituted by the taxpayer during the period beginning on the earlier of:

(1) The date of the reviewing official notifies the taxpayer of the determination described in 26 U.S.C. 7429(a)(3); or

(2) The 16th day after the request described in 26 U.S.C. 7429(a)(2) was made by the taxpayer; and ending on the 90th day thereafter.

(b) *Extension of the period for judicial review*. The U.S. Government may not seek an extension of the 20-day period described in 26 U.S.C. 7429(b)(2), but it may join with the taxpayer in seeking such an extension.

(26 U.S.C. 7429)

§ 70.211 Damages for failure to release lien.

(a) *General*. If any officer or employee of the Bureau knowingly, or by reason of negligence, fails to release a lien under 26 U.S.C. 6325 on property of the taxpayer, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

(b) *Damages*. In any action brought under paragraph (a) of this section, upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of:

(1) Actual, direct economic damages sustained by the plaintiff which, but for the actions of the defendant, would not have been sustained, plus

(2) The costs of the action.

(c) *Limitations—(1) Requirement that administrative remedies be exhausted.*

A judgment for damages shall not be awarded under paragraph (b) of this section unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Bureau.

(2) *Mitigation of damages.* The amount of damages awarded under paragraph (b)(1) of this section shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

(3) *Period for bringing action.*

Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date of the right of action accrues.

(d) *Notice of failure to release lien.*

The requirements covering release of liens and administrative appeal of liens appear at §§ 70.150 and 70.151 of this part, respectively. If a lien is not released when the conditions for release are met, the taxpayer should notify the Chief, Tax Processing Center in writing of ATF's failure to release the lien. The Chief, Tax Processing Center will release the lien or notify the taxpayer of any additional actions required on the taxpayer's part to effect release of the lien within 30 days from receipt of the notice of failure to release lien. Whenever necessary to protect the interests of the government, a regional director (compliance) may also release a lien under this section.

(26 U.S.C. 7432)

§ 70.212 Damages for unauthorized collection actions.

(a) *In general.* If, in connection with any collection of tax under the provisions of 26 U.S.C. enforced and administered by the Bureau with respect to a taxpayer, any officer or employee of the Bureau recklessly or intentionally disregards any provision of 26 U.S.C. enforced and administered by the Bureau or any regulation thereunder, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as provided in 26 U.S.C. 7432 and § 70.211 of this part, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

(b) *Damages.* In any action brought under paragraph (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of \$100,000 or the sum of:

(1) Actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional actions of the officer or employee, and

(2) The costs of the action.

(c) *Limitations—(1) Requirement that administrative remedies be exhausted.*

A judgment for damages shall not be awarded under paragraph (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Bureau.

(2) *Mitigation of damages.* The amount of damages awarded under paragraph (b)(1) of this section shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

(3) *Period for bringing action.*

Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the right of action accrues.

(d) *Damages for frivolous or groundless claims.* Whenever it appears to the court that the taxpayer's position in proceedings before the court instituted or maintained by such taxpayer under this section is frivolous or groundless, damages in an amount not in excess of \$10,000 shall be awarded to the United States by the court in the court's decision. Damages so awarded shall be assessed at the same time as the decision and shall be paid upon notice and demand from the regional director (compliance) or the Chief, Tax Processing Center.

(26 U.S.C. 6673 and 7433)

§ 70.213 Repayments to officers or employees.

The Director is authorized to repay to any officer or employee of the Bureau the full amount of such sums of money as may be recovered against such officer or employee in any court for any taxes imposed under provisions of 26 U.S.C. enforced and administered by the Bureau collected by such officer or employee with the cost and expense of suit, and all damages and costs recovered against any officer or employee of the Bureau in any suit brought against such officer or employee by reason of anything done in the official performance of duties under the provisions of 26 U.S.C. enforced and administered by the Bureau.

(26 U.S.C. 7423)

Par. 57. Undesignated centerheadings are added immediately preceding § 70.221 to read as follows:

Limitations

Limitations on Assessment and Collection

Par. 58. Section 70.223(d) is amended by revising the first sentence to read as follows:

§ 70.223 Exceptions to general period of limitations on assessment and collection.

(d) *Extension by agreement.* The time prescribed by 26 U.S.C. 6501 for the assessment of any tax imposed by provisions of 26 U.S.C. enforced and administered by the Bureau may, prior to the expiration of such time, be extended for any period of time agreed upon in writing by the taxpayer and the regional director (compliance) or the Chief, Tax Processing Center. * * *

Par. 59. Sections 70.224 through 70.227 are added to read as follows:

§ 70.224 Collection after assessment.

(a) *Length of period—(1) General rule.* In any case in which a tax has been assessed within the statutory period of limitation properly applicable thereto, a proceeding in court to collect such tax may be begun, or levy for the collection of such tax may be made, within 6 years after the assessment thereof.

(2) *Extension by agreement.* (i) The 6-year period of limitation on collection after assessment of any tax may, prior to the expiration thereof, be extended for any period of time agreed upon in writing by the taxpayer and the regional director (compliance). Whenever necessary to protect the revenue, the Chief, Tax Processing Center may also execute a written agreement with the taxpayer to extend the period of limitation. The extension shall become effective upon execution of the agreement by both the taxpayer and the regional director (compliance) or the Chief, Tax Processing Center.

(ii) The period of limitation on collection after assessment of any tax (including any extension of such period) may be extended after the expiration thereof if there has been a levy on any part of the taxpayer's property prior to such expiration and if the extension is agreed upon in writing prior to a release of the levy under the provisions of 26 U.S.C. 6343. An extension under this paragraph has the same effect as an agreement made prior to the expiration of the period of limitation on collection after assessment, and during the period of the extension collection may be enforced as to all property or rights to property owned by the taxpayer

whether or not seized under the levy which was released.

(iii) Any period agreed upon under the provisions of paragraph (a)(1) of this section may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(3) If a timely proceeding in court for the collection of a tax is commenced, the period during which such tax may be collected by levy shall be extended and shall not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable.

(b) *Date when levy is considered made.* The date on which a levy on property or rights to property is made is the date on which the notice of seizure provided in 26 U.S.C. 6335(a) is given.

(26 U.S.C. 6502)

§ 70.225 Suspension of running of period of limitation; assets of taxpayer in control or custody of court.

Where all or substantially all of the assets of a taxpayer are in the control or custody of the court in any proceeding before any court of the United States, or any State of the United States, or the District of Columbia, the period of limitations on collection after assessment prescribed in 26 U.S.C. 6502 is suspended with respect to the outstanding amount due on the assessment for the period such assets are in the control or custody of the court, and for 6 months thereafter.

(26 U.S.C. 6503)

§ 70.226 Suspension of running of period of limitation; taxpayer outside of United States.

The running of the period of limitations on collection after assessment prescribed in 26 U.S.C. 6502 (relating to collection after assessment) is suspended for the period during which the taxpayer is absent from the United States if such period is a continuous period of absence from the United States extending for 6 months or more. In a case where the running of the period of limitations has been suspended under the first sentence of this paragraph and at the time of the taxpayer's return to the United States the period of limitations would expire before the expiration of 6 months from the date of the taxpayer's return, the period of limitations shall not expire until after 6 months from the date of the taxpayer's return. The taxpayer will be deemed to be absent from the United States for purposes of this section if the taxpayer is generally and substantially absent from the United States, even

though the taxpayer makes casual temporary visits during the period.

(26 U.S.C. 6503)

§ 70.227 Suspension of running of period of limitation; wrongful seizure of property of third party.

The running of the period of limitations on collection after assessment prescribed in 26 U.S.C. 6502 (relating to collection after assessment) shall be suspended for a period equal to a period beginning on the date property (including money) is wrongfully seized or received by a regional director (compliance) and ending on the date 30 days after the date on which the regional director (compliance) returns the property pursuant to 26 U.S.C. 6343(b) (relating to authority to return property) or the date 30 days after the date on which a judgment secured pursuant to 26 U.S.C. 7426 (relating to civil actions by persons other than taxpayers) with respect to such property becomes final. The running of the period of limitations on collection after assessment shall be suspended under this section only with respect to the amount of such assessment which is equal to the amount of money or the value of specific property returned.

(26 U.S.C. 6503)

Par. 60. Sections 70.231 through 70.234 and an undesignated centerheading preceding them are added to read as follows:

Limitations on Liens

§ 70.231 Protection for certain interests even though notice filed.

(a) *Securities.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid with respect to a security (as defined in § 70.143(d) of this part) against:

(1) A purchaser (as defined in § 70.143(f) of this part) of the security who at the time of purchase did not have actual notice or knowledge (as defined in § 70.144(a) of this part) of the existence of the lien;

(2) A holder of a security interest (as defined in § 70.143(a) of this part) in the security who did not have actual notice or knowledge (as defined in § 70.144(a) of this part) of the existence of the lien at the time the security interest came into existence or at the time such security interest was acquired from a previous holder for a consideration in money or money's worth (as defined in § 70.143(a) of this part); or

(3) A transferee of an interest protected under paragraph (a) (1) or (2) of this section to the same extent the lien is invalid against the transferor to

the transferee. For purposes of this paragraph, no person can improve that person's position with respect to the lien by reacquiring the interest from an intervening purchaser or holder of a security interest against whom the lien is invalid.

(b) *Motor vehicles.*—(1) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against a purchaser (as defined in § 70.143(f) of this part) of a motor vehicle (as defined in § 70.143(c) of this part) if:

(i) At the time of purchase, the purchaser did not have actual notice or knowledge (as defined in § 70.144(a) of this part) of the existence of the lien, and

(ii) Before the purchaser obtains such notice or knowledge, the purchaser has acquired actual possession of the motor vehicle and has not thereafter relinquished actual possession to the seller or seller's agent.

(2) *Cross reference.* For provisions relating to additional circumstances in which the lien imposed by 26 U.S.C. 6321 may not be valid against the purchaser of tangible personal property (including a motor vehicle) purchased at retail, see paragraph (c) of this section.

(c) *Personal property purchased at retail.*—(1) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed (with respect to any tax imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau) in accordance with § 70.148 of this part, the lien is not valid against a purchaser (as defined in § 70.143(f) of this part) of tangible personal property purchased at a retail sale (as defined in paragraph (c)(2) of this section) unless at the time of purchase the purchaser intends the purchase to (or knows that the purchase will) hinder, evade, or defeat the collection of any tax imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau.

(2) *Definition of retail sale.* For purposes of paragraph (c) of this section, the term "retail sale" means a sale, made in the ordinary course of the seller's trade or business, of tangible personal property of which the seller is the owner. Such term includes a sale in customary retail quantities by a seller who is going out of business, but does not include a bulk sale or an auction sale in which goods are offered in quantities substantially greater than are customary in the ordinary course of the seller's trade or business or an auction sale of goods the owner of which is not in the business of selling such goods.

(d) *Personal property purchased in casual sale*—(1) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against a purchaser (as defined in § 70.143(f) of this part) of household goods, personal effects, or other tangible personal property of a type described in § 70.241 of this part (which includes wearing apparel, school books, fuel, provisions, furniture, arms for personal use, livestock, and poultry (whether or not the seller is the head of a family); and books and tools of a trade, business, or profession (whether or not the trade, business, or profession of the seller)), purchased, other than for resale, in a casual sale for less than \$250 (excluding interest and expenses described in § 70.147 of this part). For purposes of this paragraph, a casual sale is a sale not made in the ordinary course of the seller's trade or business.

(2) *Limitation.* This paragraph applies only if the purchaser does not have actual notice or knowledge (as defined in § 70.144(a) of this part):

- (i) Of the existence of the tax lien, or
- (ii) That the sale is one of a series of sales.

For purposes of paragraph (d)(2)(ii) of this section, a sale is one of a series of sales if the seller plans to dispose of, in separate transactions, substantially all of the seller's household goods, personal effects, and other tangible personal property described in § 70.241 of this part.

(e) *Personal property subject to possessory liens.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against a holder of a lien on tangible personal property which under local law secures the reasonable price of the repair or improvement of the property if the property is, and has been, continuously in the possession of the holder of the lien from the time the possessory lien arose. For example, if local law gives an automobile mechanic the right to retain possession of an automobile the mechanic has repaired as security for payment of the repair bill and the mechanic retains continuous possession of the automobile until such lien is satisfied, a tax lien filed in accordance with 26 U.S.C. 6323(f)(1) which has attached to the automobile will not be valid to the extent of the reasonable price of the repairs. It is immaterial that the notice of tax lien was filed before the mechanic undertook the work or that the mechanic knew of the lien before undertaking the work.

(f) *Real property tax and special assessment liens.* Even though a notice

of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against the holder of another lien upon the real property (regardless of when such other lien arises), if such other lien is entitled under local law to priority over security interests in real property which are prior in time and if such other lien on real property secures payment of:

(1) A tax of general application levied by any taxing authority based upon the value of the property, or

(2) A special assessment imposed directly upon the property by any taxing authority, if the assessment is imposed for the purpose of defraying the cost of any public improvement; or

(3) Charges for utilities or public services furnished to the property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(g) *Residential property subject to a mechanic's lien for certain repairs and improvements.* Even though a notice of lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against a mechanic's lienor (as defined in § 70.143(b) of this part) who holds a lien for the repair or improvement of a personal residence if:

(1) The residence is occupied by the owner and contains no more than four dwelling units, and

(2) The contract price on the prime contract with the owner for the repair or improvement (excluding interest and expenses described in § 70.147 of this part) is not more than \$1,000. For purposes of this paragraph, the amounts of subcontracts under the prime contract with the owner are not to be taken into consideration for purposes of computing the \$1,000 prime contract price. It is immaterial that the notice of tax lien was filed before the contractor undertakes the work or that the contractor knew of the lien before undertaking the work.

(h) *Attorney's liens*—(1) *In general.* Even though notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against an attorney who, under local law, holds a lien upon, or a contract enforceable against, a judgment or other amount in settlement of a claim or of a cause of action. The priority afforded an attorney's lien under this paragraph shall not exceed the amount of the attorney's reasonable compensation for obtaining the judgment or procuring the settlement. For purposes of this paragraph, reasonable compensation means the amount customarily allowed under local law for an attorney's service for

litigating or settling a similar case or administrative claim. However, reasonable compensation shall be determined on the basis of the facts and circumstances of each individual case. It is immaterial that the notice of tax lien is filed before the attorney undertakes the work or that the attorney knows of the tax lien before undertaking the work. This paragraph does not apply to an attorney's lien which may arise from the defense of a claim or cause of action against a taxpayer except to the extent such lien is held upon a judgment or other amount arising from the adjudication or settlement of a counterclaim in favor of the taxpayer. In case of suits against the taxpayer, see § 70.150(d)(2) of this part for rules relating to the subordination of the tax lien to facilitate tax collection.

(2) *Claim or cause of action against the United States.* Paragraph (h)(1) of this section does not apply to an attorney's lien with respect to:

(i) Any judgment or other fund resulting from the successful litigation or settlement of an administrative claim or cause of action against the United States to the extent that the United States, under any legal or equitable right, offsets its liability under the judgment or settlement against any liability of the taxpayer to the United States, or

(ii) Any amount credited against any liability of the taxpayer in accordance with 26 U.S.C. 6402.

(i) *Certain insurance contracts.* Even though a notice of a lien imposed by 26 U.S.C. 6321 (with respect to any tax imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau) is filed in accordance with § 70.148 of this part, the lien is not valid with respect to a life insurance, endowment, or annuity contract, against an organization which is the insurer under the contract, at any time:

(1) Before the insuring organization has actual notice or knowledge (as defined in § 70.144(a) of this part) of the existence of the tax lien.

(2) After the insuring organization has actual notice or knowledge of the lien (as defined in § 70.144(a) of this part) with respect to advances (including contractual interest thereon as provided in § 70.147(a) of this part) required to be made automatically to maintain the contract in force under an agreement entered into before the insuring organization had such actual notice or knowledge, or

(3) After the satisfaction of a levy pursuant to 26 U.S.C. 6332(b), unless and until the Chief, Tax Processing Center delivers to the insuring organization a notice (for example, another notice of

levy, a letter, etc.), executed after the date of such satisfaction, that the lien exists.

Delivery of the notice described in paragraph (i)(3) of this section may be made by any means, including regular mail, and delivery of the notice shall be effective only from the time of actual receipt of the notification by the insuring organization. The provisions of this paragraph are applicable to matured as well as unmatured insurance contracts.

(j) *Passbook loans*—(1) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against an institution described in 26 U.S.C. 581 or 591 to the extent of any loan made by the institution which is secured by a savings deposit, share, or other account evidenced by a passbook (as defined in paragraph (j)(2) of this section) if the institution has been continuously in possession of the passbook from the time the loan is made. This paragraph applies only to a loan made without actual notice or knowledge (as defined in § 70.144(a) of this part) of the existence of the lien. Even though an original passbook loan is made without actual notice or knowledge of the existence of the lien, this paragraph does not apply to any additional loan made after knowledge of the lien is acquired by the institution even if it continues to retain the passbook from the time the original passbook loan is made.

(2) *Definition of passbook.* For purposes of paragraph (j) of this section, the term "passbook" includes:

(i) Any tangible evidence of a savings deposit, share, or other account which, when in the possession of the bank or other savings institution, will prevent a withdrawal from the account to the extent of the loan balance, and

(ii) Any procedure or system, such as an automatic data processing system, the use of which by the bank or other savings institution will prevent a withdrawal from the account to the extent of the loan balance.

(26 U.S.C. 6323)

§ 70.232 Protection for commercial transactions financing agreements.

(a) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid with respect to a security interest which:

(1) Comes into existence after the tax lien filing.

(2) Is in qualified property covered by the terms of a commercial transactions financing agreement entered into before the tax lien filing, and

(3) Is protected under local law against a judgment lien arising, as of the time of the tax lien filing, out of an unsecured obligation.

See § 70.143 (a) and (e) of this part for definitions of the terms "security interest" and "tax lien filing," respectively. For purposes of this section, a judgment lien is a lien held by a judgment lien creditor as defined in § 70.143(g) of this part.

(b) *Commercial transactions financing agreement.* For purposes of this section, the term "commercial transactions financing agreement" means a written agreement entered into by a person in the course of such person's trade or business:

(1) To make loans to the taxpayer (whether or not at the option of the person agreeing to make such loans) to be secured by commercial financing security acquired by the taxpayer in the ordinary course of the taxpayer's trade or business, or

(2) To purchase commercial financing security, other than inventory, acquired by the taxpayer in the ordinary course of the taxpayer's trade or business. Such an agreement qualifies as a commercial transactions financing agreement only with respect to loans or purchases made under the agreement before the 46th day after the date of tax lien filing or the time when the lender or purchaser has actual notice or knowledge (as defined in § 70.144(a) of this part) of the tax lien filing, if earlier. For purposes of this paragraph, a loan or purchase is considered to have been made in the course of the lender's or purchaser's trade or business if such person is in the business of financing commercial transactions (such as a bank or commercial factor) or if the agreement is incidental to the conduct of such person's trade or business. For example, if a manufacturer finances the accounts receivable of one of its customers, the manufacturer is considered to engage in such financing in the course of its trade or business. The extent of the priority of the lender or purchaser over the tax lien is the amount of the disbursement made before the 46th day after the date the notice of tax lien is filed, or made before the day (before such 46th day) on which the lender or purchaser has actual notice or knowledge of the filing of the notice of the tax lien.

(c) *Commercial financing security*—(1) *In general.* The term "commercial financing security" means:

(i) Paper of a kind ordinarily arising in commercial transactions,

(ii) Accounts receivable (as defined in paragraph (c)(2) of this section),

(iii) Mortgages on real property, and

(iv) Inventory. For purposes of this subparagraph, the term "paper of a kind ordinarily arising in commercial transactions" in general includes any written document customarily used in commercial transactions. For example, such written documents include paper giving contract rights (as defined in paragraph (c)(2) of this section), chattel paper, documents of title to personal property, and negotiable instruments or securities. The term "commercial financing security" does not include general intangibles such as patents or copyrights. A mortgage on real estate (including a deed of trust, contract for sale, and similar instrument) may be commercial financing security if the taxpayer has an interest in the mortgage as a mortgagee or assignee. The term "commercial financing security" does not include a mortgage when the taxpayer is the mortgagor of realty owned by the taxpayer. For purposes of this subparagraph, the term "inventory" includes raw materials and goods in process as well as property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

(2) *Definitions.* For purposes of §§ 70.143 and 70.146 of this part, and this section:

(i) A contract right is any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper, and

(ii) An account receivable is any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper.

(d) *Qualified property.* For purposes of paragraph (a) of this section, qualified property consists solely of commercial financing security acquired by the taxpayer-debtor before the 46th day after the date of tax lien filing. Commercial financing security acquired before such day may be qualified property even though it is acquired by the taxpayer after the lender received actual notice or knowledge of the filing of the tax lien. For example, although the receipt of actual notice or knowledge of the filing of the notice of the tax lien has the effect of ending the period within which protected disbursements may be made to the taxpayer, property which is acquired by the taxpayer after the lender receives actual notice or knowledge of such filing and before such 46th day, which otherwise qualifies as commercial financing security, becomes commercial financing security to which the priority of the lender

extends for loans made before the lender received the actual notice or knowledge. An account receivable (as defined in paragraph (c)(2)(ii) of this section) is acquired by a taxpayer at the time, and to the extent, a right to payment is earned by performance. Chattel paper, documents of title, negotiable instruments, securities, and mortgages on real estate are acquired by a taxpayer when the taxpayer obtains rights in the paper or mortgage. Inventory is acquired by the taxpayer when title passes to the taxpayer. A contract right (as defined in paragraph (c)(2)(i) of this section) is acquired by a taxpayer when the contract is made. Identifiable proceeds, which arise from the collection or disposition of qualified property by the taxpayer, are considered to be acquired at the time such qualified property is acquired if the secured party has a continuously perfected security interest in the proceeds under local law. The term "proceeds" includes whatever is received when collateral is sold, exchanged, or collected. For purposes of this paragraph, the term "identifiable proceeds" does not include money, checks and the like which have been commingled with other cash proceeds. Property acquired by the taxpayer after the 45th day following tax lien filing, by the expenditure of proceeds, is not qualified property.

(e) *Purchaser treated as acquiring security interest.* A person who purchases commercial financing security, other than inventory, pursuant to a commercial transactions financing agreement is treated, for purposes of this section, as having acquired a security interest in the commercial financing security. In the case of a bona fide purchase at a discount, a purchaser of commercial financing security who satisfies the requirements of this section has priority over the tax lien to the full extent of the security.

(26 U.S.C. 6323)

§ 70.233 Protection for real property construction or improvement financing agreements.

(a) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid with respect to a security interest which:

- (1) Comes into existence after the tax lien filing,
- (2) Is on qualified property covered by the terms of a real property construction or improvement financing agreement entered into before the tax lien filing, and
- (3) Is protected under local law against a judgment lien arising, as of the

time of tax lien filing, out of an unsecured obligation. For purposes of this section, it is immaterial that the holder of the security interest had actual notice or knowledge of the lien at the time disbursements are made pursuant to such an agreement. See § 70.143 (a) and (e) of this part for general definitions of the terms "security interest" and "tax lien filing." For purposes of this section, a judgment lien is a lien held by a judgment lien creditor as defined in § 70.143(g) of this part.

(b) *Real property construction or improvement financing agreement.* For purposes of this section, the term "real property construction or improvement financing agreement" means any written agreement to make cash disbursements (whether or not at the option of the party agreeing to make such disbursements):

- (1) To finance the construction, improvement, or demolition of real property if the agreement provides for a security interest in the real property with respect to which the construction, improvement, or demolition has been or is to be made;
- (2) To finance a contract to construct or improve, or demolish real property if the agreement provides for a security interest in the proceeds of the contract; or
- (3) To finance the raising or harvesting of a farm crop or the raising of livestock or other animals if the agreement provides for a security interest in any property subject to the lien imposed by 26 U.S.C. 6321 at the time of tax lien filing, in the crop raised or harvested, or in the livestock or other animals raised.

For purposes of paragraphs (b) (1) and (2) of this section, construction or improvement may include demolition. For purposes of any agreement described in paragraph (b)(3) of this section, the furnishing of goods and services is treated as the disbursement of cash.

(c) *Qualified property.* For purposes of this section, the term "qualified property" includes only:

- (1) In the case of an agreement described in paragraph (b)(1) of this section, the real property with respect to which the construction or improvement has been or is to be made;
- (2) In the case of an agreement described in paragraph (b)(2) of this section, the proceeds of the contract to construct or improve real property; or
- (3) In the case of an agreement described in paragraph (b)(3) of this section, property subject to the lien imposed by 26 U.S.C. 6321 at the time of tax lien filing, the farm crop raised or

harvested, or the livestock or other animals raised.

(26 U.S.C. 6323)

§ 70.234 Protection for obligatory disbursement agreements.

(a) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid with respect to security interest which:

- (1) Comes into existence after the tax lien filing,
- (2) Is in qualified property covered by the terms of an obligatory disbursement agreement entered into before the tax lien filing, and
- (3) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

See § 70.143 (a) and (e) of this part for definitions of the terms "security interest" and "tax lien filing." For purposes of this section, a judgment lien creditor as defined in § 70.143(g) of this part.

(b) *Obligatory disbursement agreement.* For purposes of this section, the term "obligatory disbursement agreement" means a written agreement, entered into by a person in the course of the person's trade or business, to make disbursements. An agreement is treated as an obligatory disbursement agreement only with respect to disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer. The obligation to pay must be conditioned upon an event beyond the control of the obligor. For example, the provisions of this section are applicable where an issuing bank obligates itself to honor drafts or other demands for payment on a letter of credit and a bank, in good faith, relies upon that letter of credit in making advances. The provisions of this section are also applicable, for example, where a bonding company obligates itself to make payments to indemnify against loss or liability and, under the terms of the bond, makes a payment with respect to a loss. The priority described in this section is not applicable, for example, in the case of an accommodation endorsement by an endorser who assumes the obligation other than in the course of the endorser's trade or business.

(c) *Qualified property.* Except as provided under paragraph (d) of this section, the term "qualified property," for purposes of this section, means property subject to the lien imposed by 26 U.S.C. 6321 at the time of tax lien filing and, to the extent that the

acquisition is directly traceable to the obligatory disbursement, property acquired by the taxpayer after tax lien filing.

(d) *Special rule for surety agreements.* Where the obligatory disbursement agreement is an agreement insuring the performance of a contract of the taxpayer and another person, the term "qualified property" shall be treated as also including:

(1) The proceeds of the contract the performance of which was insured, and

(2) If the contract the performance of which was insured is a contract to construct or improve real property, to produce goods, or to furnish services, any tangible personal property used by the taxpayer in the performance of the insured contract.

For example, a surety company which holds a security interest, arising from cash disbursements made after tax lien filing under a payment or performance bond on a real estate construction project, has priority over the tax lien with respect to the proceeds of the construction contract and, in addition, with respect to any tangible personal property used by the taxpayer in the construction project if its security interest in the tangible personal property is protected under local law against a judgment lien arising, as of the time the tax lien was filed, out of an unsecured obligation.

(26 U.S.C. 6323)

Par. 61. Sections 70.241 through 70.245 and an undesignated center heading preceding them are added to read as follows:

Limitations on Levies

§ 70.241 Property exempt from levy.

(a) *Enumeration.* There shall be exempt from levy:

(1) *Wearing apparel and school books.* Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of the taxpayer's family. Expensive items of wearing apparel, such as furs, which are luxuries and are not necessary for the taxpayer or for members of the taxpayer's family, are not exempt from levy.

(2) *Fuel, provisions, furniture, and personal effects.* If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed \$1,650 in value. For purposes of this provision, an individual who is the only remaining member of a family and who lives alone is not the head of a family.

(3) *Books and tools of a trade, business or profession.* So many of the books and tools necessary for the trade, business, or profession of an individual taxpayer as do not exceed in the aggregate \$1,100 in value.

(4) *Unemployment benefits.* Any amount payable to an individual with respect to that individual's unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State, or of the District of Columbia or of the Commonwealth of Puerto Rico.

(5) *Undelivered mail.* Mail, addressed to any person, which has not been delivered to the addressee.

(6) *Certain annuity and pension payments.* Annuity or pension payments under the Railroad Retirement Act (45 U.S.C. chapter 9), benefits under the Railroad Unemployment Insurance Act (45 U.S.C. chapter 11), special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retiree pay under 10 U.S.C. chapter 73.

(7) *Workmen's compensation.* Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) *Judgments for support of minor children.* If the taxpayer is required under any type of order or decree (including an interlocutory decree or a decree of support pendente lite) of a court of competent jurisdiction, entered prior to the day of levy, to contribute to the support of such taxpayer's minor children, so much of the taxpayer's salary, wages, or other income as is necessary to comply with such order or decree. The taxpayer must establish the amount necessary to comply with the order or decree. The Chief, Tax Processing Center is not required to release a levy until such time as that official is satisfied that the amount to be released from levy will actually be applied in satisfaction of the support obligation. The Chief, Tax Processing Center may make arrangements with a delinquent taxpayer to establish a specific amount of such taxpayer's salary, wage, or other income for each pay period which shall be exempt from levy. Any request for such an arrangement shall be directed to the Chief, Tax Processing Center. Where the taxpayer has more than one source of income sufficient to satisfy the support

obligation imposed by the order or decree, the amount exempt from levy may at the discretion of the Chief, Tax Processing Center be allocated entirely to one salary, wage, or source of other income or be apportioned between the several salaries, wages, or other sources of income.

(9) *Minimum exemption for wages, salary, and other income.* Amounts payable to or received by the taxpayer as wages or salary for personal services, or as other income, to the extent provided in §§ 70.242 through 70.245 of this part.

(10) *Certain service-connected disability payments.* Any amount payable to an individual as a service-connected (within the meaning of 38 U.S.C. 101(16)) disability benefit under:

(i) 38 U.S.C. chapter 11, subchapter II, III, IV, V, or VI, or

(ii) 38 U.S.C. chapter 13, 21, 23, 31, 32, 34, 35, 37, or 39 shall be exempt from levy.

(11) *Certain public assistance payments.* Any amount payable to an individual as a recipient of public assistance under:

(i) Title 42 U.S.C. subchapter IV (relating to aid to families with dependent children) or 42 U.S.C. subchapter XVI (relating to supplemental security income for the aged, blind, and disabled), or

(ii) State or local government public assistance or public welfare programs for which eligibility is determined by a needs or income test shall be exempt from levy.

(12) *Assistance under job training partnership act.* Any amount payable to a participant under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*) from funds appropriated pursuant to such Act shall be exempt from levy.

(13) *Principal residence exempt in absence of certain approval or jeopardy.* Except to the extent provided in § 70.166 of this part, the principal residence of the taxpayer (within the meaning of 26 U.S.C. 1034) is exempt from levy.

(b) *Appraisal.* The ATF officer seizing property of the type described in 26 U.S.C. 6334(a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the officer making the seizure, such officer shall summon three disinterested individuals who shall make the valuation.

(c) *Other property.* No other property or rights to property are exempt from levy except the property specifically exempted by 26 U.S.C. 6334(a). No provisions of a State law may exempt

property or rights to property from levy for the collection of any Federal tax. Thus, property exempt from execution under State personal or homestead exemption laws is, nevertheless, subject to levy by the United States for collection of its taxes.

(26 U.S.C. 6334)

§ 70.242 Wages, salary and other income.

(a) *In general.* Under 26 U.S.C. 6334(a)(9) and (d) certain amounts payable to or received by a taxpayer as wages, salary or other income are exempt from levy. This section describes the income of a taxpayer that is eligible for the exemption from levy (paragraph (b) of this section) and how exempt amounts are to be paid to the taxpayer (paragraph (c) of this section). Section 70.243 of this part describes the sum which will be exempt from levy for each of the taxpayer's payroll periods. Payroll periods are described in § 70.244 of this part. Amounts exempt from levy are determined in part by the number of persons claimed by the taxpayer as dependents. Section 70.245 of this part describes the manner in which the taxpayer is to claim any dependent exemptions and the manner in which the employer is to compute the exempt amount and pay the balance to the Chief, Tax Processing Center.

(b) *Eligible taxpayer income.* Only wages, salary or other income payable to the taxpayer after the levy is made on the payor may be exempt from levy under 26 U.S.C. 6334 (a)(9). No amount of wages, salary or other income which is paid to the taxpayer before levy is made on the payor will be so exempt from levy.

(c) *Payment of exempt amounts to taxpayer—(1) From wages, salary or other income not subject to levy.* In the case of a taxpayer who has more than one source of wages, salary or other income, the Chief, Tax Processing Center may elect to levy on only one or more such source while leaving other sources of salary or other income free from levy. If those wages, salary or other income which the Chief, Tax Processing Center leaves free from levy equal or exceed the amount to which the taxpayer is entitled as an exemption from levy under 26 U.S.C. 6334(a)(9) and (d) and § 70.243 of this part (and is not otherwise exempt), then no amount of the taxpayer's wages, salary or other income on which the Chief, Tax Processing Center elects to levy is exempt from levy. The Chief, Tax Processing Center shall notify the employer or other person subject to levy that no amount of the taxpayer's wages,

salary or other income is exempt from levy.

(2) *From wages, salary or other income subject to levy.* If the taxpayer's income upon which the Chief, Tax Processing Center does not levy is less than that amount to which the taxpayer is entitled as an exemption, then an amount determined pursuant to § 70.243 of this part is to be paid to the taxpayer from those wages, salary or other income which are subject to levy. The Chief, Tax Processing Center will designate those wages, salary or other income subject to levy from which such amount will be paid to the taxpayer. The Chief, Tax Processing Center will generally make this designation by delivering to the employer, or other person levied upon, the form upon which the taxpayer is to claim any dependent exemption. The form will accompany the notice of levy. The person receiving the form from the Chief, Tax Processing Center must promptly deliver it to the taxpayer. In the case of some employers having a large number of employees, however, the Chief, Tax Processing Center will send the form upon which an employee is to claim any dependent exemption directly to the employee. In such a case, the notice of levy will indicate that the form for claiming dependent exemptions has been sent to the taxpayer. If a notice of levy is not accompanied by the form for claiming dependent exemptions and does not indicate that the form was sent directly to the taxpayer, then the person levied upon must make payment to the Chief, Tax Processing Center without regard to amounts prescribed by § 70.243 of this part as exempt from levy. If a notice of levy is accompanied by the form for claiming dependent exemptions or indicates that the form was sent directly to the taxpayer, then the person levied upon is to pay over to the taxpayer, amounts determined to be exempt from levy pursuant to § 70.243 and § 70.245 (b) and (c) of this part (relating to the requirement that the taxpayer submit a claim for any dependent exemption). Amounts not exempt from levy are to be paid to the Chief, Tax Processing Center in accordance with the terms of the levy. (26 U.S.C. 6334)

§ 70.243 Exempt amount.

Amount payable to the taxpayer as wages, salary, or other income for each payroll period described in § 70.244 of this part are exempt from levy as follows:

(a) If the payroll period is weekly, an amount equal to:

- (1) The sum of:
- (i) The standard deduction, and

(ii) The aggregate amount of the deductions for personal exemption allowed the taxpayer under 26 U.S.C. 151 in the taxable year in which such levy occurs, divided by

(2) 52.

(b) If the payroll period is not weekly, the amount exempt from levy shall be an amount which as nearly as possible will result in the same total exemption from levy for such individual over a period of time as such individual would have under paragraph (a) of this section if (during such period of time) the individual were paid or received such wages, salary or other income on a regular weekly basis.

(26 U.S.C. 6334)

§ 70.244 Payroll period.

For purpose of determining the amount of wages, salary or other income exempt from levy under 26 U.S.C. 6334(a)(9):

(a) *Regularly used calendar periods.* In the case of wages, salary or other income paid to the taxpayer on the basis of an established calendar period regularly used by the employer or other person levied upon for payroll or payment purpose (e.g., daily, weekly, biweekly, semimonthly, or monthly), that period is the taxpayer's payroll period.

(b) *Amounts paid on recurrent but irregular basis.* In the case of wages, salary, or other income paid to the taxpayer on a recurrent but irregular basis, the first day of the taxpayer's payroll period is that day following the day upon which the wages, salary, or other income were last paid to the taxpayer. The last day of the payroll period is that day upon which the current payment becomes payable to him or her. However, in any case in which:

(1) Amounts are paid to the taxpayer on a recurrent but irregular basis, and

(2) the last payment was paid to the taxpayer more than 60 days before the current payment becomes payable, the current payment will be deemed a one-time payment (see paragraph (c) of this section).

(c) *Nonrecurrent payments.* In the case of wages, salary or other income paid to the taxpayer on a one-time basis, the taxpayer's payroll period is deemed to be weekly (i.e., the 1-week period ending on the day of payment).

(26 U.S.C. 6334)

§ 70.245 Computation of exempt amount and payment of amounts not exempt from levy to the Chief, Tax Processing Center.

(a) *General.* Unless advised by the Chief, Tax Processing Center that no

part of the money due to the taxpayer is exempt from levy, the employer or other person levied upon will compute the exempt amount, using the formula in § 70.243 of this part and the taxpayer's statement of exemptions and filing status described in paragraph (b) of this section.

(b) *Statement of exemptions and filing status.* Unless the taxpayer submits a statement of exemptions and filing status to the employer or other person levied upon, the exempt amount will be applied as if the taxpayer were a married individual filing a separate return with only 1 personal exemption. A statement of exemptions and filing status shall be made by either:

(1) Completion of the form provided for this purpose by the Bureau, or

(2) A written statement that:

(i) Gives the taxpayer's filing status for income tax purposes,

(ii) Shows any additional standard deduction if the taxpayer or the taxpayer's spouse is at least 65 and/or blind,

(iii) Identified by name and by relationship to the taxpayer each person for whom a dependent exemption is claimed,

(iv) Is signed by the taxpayer, and

(v) Contains a declaration that it is made under the penalties of perjury.

(c) *Time for submission of statement.* The taxpayer must submit the statement of exemptions and filing status to the employer or other person levied upon no later than the later of:

(1) The third day before the last day of the payroll period for which the exemption is claimed (that is, the third day before payday), or

(2) If the Chief, Tax Processing Center delivers the forms for the statement of exemption and filing status to the employer or other person levied upon (see § 70.242(c)(2) of this part), the second day after the date the taxpayer receives the form.

For purposes of paragraphs (c) (1) and (2) of this section, the term "day" does not include Saturdays, Sunday or a legal holiday within the meaning of 26 U.S.C. 7503. Failure on the part of the taxpayer to submit a timely statement of exemptions and filing status will result in the computation of the exempt amount as if the taxpayer were a married individual filing a separate return with only 1 personal exemption for the applicable pay period, except that the employer or other person levied upon may accept a statement of exemptions and filing status not timely submitted in accordance with this paragraph, and may prepare a disbursement to the taxpayer based

upon the information properly verified therein, if payment to the Chief, Tax Processing Center in accordance with the levy is not thereby delayed.

(d) *Payment of amounts not exempt from levy to the Chief, Tax Processing Center—(1) In General.* Wages, Salary, or other income the subject of a levy are payable to the Chief, Tax Processing Center on the date the payor is otherwise obligated to pay the taxpayer (see § 70.242(c) of this part).

(2) *Delayed payment in certain cases.* If, however, as described in paragraph (c)(2) of this section, the taxpayer may submit a statement of exemptions and filing status after the third day before payday, amounts payable to the taxpayer on that payday, to the extent not exempt from levy, are payable to the Chief, Tax Processing Center on the third day following the date on which the taxpayer may timely submit the statement of exemptions and filing status under paragraph (c)(2) of this section. For purposes of this rule, the term "day" does not include Saturday, Sunday or a legal holiday within the meaning of 26 U.S.C. 7503.

(26 U.S.C. 6334)

Par. 62. An undesignated centerheading is added immediately preceding § 70.251 and that section is amended by revising the second sentence of (a)(2) and the last sentence of (b), to read as follows:

Periods of Limitation in Judicial Proceedings

§ 70.251 Periods of limitation on suits by taxpayers.

(a) * * *

(2) * * * Except as provided in paragraph (b) of this section, no suit or proceeding for the recovery of any tax, penalty, or other sum imposed under the provision of 26 U.S.C. enforced and administered by the Bureau may be brought after the expiration of 2 years from the date of mailing, by either registered or certified mail, by a regional director (compliance) or the Chief, Tax Processing Center, to a taxpayer of a statutory notice of disallowance of the part of the claim to which the suit or proceeding relates.

(b) * * * The agreement will not be effective until signed by a regional director (compliance) or the Chief, Tax Processing Center.

Par. 63. Section 70.253 and an undesignated centerheading immediately following are added to read as follows:

§ 70.253 Periods of limitation on suits by persons other than taxpayers.

(a) *General rule.* No suit or proceeding, except as otherwise provided in 26 U.S.C. 6532(c)(2) and paragraph (b) of this section, under 26 U.S.C. 7426 and § 70.207 of this part 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 26 U.S.C. 6325(b)(3) giving rise to such action.

(b) *Period when claim is filed.* The 9-month period described in 26 U.S.C. 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 § 70.67(b)(2) of this part for the return of property wrongfully levied upon, or

(2) 6 months from the date of mailing by registered or certified mail by the regional director (compliance) to the party claimant of a notice of disallowance of the part of the request to which the action relates. A request which, under § 70.67(b)(3) of this part, is not considered adequate does not extend the 9-month period described in paragraph (a) of this section.

(26 U.S.C. 6532)

Limitations on Credit or Refund

Par. 64. Section 70.262(c)(2) is amended by revising the first sentence to read as follows:

§ 70.262 Limitations on allowance of credits and refunds.

(c) * * *

(2) If no claim is filed, the amount of the credit or refund allowed or made by the regional director (compliance) or the Chief, Tax Processing Center shall not exceed the portion of the tax paid within the 3 years immediately preceding the allowance of the credit or refund. * * *

Par. 65. Section 70.271 and an undesignated centerheading preceding it are added to read as follows:

Transferees

§ 70.271 Procedure in the case of transferred assets.

(a) *Method of collection.* (1) The liability, at law or in equity, of a transferee of property of any person liable in respect of any tax imposed under provisions of 26 U.S.C. enforced and administered by the Bureau, in any case where the liability of the transferee arises on the liquidation of a corporation or partnership, or a corporate reorganization within the meaning of 26

U.S.C. 368(a), shall be assessed against such transferee and paid and collected in the same manner and subject to the same provisions and limitations as in the case of the tax with respect to which such liability is incurred, except as hereinafter provided.

(2) *Applicable provisions.* The provisions of 26 U.S.C. made applicable by 26 U.S.C. 6901(a) to the liability of a transferee referred to in paragraph (a)(1) of this section, include the provisions relating to:

(i) Delinquency in payment after notice and demand and the amount of interest attaching because of such delinquency;

(ii) The authorization of distraint and proceedings in court for collection; and

(iii) The prohibition of claims and suits for refund.

For detailed provisions relating to assessments, collections, and refunds, see 26 U.S.C. chapters 63, 64, and 65, respectively.

(b) *Definition of transferee.* As used in this section, the term "transferee" includes the shareholder of a dissolved corporation, the assignee or donee of an insolvent person, the successor of a corporation, a party to a reorganization as defined in 26 U.S.C. 368, and all other classes of distributees.

(c) *Period of limitations on assessment.* The period of limitations for assessment of the liability of a transferee is as follows:

(1) *Initial transferee.* In the case of the liability of an initial transferee, 1 year after the expiration of the period of limitations for assessment against the transferor.

(2) *Transferee of transferee.* In the case of the liability of a transferee of a transferee, 1 year after the expiration of the period of limitations for assessment against the preceding transferee, or 3 years after the expiration of the period of limitations for assessment against the taxpayer, whichever of such periods first expires.

(3) *Court proceeding against taxpayer or last preceding transferee.* If, before the expiration of the period specified in paragraph (c)(1) or (2) of this section, (whichever is applicable), a court proceeding against the taxpayer or last preceding transferee for the collection of the tax or liability in respect thereof, respectively, has been begun within the period of limitation for the commencement of such proceeding, then within 1 year after the return of execution in such proceeding.

(d) *Extension by agreement—(1) Extension of time for assessment.* The time prescribed by 26 U.S.C. 6901 for the assessment of the liability of a

transferee may, prior to the expiration of such time, be extended for any period of time agreed upon in writing by the transferee and the regional director (compliance) or the Chief, Tax Processing Center. The extension shall become effective when the agreement has been executed by both parties. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(2) *Extension of times for credit or refund.* (i) For the purposes of determining the period of limitations on credit or refund to the transferee of overpayments made by such transferee or overpayments made by the taxpayer to which such transferee may be legally entitled to credit or refund, an agreement and any extension thereof referred to in paragraph (d)(1) of this section, shall be deemed an agreement and extension thereof for purposes of 26 U.S.C. 6511(c) (relating to limitations on credit or refund in case of extension of time by agreement).

(ii) For the purpose of determining the limit specified in 26 U.S.C. 6511(c)(2) on the amount of the credit or refund, if the agreement is executed after the expiration of the period of limitations for assessment against the taxpayer with reference to whom the liability of such transferee arises, the periods specified in 26 U.S.C. 6511(b)(2) shall be increased by the period from the date of such expiration to the date the agreement is executed.

(e) *Period of assessment against taxpayer.* For the purpose of determining the period of limitations for assessment against a transferee, if the taxpayer is deceased, or, in the case of a corporation, has terminated its existence, the period of limitations for assessment against the taxpayer shall be the period that would be in effect had the termination of existence not occurred.

(26 U.S.C. 6901)

Par. 66. Sections 70.281 and 70.282 and a related undesignated center heading are added to read as follows:

Bonds

§ 70.281 Form of bond and security required.

(a) *In general.* Any person required to furnish a bond under the provisions of this part shall execute such bond:

(1) On the appropriate form prescribed by the Bureau (which may be obtained from the regional director (compliance) or the Chief, Tax Processing Center), and

(2) With satisfactory surety.

For provisions as to what will be considered "satisfactory surety", see paragraph (b) of this section. The bonds referred to in this paragraph shall be drawn in favor of the United States.

(b) *Satisfactory surety—(1) Approved surety company or bonds or notes of the United States.* For purposes of paragraph (a) of this section, a bond shall be considered executed with satisfactory surety if:

(i) It is executed by a surety company holding a certificate of authority from the Secretary as an acceptable surety on Federal bonds; or

(ii) It is secured by bonds or notes of the United States as provided in by 31 U.S.C. 9303.

(2) *Other surety acceptable in discretion of ATF officials.* Unless otherwise expressly provided in 26 U.S.C. or this part, a bond may, in the discretion of the regional director (compliance) or the Chief, Tax Processing Center, be considered executed with satisfactory surety if, in lieu of being executed or secured as provided in paragraph (b)(1) of this section, it is:

(i) Executed by a corporate surety (other than a surety company) provided such corporate surety establishes that it is within its corporate powers to act as surety for another corporation or an individual;

(ii) Executed by two or more individual sureties, provided such individual sureties meet the conditions contained in paragraph (b)(3) of this section;

(iii) Secured by a mortgage on real or personal property;

(iv) Secured by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any State, Territory, or possession of the United States, or by a U.S. postal, bank, express or telegraph money order;

(v) Secured by corporate bonds or stocks, or by bonds issued by a State or political subdivision thereof, of recognized stability; or

(vi) Secured by any other acceptable collateral. Collateral shall be deposited with the regional director (compliance) or the Chief, Tax Processing Center or, in that official's discretion, with a responsible financial institution acting as escrow agent.

(3) *Conditions to be met by individual sureties.* If a bond is executed by two or more individual sureties, the following conditions must be met by each such individual surety:

(i) The surety must reside within the State in which the principal place of

business or legal residence of the primary obligor is located;

(ii) The surety must have property subject to execution of a current market value, above all encumbrances, equal to at least the penalty of the bond;

(iii) All real property which the surety offers as security must be located in the State in which the principal place of business or legal residence of the primary obligor is located;

(iv) The surety must agree not to mortgage, or otherwise encumber, any property offered as security while the bond continues in effect without first securing the permission of the official with whom the bond is filed; and

(v) The surety must file with the bond, and annually thereafter so long as the bond continues in effect, an affidavit as to the adequacy of the security, executed on the appropriate form furnished by the regional director (compliance) or the Chief, Tax Processing Center.

Partners may not act as sureties upon bonds of their partnership. Stockholders of a corporate principal may be accepted as sureties provided their qualifications as such are independent of their holdings of the stock of the corporation.

(4) *Adequacy of surety.* No surety or security shall be accepted if it does not adequately protect the interest of the United States.

(26 U.S.C. 7101)

§ 70.282 Single bond in lieu of multiple bonds.

In the case of bonds required under this part, a single bond will not be accepted in lieu of two or more bonds.

(26 U.S.C. 7102)

Par. 67. Sections 70.301 through 70.306 and an undesignated centerheading preceding them are added to read as follows:

Miscellaneous Provisions

§ 70.301 Reproduction of returns and other documents.

(a) *In general.* The Director may contract with any Federal agency or any person to have such agency or person process films and other photoimpressions of any return, statement, document, or of any card, record, or other matter required under the provisions of 26 U.S.C. enforced and administered by the Bureau, and make reproductions from such films and photoimpressions.

(b) *Safeguards—(1) By private contractor.* Any person entering into a contract with the Bureau for the performance of any of the services described in paragraph (a) of this

section shall agree to comply, and to assume responsibility for compliance by that person's employees, with the following requirements:

(i) The films or photoimpressions, and reproductions made therefrom, shall be used only for the purpose of carrying out the provisions of the contract, and information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract;

(ii) All the services shall be performed under the supervision of the person with whom the contract is made or that person's responsible employees;

(iii) All material received for processing and all processed and reproduced material shall be kept in a locked and fireproof compartment in a secure place when not being worked upon;

(iv) All spoilage of reproductions made from the film or photoimpressions supplied to the contractor shall be destroyed, and a statement under the penalties of perjury shall be submitted to the Bureau that such destruction has been accomplished; and

(v) All film, photoimpressions, and reproductions made therefrom, shall be transmitted to the Bureau by personal delivery, first-class mail, parcel post, or express.

(2) *By Federal agency.* Any Federal agency entering into a contract with the Bureau for the performance of any services described in paragraph (a) of this section, shall treat as confidential all material processed or reproduced pursuant to such contract.

(3) *Inspection.* The Bureau shall have the right to send its officers and employees into the office and plants of Federal agencies and other contractors for inspection of the facilities and operations provided for the performance of any work contracted or to be contracted for under this section.

(4) *Criminal sanctions.* For penalty provisions relating to the unauthorized use and disclosure of information in violation of the provisions of this section, see 26 U.S.C. 7213(c).

(26 U.S.C. 7513)

§ 70.302 Fees and costs for witnesses.

(a) *Introduction.* Title 26 U.S.C. 7610 provides that the Bureau may make payments to certain persons who are summoned to give information to the Bureau under 26 U.S.C. 7602 and § 70.22 of this part. Under 26 U.S.C. 7610 witnesses generally will not be reimbursed for actual expenses incurred but instead will be paid in accordance with the payment rates established by

regulations. Paragraph (b) of this section contains elaborations of certain terms found in 26 U.S.C. 7610 and definitions of other terms used in the regulations under 26 U.S.C. 7610 (a) and (b); and paragraphs (c) and (d) of this section contain rules and rates applicable to payments under 26 U.S.C. 7610.

(b) *Definitions—(1) Directly incurred costs.* Directly incurred costs are costs incurred solely, immediately, and necessarily as a consequence of searching for, reproducing, or transporting records in order to comply with a summons. They do not include a proportionate allocation of fixed costs, such as overhead, equipment depreciation, etc. However, where a third party's records are stored at an independent storage facility that charges the third party a search fee to search for, reproduce, or transport particular records requested, these fees are considered to be directly incurred by the summoned third party.

(2) *Reproduction cost.* Reproduction costs are costs incurred in making copies or duplicates of summoned documents, transcripts, and other similar material.

(3) *Search costs.* Search costs include only the total cost of personnel time directly incurred in searching for records or information and the cost of retrieving information stored by computer. Salaries of persons locating and retrieving summoned material are not included in search costs. Also, search costs do not include salaries, fees, or similar expenditures for analysis of material or for managerial or legal advice, expertise, or research, or time spent for these activities.

(4) *Third party.* A third party is any person served with a summons, other than a person with respect to whose liability a summons is issued, or an officer, employee, agent, accountant, or attorney of that person.

(5) *Third party records.* Third party records are books, papers, records, or other data in which the person with respect to whose liability a summons is issued does not have a proprietary interest at the time the summons is served.

(6) *Transportation costs.* Transportation costs include only costs incurred to transport personnel to search for records or information requested and costs incurred solely by the need to transport the summoned material to the place of examination. These costs do not include the cost of transporting the summoned witness for appearance at the place of examination. See paragraph (c)(2) of this section for payment of travel expenses.

(c) *Conditions and rates of payments*—(1) *Basis for payment.*

Payment for search, reproduction, and transportation costs will be made only to third parties served with a summons to produce third party records or information and only for material requested by the summons. Payment will be made only for those costs both directly incurred and reasonably necessary. No payment will be made until the third party has satisfactorily complied with the summons and has submitted an itemized bill or invoice showing specific details concerning the costs to the Bureau employee before whom the third party was summoned. If a third party charges any other person for any cost for which the third party is seeking payment from the Bureau, the amount charged to the other person must be subtracted from the amount the Bureau must pay.

(2) *Payment rates.* The following rates are established.

(i) *Search costs.* (A) For the total amount of personnel time required to locate records or information, \$8.50 per person hour.

(B) For retrieval of information stored by computer in the format in which it is normally produced, actual costs, based on computer time and necessary supplies, except that personnel time for computer search is payable only under paragraph (c)(2)(i)(A) of this section.

(ii) *Reproduction costs.* (A) For copies of documents \$.20 per page.

(B) For photographers, films and other materials, actual cost, except that personnel time is payable only under paragraph (a)(2)(i)(A) of this section.

(iii) *Transportation costs.* For transportation costs, actual cost, except that personnel time is payable only under paragraph (c)(2)(i)(A) of this section.

(d) *Appearance fees and allowances*—(1) *In general.* Under 26 U.S.C. 7610(a)(1) and this paragraph, the Bureau shall pay a summoned person certain fees and allowances. No payments will be made until after the party summoned appears and has submitted any necessary receipts or other evidence of costs to the Bureau employee before whom the person was summoned.

(2) *Attendance fees.* A summoned person shall be paid an attendance fee for each day's attendance. A summoned person shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of the attendance or at any time during the attendance. The attendance fee is the higher of \$30 per day or the amount paid under 28 U.S.C. 1821(b) to witnesses in

attendance at courts of the United States at the time of the summoned person's appearance.

(3) *Travel allowances.* A summoned person who travels by common carrier shall be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled to and from the summoned person's residence by the shortest practical route in going to and returning from the place of attendance. Such a summoned person shall utilize a common carrier at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished. A travel allowance equal to the mileage allowance which the Administrator of General Services has prescribed, under 5 U.S.C. 5704, for official travel of employees of the Federal Government shall be paid to each summoned person who travels by privately owned vehicle. Computation of mileage under this paragraph shall be made on the basis of a uniform table of distances adopted by the Administrator of General Services. Toll charges for toll roads, bridges, tunnels and ferries, taxicab fares between places of lodging and carrier terminals, and parking fees (upon presentation of a valid parking receipt) shall be paid in full to a summoned person incurring those expenses.

(4) *Subsistence allowances.* A subsistence allowance shall be paid to a summoned person (other than a summoned person who is incarcerated) when an overnight stay is required at the place of attendance because the place is so far removed from the residence of the summoned person as to prohibit return thereto from day to day. A subsistence allowance for a summoned person shall be paid in an amount not to exceed the maximum allowance prescribed by the Administrator of General Services, under 5 U.S.C. 5702(a), for official travel in the area of attendance by employees of the Federal Government. An alien who has been paroled into the United States by the Attorney General, under 8 U.S.C. 1182(d)(5)(A), or an alien who either has admitted belonging to a class of aliens who are deportable or has been determined under 8 U.S.C. 1252(b) to be deportable, shall be ineligible to receive the fees or allowances provided for under 26 U.S.C. 7610(a)(1).

(26 U.S.C. 7610)

§ 70.303 Rules and regulations.

(a) *Issuance.* The Director, with the approval of the Secretary, shall prescribe all needful rules and regulations for the enforcement of provisions of 26 U.S.C. enforced and

administered by the Bureau (except where this authority is expressly given by 26 U.S.C. to any other person other than an officer or employee of the Treasury Department), including all rules and regulations as may be necessary by reason of any alteration of law in relation to taxes within the Director's jurisdiction.

(b) *Retroactivity.* The Director, with the approval of the Secretary, may prescribe the extent, if any, to which any regulation or Treasury decision relating to the laws within the Director's jurisdiction shall be applied without retroactive effect. The Director may prescribe the extent, if any, to which any ruling relating to the laws within the Director's jurisdiction, issued by or pursuant to authorization from the Director, shall be applied without retroactive effect.

(c) *Preparation and distribution of regulations, forms, stamps, and other matters.* The Director, under the direction of the Secretary, shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of taxes within the Director's jurisdiction.

(26 U.S.C. 7805)

§ 70.304 Place for filing documents other than returns.

(a) If a document, other than a return, is required to be filed with a regional office, such document may be hand delivered to such office.

(b) For purposes of this section, a return or document will be considered to be hand carried if it is brought to the regional director (compliance) or designated delegate by the person required to file the return or other document, or by the person's agent. Examples of persons who will be considered to be agents, for purposes of the preceding sentence, are: Members of the taxpayer's family, an employee of the taxpayer, the taxpayer's attorney, accountant, or tax advisor, and messengers employed by the taxpayer. A return or document will not be considered to be hand carried if it is sent to the Bureau through the U.S. Mail.

(26 U.S.C. 6091)

§ 70.305 Timely mailing treated as timely filing.

(a) *General rule.* Title 26 U.S.C. 7502 provides that, if the requirements of such section are met, a document shall be deemed to be filed on the date of the postmark stamped on the cover in which such document was mailed. Thus, if the cover containing such document bears a timely postmark, the document will be

considered filed timely although it is received after the last date, or the last day of the period, prescribed for filing such document. Title 26 U.S.C. 7502 is applicable only to those documents which come within the definition of such term provided by paragraph (b) of this section and only if the document is mailed in accordance with paragraph (c) of this section and is delivered in accordance with paragraph (d) of this section.

(b) *Document defined.* The term "document," as used in this section, means any return, claim, statement, or other document required to be filed within a prescribed period or on or before a prescribed date under authority of any provisions of 26 U.S.C. enforced and administered by the Bureau.

(c) *Mailing requirements.* (1) Title 26 U.S.C. 7502 is not applicable unless the document is mailed in accordance with the following requirements:

(i) The document must be contained in an envelope or other appropriate wrapper, properly addressed to the agency, officer, or office with which the document is required to be filed.

(ii) The document must be deposited within the prescribed time in the mail in the United States with sufficient postage prepaid. For this purpose, a document is deposited in the mail in the United States when it is deposited with the domestic mail service of the U.S. Postal Service, as defined by the postal regulations (39 CFR Part 2). Title 26 U.S.C. 7502 does not apply to any document which is deposited with the mail service of any other country.

(iii)(A) If the postmark on the envelope or wrapper is made by the U.S. Postal Service, such postmark must bear a date on or before the last date, or the last day of the period, prescribed for filing the document. If the postmark does not bear a date on or before the last date, or the last day of the period, prescribed for filing the document, the document will be considered not to be filed timely, regardless of when the document is deposited in the mail. Accordingly, the sender who relies upon the applicability of 26 U.S.C. 7502 assumes the risk that the postmark will bear a date on or before the last date, or the last day of the period, prescribed for filing the document, but see paragraph (c)(2) of this section, with respect to the use of registered mail or certified mail to avoid this risk. If the postmark on the envelope or wrapper is not legible, the person who is required to file the document has the burden of proving the time when the postmark was made. Furthermore, in case the cover containing a document bearing a timely postmark made by the U.S. Postal

Service is received after the time when a document postmarked and mailed at such time would ordinarily be received, the sender may be required to prove that it was timely mailed.

(B) If the postmark on the envelope or wrapper is made other than by the U.S. Postal Service, the postmark so made must bear a date on or before the last date, or the last day of the period, prescribed for filing the document, and the document must be received by the agency, officer, or office with which it is required to be filed not later than the time when a document contained in an envelope or other appropriate wrapper which is properly addressed and mailed and sent by the same class of mail would ordinarily be received if it were postmarked at the same point of origin by the U.S. Postal Service on the last date, or the last day of the period, prescribed for filing the document.

However, in case the document is received after the time when a document so mailed and so postmarked by the U.S. Postal Service would ordinarily be received, such document will be treated as having been received at the time when a document so mailed and so postmarked would ordinarily be received, if the person who is required to file the document establishes that it was actually deposited in the mail before the last collection of the mail from the place of deposit which was postmarked (except for the metered mail) by the U.S. Postal Service on or before the last date, or the last day of the period, prescribed for filing the document, that the delay in receiving the document was due to a delay in the transmission of the mail, and the cause of such delay. If the envelope has a postmark made by the U.S. Postal Service in addition to the postmark not so made, the postmark which was not made by the U.S. Postal Service shall be disregarded, and whether the envelope was mailed in accordance with this section shall be determined solely by applying the rules of paragraph (c)(1)(iii)(A) of this section.

(2) If the document is sent by U.S. registered mail, the date of registration of the document shall be treated as the postmark date. If the document is sent by U.S. certified mail and the sender's receipt is postmarked by the postal employee to whom such document is presented, the date of the U.S. postmark on such receipt shall be treated as the postmark date of the document. Accordingly, the risk that the document will not be postmarked on the day that it is deposited in the mail may be overcome by the use of registered mail or certified mail.

(3) As used in this section, the term "the last date, or the last day of the period, prescribed for filing the document" includes any extension of time granted for such filing. Except as provided in 26 U.S.C. 5061 for the filing of returns and payment of a tax under 26 U.S.C. subtitle E, when the last date, or the last day of the period, prescribed for filing the document falls on a Saturday, Sunday, or legal holiday, 26 U.S.C. 7503 is also applicable, so that, in applying the rules of this paragraph, the next succeeding day which is not a Saturday, Sunday, or legal holiday, shall be treated as the last date, or the last day of the period, prescribed for filing the document.

(d) *Delivery.* (1) Title 26 U.S.C. 7502 is not applicable unless the document is delivered by U.S. mail to the agency, officer, or office with which it is required to be filed. However, if the document is sent by registered mail or certified mail, proof that the document was properly registered or that a postmarked certified mail sender's receipt was properly issued therefor, and that the envelope or wrapper was properly addressed to such agency, officer or office shall constitute prima facie evidence that the document was delivered to such agency, officer or office.

(2) Title 26 U.S.C. 7502 is applicable only when the document is delivered after the last date, or the last day of the period, prescribed for filing the document.

(e) *Exceptions.* This section shall not apply with respect to:

(1) The filing of a document in, or the making of a payment to, any court,

(2) Currency or other medium of payment unless actually received and accounted for, or

(3) Returns, claims, statements, or other documents, or payments, which are required under any provision of 26 U.S.C. enforced and administered by the Bureau or the regulations thereunder to be delivered by any method other than by mailing.

(26 U.S.C. 5061 and 7503)

§ 70.306 Time for performance of acts other than payment of tax or filing of any return where last day falls on Saturday, Sunday, or legal holiday.

(a) *In general.* Title 26 U.S.C. 7503 provides that when the last day prescribed under provisions of 26 U.S.C. enforced and administered by the Bureau, for the performance of any act falls on a Saturday, Sunday, or legal holiday, such act shall be considered performed timely if performed on the next succeeding day which is not a

Saturday, Sunday, or legal holiday. For this purpose, any authorized extension of time shall be included in the determining of the last day for performance of any act. Title 26 U.S.C. 7503 is not applicable to the filing of returns and payment of tax under 26 U.S.C. subtitle E. Title 26 U.S.C. 7503 is applicable only in case an act is required under authority of any provisions of 26 U.S.C. enforced and administered by the Bureau to be performed on or before a prescribed date or within a prescribed period. Title 26 U.S.C. 7503 applies to acts to be performed by the taxpayer (such as the filing of a claim for credit or refund of tax) and acts to be performed by the Director, the Chief, Tax Processing Center, or a regional director (compliance), (such as, the giving of any notice with respect to, or making any demand for the payment of, any tax; the assessment or collection of any tax). For rules concerning the payment of any tax or filing of any return required under the authority of 26 U.S.C. subtitle E, relating to alcohol, tobacco, and certain other excise taxes, see 26 U.S.C. 5061 and the regulations covering the specific commodity.

(b) *Legal holidays.* (1) For the purpose of 26 U.S.C. 7503, the term "legal holiday" includes the legal holidays in the District of Columbia. Such legal holidays found in 5 U.S.C. 6103(a), as enacted and made effective by the Act of November 2, 1983 (97 Stat. 917), are:

- (i) January 1, New Year's Day,
- (ii) Third Monday in January, Birthday of Martin Luther King, Jr.,
- (iii) January 20, when such day is Inauguration Day,
- (iv) Third Monday in February, Washington's Birthday,
- (v) Last Monday in May, Memorial Day,
- (vi) July 4, Independence Day,
- (vii) First Monday in September, Labor Day,
- (viii) Second Monday in October, Columbus Day,
- (ix) November 11, Veterans' Day,
- (x) Fourth Thursday in November, Thanksgiving Day, and
- (xi) December 25, Christmas Day.

When a legal holiday in the District of Columbia falls on a Sunday, the next day is a legal holiday in the District of Columbia. For the purpose of 26 U.S.C. 7503, when a legal holiday in the District of Columbia (other than Inauguration Day) falls on a Saturday it shall be treated as falling on the preceding Friday.

(2) In the case of any statement or other document required to be filed, or any other act required under the

authority of provisions of 26 U.S.C. enforced and administered by the Bureau to be performed at any office of the Bureau or any other office or agency of the United States, located outside the District of Columbia, but within an ATF region, the term "legal holiday" includes, in addition to the legal holidays enumerated in paragraph (b)(1) of this section, any statewide legal holiday of the State where the act is required to be performed. If the act is performed in accordance with law at an office of the Bureau or any other office or agency of the United States located in a Territory or possession of the United States, the term "legal holiday" includes, in addition to the legal holidays described in paragraph (b)(1) of this section, any legal holiday which is recognized throughout the Territory or possession in which the office is located. (26 U.S.C. 5061 and 7503)

Par. 68. An undesignated centerheading is added immediately preceding § 70.311 to read as follows:

General Provisions Relating to Stamps, Marks or Labels

Par. 69. An undesignated centerheading is added immediately preceding § 70.321 to read as follows:

Registration

Par. 70. Section 70.321 is amended by adding the OMB control number immediately following the informational cite at the end of the section to read as follows:

§ 70.321 * * *

(Approved by the Office of Management and Budget under control number 1512-0472)

Par. 71. Sections 70.331 through 70.333 and a related undesignated centerheading are added to read as follows:

Crimes, Other Offenses and Forfeitures

§ 70.331 Fraudulent returns, statements, or other documents.

Any person who willfully delivers or discloses to any officer or employee of the Bureau any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than \$10,000 (\$50,000 in the case of a corporation) or imprisoned not more than 1 year, or both.

(26 U.S.C. 7207)

§ 70.332 Unauthorized use or sale of stamps.

Any person who buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge,

except as authorized in the Internal Revenue Code or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device prescribed by the Director under provisions of 26 U.S.C. enforced and administered by the Bureau for the collection or payment of any tax imposed thereunder, shall, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 6 months, or both.

(26 U.S.C. 7209)

§ 70.333 Offenses by officers and employees of the United States

Any officer or employee of the United States acting in connection with any provisions of 26 U.S.C. enforced and administered by the Bureau required to make a written report under the provisions of 26 U.S.C. 7214(a)(8) shall submit such report to the Director, or to a regional director (compliance) or to the Chief, Tax Processing Center.

(26 U.S.C. 7214)

Par. 72. Subpart F is redesignated as subpart E.

Par. 73. Section 70.411 is amended by adding the OMB control number immediately following the end of the section to read as follows:

§ 70.411 Imposition of taxes, qualification requirements, and regulations.

* * * * *

(Approved by the Office of Management and Budget under control number 1512-0472)

Par. 74. Section 70.412 is amended by removing the reference to "§ 70.111(c)" in the last sentence of paragraph (a) and replacing it with "§ 70.411(c)" and by adding the OMB control number immediately following the end of the section to read as follows:

§ 70.412 Excise taxes.

* * * * *

(Approved by the Office of Management and Budget under control number 1512-0472)

Par. 75. Section 70.413 is amended by revising paragraph (b) and revising the first sentence of paragraph (c)(1) and by adding the OMB control number immediately following the end of the section to read as follows:

§ 70.413 Claims.

* * * * *

(b) *Claims for abatement.* When the tax on distilled spirits, wines, or beer is assessed and the taxpayer thinks that the tax is not due under the law, such taxpayer may file a claim for abatement of the tax on ATF Form 5620.8 with the official who made demand for the tax. ATF Form 5620.8 may be procured from the regional director (compliance) or the

Chief, Tax Processing Center. The regional director (compliance) or the Chief, Tax Processing Center may call upon the taxpayer to file a bond in double the amount of the tax in order to insure collection of the tax if the claim is rejected. When the claim is acted upon, the taxpayer is notified of the allowance or rejection of the claim. If the claim is rejected, the regional director (compliance) or the Chief, Tax Processing Center, will initiate action to collect the tax.

(c) *Claims for refund*—(1) *Taxes illegally, erroneously, or excessively collected.* A claim for refund of taxes illegally, erroneously, or excessively collected may be filed by the taxpayer with the official who collected the tax.

(Approved by the Office of Management and Budget under control number 1512-0141)

Par. 76. Section 70.414 is amended by revising the first sentence of paragraph (k) and by adding the OMB control number immediately following the end of the section to read as follows:

§ 70.414 Preparation and filing of claims.

(k) *Reopening claims.* A claimant who wishes to have a rejected claim reopened must, within the applicable statutory period of limitations, submit a written application to the official who originally rejected the claim for reconsideration of the claim. ***

(Approved by the Office of Management and Budget under control number 1512-0141)

Par. 77. Section 70.415 is revised to read as follows:

§ 70.415 Offers in compromise.

Procedure in the case of offers in compromise of liabilities under 26 U.S.C. chapter 51 and of penalties for violation of the Federal Alcohol Administration Act, is set forth in §§ 70.482 through 70.484.

Par. 78. Section 70.417 is revised to read as follows:

§ 70.417 Rulings.

The procedure for rulings in alcohol tax matters is set forth in § 70.471.

Par. 79. Section 70.418 is revised to read as follows:

§ 70.418 Conferences.

Any person desiring a conference in the office of the regional director (compliance) of the region in which such person is located, the Chief, Tax Processing Center, in Cincinnati, or of the Director, in Washington, relative to any matter arising in connection with such person's operations, will be

accorded such a conference upon request. No formal requirements are prescribed for such conference.

Par. 80. Section 70.419 is revised to read as follows:

§ 70.419 Representatives.

Title 31 CFR part 8 is applicable to all representatives of the taxpayer, in the office of the Director, the Chief, Tax Processing Center, or the regional director (compliance).

Par. 81. Section 70.420 is revised to read as follows:

§ 70.420 Forms.

For forms to be used, see § 70.411(c).

Par. 82. Section 70.431 is amended by adding the OMB control number immediately following the end of the section to read as follows:

§ 70.431 Imposition of taxes, regulations.

(Approved by the Office of Management and Budget under control number 1512-0472)

Par. 83. Section 70.432(e) is amended by revising the second sentence and § 70.432(f) is revised to read as follows:

§ 70.432 Qualification and bonding requirements.

(e) *Drawback of tax.* *** Drawback may be allowed only to the person who paid the tax on such articles and who files a claim and otherwise complies with the provisions contained in the applicable regulations referred to in § 70.431. ***

(f) *General.* Detailed information relating to the qualification and bonding requirements, including the forms to be used and the procedure to be followed, is fully set forth in the regulations referred to in § 70.431.

Par. 84. Section 70.433 is amended by revising paragraph (d) and by adding the OMB control number immediately following the end of the section to read as follows:

§ 70.433 Collection of taxes.

(d) *General.* Detailed information about the payment of taxes on tobacco products, and cigarette papers and tubes, including the forms to be used, records to be kept, and reports and inventories to be filed, is contained in the respective regulations referred to in § 70.431.

(Approved by the Office of Management and Budget under control number 1512-0472)

Par. 85. Section 70.435(a) is revised to read as follows:

§ 70.435 Claims.

(a) *General.* Detailed requirements, including the procedure to be followed in the filing of a claim, the form to be used, the supporting documents which must be submitted, the time within which a claim must be filed, and any other limitations or instructions are contained in the applicable regulations referred to in § 70.431.

Par. 86. Section 70.436 is revised to read as follows:

§ 70.436 Offers in compromise.

Procedure in the case of offers in compromise of liabilities under 26 U.S.C. chapter 52 is set forth in §§ 70.482 through 70.484.

Par. 87. Section 70.437 is revised to read as follows:

§ 70.437 Rulings.

The procedure for rulings in tobacco tax matters is set forth in § 70.471.

Par. 88. Section 70.446 is revised to read as follows:

§ 70.446 Rulings.

The procedure for rulings in the firearms and explosives area is set forth in § 70.471.

Par. 89. Section 70.447 is revised to read as follows:

§ 70.447 Assessments.

Where the evidence disclosed by investigation establishes that additional or delinquent tax liability has been incurred and not paid, the regional director (compliance) or the Chief, Tax Processing Center will list the tax as an assessment. Notification and demand for payment of assessed taxes will be issued to the taxpayer by the regional director (compliance) or the Chief, Tax Processing Center.

Par. 90. Section 70.448 (b) and (c) are revised to read as follows:

§ 70.448 Claims.

(b) Claims for abatement of making and transfer taxes, and claims for abatement of occupational taxes and penalties erroneously assessed, are prepared and filed in accordance with the procedures set forth in § 70.413(b).

(c) Claims may be reopened or amended in accordance with the provisions of § 70.414 (k) and (l).

Par. 91. Section 70.449 is revised to read as follows:

§ 70.449 Offers in compromise.

Procedure in the case of offers in compromise of liabilities under 26 U.S.C. chapter 53 is set forth in §§ 70.482 through 70.484.

Par. 92. An undesignated centerheading is added immediately preceding § 70.450 to read as follows:

Seized Property

Par. 93. An undesignated centerheading is added immediately preceding § 70.461 to read as follows:

Possessions

Par. 94. Section 70.471 is amended by revising (a)(3) to read as follows:

§ 70.471 Rulings.

(a) * * *

(3) The taxes relating to machine guns, destructive devices, and certain other firearms imposed by chapter 53 of the Internal Revenue Code; the registration by importers and manufacturers of, and dealers in, such firearms; the registration of such firearms; the licensing of importers and manufacturers of, and dealers in, firearms and ammunition, and collectors of firearms and ammunition curios and relics under chapter 44 of title 18 of the United States Code; the licensing of manufacturers, importers, limited manufacturers of, and dealers in, explosives and issuance of permits for users of explosives under chapter 40 of title 18 of the United States Code; and registration of Importers of, and permits to import, arms, ammunition, and implements of war, under section 38 of the Arms Export Control Act of 1976, may request a ruling thereon by addressing a letter to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, to the Chief, Tax Processing Center, or to the regional director (compliance) of the ATF region in which the inquirer's business is located. Since a ruling can issue only from the Bureau Headquarters, any such request made to the Chief, Tax Processing Center or to the regional director (compliance) will be referred to the Director for reply unless the issues involved are clearly covered by currently effective rulings or come within the plain intent of the statutes or regulations. * * *

Par. 95. Section 70.481 and an undesignated centerheading preceding it are added to read as follows:

Administrative Remedies

§ 70.481 Agreements for payment of liability in installments.

(a) *Authorization of agreements.* The regional director (compliance) or the Chief, Tax Processing Center, is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to satisfy liability for payment of any tax

in installment payments if the regional director (compliance) or the Chief, Tax Processing Center determines that such agreement will facilitate collection of such liability.

(b) *Extent to which agreements remain in effect.*—(1) *In general.* Except as otherwise provided in this paragraph (b), any agreement entered into by an authorized ATF official under paragraph (a) of this section shall remain in effect for the term of the agreement.

(2) *Inadequate information or jeopardy.* The official who entered into an installment agreement under paragraph (a) of this section may terminate such agreement if:

(i) Information which the taxpayer provided prior to the date such agreement was entered into was inaccurate or incomplete, or

(ii) The regional director (compliance) or the Chief, Tax Processing Center believes that collection of any tax to which an agreement under this section relates is in jeopardy.

(3) *Subsequent change in financial conditions.*—(i) *In general.* If the official who entered into an installment agreement under paragraph (a) of this section makes a determination that the financial condition of the taxpayer has significantly changed, the official may alter, modify, or terminate such agreement.

(ii) *Notice.* Action may be taken by the regional director (compliance) or the Chief, Tax Processing Center under paragraph (b)(3)(i) of this section only if:

(A) Notice of such determination is provided to the taxpayer no later than 30 days prior to the date of such action, and

(B) Such notice includes the reasons why the official believes a significant change in the financial condition of the taxpayer has occurred.

(4) *Failure to pay an installment or any other tax liability when due or to provide requested financial information.* The official who entered into an installment agreement under paragraph (a) of this section may alter, modify, or terminate such agreement in the case of the failure of the taxpayer:

(i) To pay an installment at the time such installment payment is due under such agreement,

(ii) To pay any other tax liability at the time such liability is due, or

(iii) To provide a financial condition update as requested by the regional director (compliance) or the Chief, Tax Processing Center.

(26 U.S.C. 6159)

Par. 96. Section 70.482 is revised to read as follows:

§ 70.482 Offers in compromise of liabilities (other than forfeiture) under 26 U.S.C.

(a) *In general.* The Director may compromise any civil or criminal liability arising under the provisions of 26 U.S.C. enforced and administered by ATF prior to reference of a case involving such liability to the Department of Justice for prosecution or defense. (For compromise of forfeiture liability, see § 70.484 of this part.) Any such liability may be compromised only upon one or both of the following two grounds:

(1) Doubt as to liability; or

(2) Doubt as to collectibility.

No such liability will be compromised if the liability has been established by a valid judgment or is certain, and there is no doubt as to the ability of the Government to collect the amounts owing with respect to such liability.

(b) *Scope of compromise agreement.* A compromise agreement may relate to civil or criminal liability for taxes, interest, ad valorem penalties, or specific penalties. However, a criminal liability may be compromised only if it involves a violation of a regulatory provision of 26 U.S.C., or a related statute, and then only if such violation was not deliberately committed with an intent to defraud.

(c) *Effect of compromise agreement.* A compromise agreement relates to the entire liability of the taxpayer (including taxes, ad valorem penalties, and interest) with respect to which the offer in compromise is submitted and all questions of such liability are conclusively settled thereby. Specific penalties, however, shall be compromised separately and not in connection with taxes, interest, or ad valorem penalties. Neither the taxpayer nor the Government shall, upon acceptance of an offer in compromise, be permitted to reopen the case except by reason of falsification or concealment of assets by the taxpayer, or mutual mistake of a material fact sufficient to cause a contract to be reformed or set aside. However, acceptance of an offer in compromise of a civil liability does not remit a criminal liability, nor does acceptance of an offer in compromise of a criminal liability remit a civil liability.

(d) *Procedure with respect to offers in compromise.*—(1) *Submission of offers.* Offers in compromise under this section shall be submitted on Form 5640.1, along with any additional information required by the official authorized to accept or reject the offer. If the offer in compromise is based on inability to pay, the proponent must submit any financial statement required by such official. Each

regional director (compliance) has the authority to accept or reject offers in compromise of:

(i) Tax liabilities arising from:

(A) The illegal production of untaxed distilled spirits, wines, or beer.

(B) The failure to file returns of, or to pay, occupational taxes with respect to distilled spirits, wines, beer, tobacco products, cigarette papers and tubes, or firearms.

(C) The failure to pay firearms making or transfer taxes; and

(ii) Criminal liabilities of retail dealers in liquor arising from violations of the internal revenue laws relating to liquor, including the reuse or refilling of liquor bottles. The Associate Director (Compliance Operations) has the authority to accept or reject offers in compromise of civil liability (of less than \$100,000) and criminal liability arising under 26 U.S.C. chapters 51, 52, and 53 in cases not subject to compromise by regional directors (compliance). The Director accepts or rejects all other offers in compromise except those in compromise of liabilities listed in §§ 70.483 and 70.484 of this part. In civil cases involving liability of \$500 or over and in criminal cases the functions of the General Counsel under 26 U.S.C. 7122(b) are performed by the Chief Counsel of the Bureau of Alcohol, Tobacco and Firearms. The offer should generally be accompanied by a remittance representing the amount of the compromise offer or a deposit if the offer provides for future installment payments. When final action has been taken, the regional director (compliance), when applicable, and the proponent are notified of the acceptance or rejection of the offer.

(2) *Stay of collection.* The submission of an offer in compromise shall not automatically operate to stay the collection of any tax liability. However, enforcement of collection may be deferred if the interests of the United States will not be jeopardized thereby.

(3) *Acceptance.* An offer in compromise shall be considered accepted only when the proponent thereof is so notified in writing. As a condition to accepting an offer in compromise, the taxpayer may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interests of the United States. If the final payment on an accepted offer is contingent upon the immediate or simultaneous release of a tax lien in whole or in part, such payment must be in cash, or in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated

under the laws of the United States or any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(4) *Withdrawal or rejection.* An offer in compromise may be withdrawn by the proponent at any time prior to its acceptance. In the event an offer is rejected, the proponent shall be promptly notified in writing. Frivolous offers or offers submitted for the purpose of delaying the collection of tax liabilities shall be immediately rejected. If an offer in compromise is withdrawn or rejected, the amount tendered with the offer, including all installments paid, shall be refunded without interest, unless the taxpayer has stated or agreed that the amount tendered may be applied to the liability with respect to which the offer was submitted.

(e) *Record.* Except as otherwise provided in this paragraph, if an offer in compromise is accepted, there shall be placed on file the opinion of the Chief Counsel for the Bureau with respect to such compromise, with that official's reason therefor, and including a statement of:

(1) the amount of tax assessed,

(2) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed, and

(3) The amount actually paid in accordance with the terms of the compromise.

However, no such opinion shall be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than \$500.

(f) *Requirement with respect to statute of limitations.* No offer in compromise shall be accepted unless the taxpayer waives the running of the statutory period of limitations on both or either assessment or collection of the tax liability involved for the period during which the offer is pending, or the period during which any installment remains unpaid, and for one year thereafter.

(g) *Inspection with respect to accepted offers in compromise.* For provisions relating to the inspection of returns and accepted offers in compromise, see 26 U.S.C. 6103(k)(1).

(26 U.S.C. 7122)

(Approved by the Office of Management and Budget under control number 1512-0472)

Par. 97. Sections 70.483 through 70.484 are revised to read as follows:

§ 70.483 Offers in compromise of violations of Federal Alcohol Administration Act.

The Federal Alcohol Administration Act provides penalties for violations of its provisions. The Associate Director (Compliance Operations), Bureau of Alcohol, Tobacco and Firearms is authorized to compromise such liabilities. Persons desiring to submit offers in compromise may submit such offers on Form 5640.2 to the regional director (compliance) or an ATF officer. Such offers are considered by the regional director (compliance) and are forwarded to the Associate Director (Compliance Operations) for final action. When the offer is acted upon, the proponent and the regional director (compliance) are notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer in compromise is returned to the proponent. If the offer is accepted, the proponent is notified and the case is closed.

§ 70.484 Offers in compromise of forfeiture liabilities.

The Director or designated delegate is authorized to compromise liabilities to administrative forfeiture of personal property seized under the laws administered and enforced by the Bureau. Persons desiring to submit offers in compromise of such liabilities may submit such offers on Form 656-E to the Director or designated delegate. When the offer is acted upon, the proponent is notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer in compromise is returned to the proponent. If the offer is accepted, the proponent is notified and the case is closed. Acceptance of an offer in compromise of civil liabilities does not remit criminal liabilities, nor does acceptance of an offer in compromise of criminal liabilities remit civil liabilities.

Par. 98. Sections 70.485 through 70.487 are added to read as follows:

§ 70.485 Closing agreements.

(a) *In general.* The Director may enter into a written agreement with any person relating to the liability of such person (or of the person or estate for whom the person acts) in respect of any tax imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau for any taxable period ending prior or subsequent to the date of such agreement. A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons

are shown by the taxpayer for desiring a closing agreement and it is determined by the Director that the United States will sustain no disadvantage through consummation of such an agreement.

(b) *Scope of closing agreement*—(1) *In general.* A closing agreement may be executed even though under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates. There may be a series of closing agreements relating to the tax liability for a single period.

(2) *Taxable periods ended prior to date of closing agreement.* Closing agreements with respect to taxable periods which ended prior to the date of the agreement may relate to the total tax liability of the taxpayer or to one or more separate items affecting the tax liability of the taxpayer.

(3) *Taxable periods ending subsequent to date of closing agreement.* Closing agreements with respect to taxable periods ending subsequent to the date of the agreement may relate to one or more separate items affecting the tax liability of the taxpayer.

(c) *Finality.* A closing agreement which is approved within such time as may be stated in such agreement, or later agreed to, shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified by any officer, employee, or agent of the United States, and

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

However, a closing agreement with respect to a taxable period ending subsequent to the date of the agreement is subject to any change in, or modification of, the law enacted subsequent to the date of the agreement and made applicable to such taxable period, and each closing agreement shall so recite.

(d) *Procedure with respect to closing agreements*—(1) *Submission of request.* A request for a closing agreement which relates to a prior taxable period may be submitted at any time before a case with respect to the tax liability involved is filed with a court of the United States. The procedure with respect to requests for closing agreements shall be under such rules as may be prescribed from time to time by the Director in

accordance with the regulations under this section.

(2) *Collection, credit, or refund.* Any tax or deficiency in tax determined pursuant to a closing agreement shall be assessed and collected, and any overpayment determined pursuant thereto shall be credited or refunded, in accordance with the applicable provisions of law.

(26 U.S.C. 7121)

§ 70.486 Managerial review.

If at any step in the collection process a taxpayer does not agree with an ATF employee under the authority of the regional director (compliance) or the Chief, Tax Processing Center, the taxpayer has the right to discuss the matter with the employee's immediate supervisor. The ATF employee will give the taxpayer the name and telephone number of the person to be contacted.

§ 70.487 Taxpayer assistance orders.

(a) *Authority to issue.* Upon application filed by a taxpayer, the Chief, Revenue Programs Division or the Assistant Chief, Revenue Programs Division may issue a Taxpayer Assistance Order, if, in the determination of that official, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which provisions of 26 U.S.C. are being administered by the Bureau. Applications for Taxpayer Assistance Orders shall be prepared and filed in accordance with instructions available from the Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226.

(b) *Terms of a taxpayer assistance order.* The terms of a Taxpayer Assistance Order may require ATF

(1) To release any property of the taxpayer levied upon, or

(2) To cease any action, or refrain from taking any action with respect to the taxpayer under any provision of law which is specifically described by the Chief, Revenue Programs Division or the Assistant Chief, Revenue Programs Division in the Taxpayer Assistance Order.

(c) *Authority to modify or rescind.* Any Taxpayer Assistance Order issued by an ATF official under this section may be modified or rescinded only by that official, or by any superior of such person.

(d) *Suspension of running of period of limitation.* The running of any period of limitation with respect to any action described in paragraph (b) of this section shall be suspended for:

(1) The period beginning on the date of the taxpayer's application under paragraph (a) of this section and ending

on the date of ATF's decision with respect to such application, and

(2) Any period specified by ATF in a Taxpayer Assistance Order issued pursuant to such application.

(e) *Independent action by ATF official.* Nothing in this section shall prevent the Chief, Revenue Programs Division or the Assistance Chief, Revenue Programs Division taking any action in the absence of an application under paragraph (a) of this section. (26 U.S.C. 7811)

PART 170—[AMENDED]

Par. 99. The authority citation for Part 170 continues to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5064, 5111, 5121, 5171, 5205, 5291, 5301, 5362, 7805; 31 U.S.C. 9304, 9306.

§ 170.91 [Amended]

Par. 100. Section 170.91 is amended by removing the reference to "26 CFR 301.6091-1(b)" in the second sentence and replacing it with "§ 70.304 of this chapter".

PART 179—[AMENDED]

Par. 101. The authority citation for part 179 continues to read as follows:

Authority: 5 U.S.C. 552a; 18 U.S.C. 926; 22 U.S.C. 2778; 26 U.S.C. Chapter 53, 6091, 6511, 6676, 6805, 7805; 27 U.S.C. 205; 44 U.S.C. 3504(h), unless otherwise noted.

§ 179.35 [Amended]

Par. 102. Section 179.35(a) is amended by removing the reference to "§ 70.105" and replacing it with "§ 70.113".

PART 194—[AMENDED]

Par. 103. The authority citation for part 194 continues to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5025, 5111-5117, 5121-5124, 5142, 5143, 5145, 5146, 5205-5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6051, 6061, 6065, 6071, 6091, 6109, 6311, 6314, 6402, 6601, 6657, 6676, 6511, 7011, 7805.

§ 194.106a [Amended]

Par. 104. Section 194.106a is amended by removing the reference to "§ 70.105" and replacing it with "§ 70.113".

PART 197—[AMENDED]

Par. 105. The authority citation for part 197 continues to read as follows:

Authority: 5 U.S.C. 552; 26 U.S.C. 5131-5134, 5611, 6676, 7213, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 197.5 [Amended]

Par. 106. Section 197.5 is amended by removing the reference to "26 CFR 301.7502 through 301.7503-1" and replacing it with "§§ 70.305 and 70.306 of

this chapter" under the definition of "Filed".

§ 197.29 [Amended]

Par. 107. Section 197.29(a) is amended by removing the reference to "§ 70.105" and replacing it with "§ 70.113".

PART 250—[AMENDED]

Par. 108. The authority citation for part 250 continues to read as follows:

Authority: 19 U.S.C. 81(c); 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131-5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 250.112 [Amended]

Par. 109. Section 250.112(c)(3) is amended by removing the reference to "§ 70.66" and replacing it with "§ 70.61 of this chapter".

PART 270—[AMENDED]

Par. 110. The authority citation for part 270 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703-5705, 5711-5713, 5721-5723, 5731, 5741, 5751, 5753, 5761-5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 270.34 [Amended]

Par. 111. Section 270.34(a) is amended by removing the reference to "§ 70.105" and replacing it with "§ 70.113".

§ 270.166 [Amended]

Par. 112. Section 270.166 is amended by removing the reference to "§ 70.66"

and replacing it with "§ 70.61 of this chapter".

§ 270.168 [Amended]

Par. 113. Section 270.168 is amended by removing the reference to "§ 70.66" and replacing it with "§ 70.61 of this chapter".

§ 270.169 [Amended]

Par. 114. Section 270.169 is amended by removing the reference to "26 CFR 301.6676-1" and replacing it with "§ 70.113 of this chapter".

PART 275—[AMENDED]

Par. 115. The authority citation for part 275 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 275.115 [Amended]

Par. 116. Section 275.115 is amended by removing the reference to "§ 70.66" and replacing it with "§ 70.61 of this chapter".

PART 285—[AMENDED]

Par. 117. The authority citation for part 285 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703-5705, 5711, 5721-5723, 5741, 5751, 5753, 5761-5763, 6061, 6065, 6109, 6302, 6402, 6404, 6676, 6806, 7011, 7212, 7325, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 285.29 [Amended]

Par. 118. Section 285.29 is amended by removing the reference to "26 CFR 301.6676-1" and replacing it with "§ 70.113 of this chapter".

§ 285.30 [Amended]

Par. 119. Section 285.30(d)(1) is amended by removing the reference to "§ 70.105" and replacing it with "§ 70.113".

PART 290—[AMENDED]

Par. 120. The authority citation for part 290 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703-5705, 5711-5713, 5721-5723, 5731, 5741, 5751, 6061, 6065, 6151, 6402, 6404, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9302, 9304, 9306.

§ 290.34 [Amended]

Par. 121. Section 290.34(a) is amended by removing the reference to "§ 70.105" and replacing it with "§ 70.113".

PART 296—[AMENDED]

Par. 122. The authority citation for part 296 continues to read as follows:

Authority: 31 U.S.C. 9304, 9306; 18 U.S.C. 2341-2346; 26 U.S.C. 5708, 5751, 5761-5763, 7805; 44 U.S.C. 3504(h); 49 U.S.C. 782.

§ 296.7 [Amended]

Par. 123. Section 296.7 is amended by removing the reference to "26 CFR 301.6901-1(b)" and replacing it with "§ 70.304 of this chapter".

Signed: August 8, 1990.

Stephen E. Higgins,
Director.

Approved: August 29, 1990.

John P. Simpson,
Acting Assistant Secretary (Enforcement).
[FR Doc. 90-23802 Filed 11-13-90; 8:45 am]

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Part III

Department of Labor

Occupational Safety and Health
Administration

29 CFR Part 1926

Safety Standards for Stairways and
Ladders Used in the Construction
Industry; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

RIN 1218-AA57

[Docket No. S-207]

Safety Standards for Stairways and Ladders Used in the Construction Industry

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) hereby amends its Construction Industry Standards by revising and relocating the existing provisions for stairways and ladders from existing Subpart L—Ladders and Scaffolds and Subpart M—Floors and Wall Openings, and Stairways, into subpart X. This final rule reformat the rules into a more logical grouping of topics. This revision also focuses on the principal hazards involved when working on stairways and ladders and eliminates what OSHA believes to be unnecessary and redundant provisions in the existing standards. The provisions of existing Subpart X—Effective Dates are deleted as they are no longer necessary.

EFFECTIVE DATE: This revision of Subpart X becomes effective January 14, 1991.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of the standard, the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, room S-4004, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION:**I. Background**

Congress amended the Contract Work Hours Standards Act (40 U.S.C. 327 *et seq.*) in 1969 by adding a new section 107 (40 U.S.C. 333) to provide employees in the construction industry with a safer work environment and to reduce the frequency and severity of construction accidents and injuries. The amendment, commonly known as the Construction Safety Act (CSA) significantly

strengthened employee protection by authorizing the promulgation of construction safety and health standards for employees of the building trades and construction industry working on federal and federally financed or federally assisted construction projects. Accordingly, the Secretary of Labor issued Safety and Health Regulations for Construction in 29 CFR part 1518 (36 FR 7340, April 17, 1971).

The Occupational Safety and Health Act (the Act) (29 U.S.C. 651 *et seq.*), was enacted by Congress in 1970 and authorized the Secretary of Labor to adopt established federal standards issued under other statutes, including the CSA, as occupational safety and health standards. Accordingly, the Secretary of Labor adopted the Construction Standards, which had been issued under the CSA, as OSHA standards (36 FR 10466, May 29, 1971). The Safety and Health Regulations for Construction were subsequently redesignated as part 1926 (36 FR 25232, December 30, 1971). The standards addressing ladders (§ 1926.450 in subpart L) and stairways (§ 1926.501 in subpart M) were adopted as OSHA standards as part of this process.

Section 6(a) of the Act authorized OSHA to adopt national consensus standards without rulemaking for the first two years after the Act took effect. This enabled the Agency to implement safety and health regulations much faster than would have been possible if OSHA had been required to conduct rulemaking. Many provisions of the existing standards for stairways and ladders were adopted from consensus standards during that period.

The organizations which produce consensus standards expect that compliance will be voluntary, based on agreement among interested parties regarding the need for particular precautions. It is implicit that the primary concern of the standard-producing organizations is to improve the overall safety of a workplace by fostering compliance with the spirit, rather than the letter, of the consensus standards. On the other hand, OSHA standards, including those adopted from consensus standards, impose mandatory burdens, because of the Agency's statutory duty to require protection of employee safety and health. As noted elsewhere in this preamble, OSHA has carefully reviewed the ongoing efforts of nationally recognized standards-producing organizations to update pertinent consensus standards that were initially adopted for stairways and ladders under subparts L and M.

In the course of reviewing information, such as the provisions of revised consensus standards, obtained by the Agency, OSHA became aware of the need to revise subparts L and M, including the provisions for ladders and stairways. In 1977, OSHA determined, after several meetings with the Advisory Committee on Construction Safety and Health (ACCSH) to review the provisions of subparts L and M, that a piecemeal approach to the revision of those provisions would not be acceptable. Therefore, a complete review of subparts L and M was begun. Since that time, ACCSH has reviewed these subparts several times and transcripts of these meetings, including recommendations, have been submitted to the Assistant Secretary. The transcripts are part of the public record (Ex. 1). The Committee's recommendations, and those of other interested parties, have been carefully analyzed in connection with the present rulemaking. Many of the changes in the final standard reflect the recommendations and suggestions of the Advisory Committee and interested persons. Relevant ACCSH comments are discussed below in the Summary and Explanation section. Committee discussions that were inconclusive or did not result in a specific recommendation have also been considered, but are not discussed in depth in this preamble.

On November 25, 1986, OSHA proposed to revise the provisions of subparts L and M of the Construction Industry Standards that regulate ladders and stairways, respectively, and to relocate the revised provisions to subpart X (51 FR 42750). Concurrently, the Agency proposed to revise the standards in subparts L and M that cover scaffolds (51 FR 42680) and fall protection (51 FR 42718), respectively, in construction employment. The proposal established a period, ending February 23, 1987, during which interested parties could submit written comments or request a hearing regarding the proposals.

The period for submitting written comments and hearing requests was extended twice at the request of commenters. On February 26, 1987, OSHA extended that period until June 1, 1987 (52 FR 5790). Then, on June 2, 1987, the Agency announced the extension of the period until August 14, 1987 (52 FR 20616). OSHA received 45 comments in response to proposed subpart X.

After reviewing and evaluating the provisions for ladders and stairways, OSHA believes that certain provisions in the existing standards either are

redundant or ambiguous or are not clearly applied to all situations. Some provisions simply are not feasible in all situations, while others are unnecessarily detailed. To eliminate these problems, this rulemaking has focused on the principal hazards involved when working on stairways and ladders and eliminates provisions that OSHA believes are unnecessary. To the extent possible, the final rule has been written in performance-oriented language, so employers have the flexibility to implement compliance strategies that both protect employees from occupational hazards and minimize disruption of operations.

To make it easier for employers and employees to find specific provisions, this final rule relocates the topics of stairways and ladders from subparts L and M to a revised subpart X titled "Stairways and Ladders." The existing subpart X in part 1926, "Effective Dates," is no longer needed as those effective dates have passed. Therefore, existing subpart X is being deleted and replaced with this new subpart X.

On January 26, 1988, OSHA announced it would convene an informal public hearing beginning on March 22, 1988, to elicit additional input on specific issues related to stairways and ladders, scaffolds, and fall protection. The hearings were conducted on March 22 and 23, 1988, with Administrative Law Judge Joel Williams presiding. At the close of the hearings, Judge Williams set a period, ending May 9, 1988, for the submission of additional comments and information. On August 11, 1989, Judge Williams certified the rulemaking record, including the hearing transcript and all written submissions to the docket, thereby closing the record for this proceeding. OSHA received 45 comments on this subpart in response to its NPRM and 18 comments in response to the hearing notice. A wide range of employees, businesses, trade associations, state governments, and other interested parties contributed to the development of this record. The Agency appreciates these efforts to help develop a rulemaking record that provides a sound basis for the promulgation of the final rule.

Based on its review of the record, OSHA has determined that the revision and reorganization of the regulations for stairways and ladders are necessary to address the significant hazards, such as fall hazards, faced by employees who use stairways and ladders while performing construction work. The Agency has determined that compliance with the provisions of this standard will

best ensure the safety of employees using stairways and ladders.

OSHA believes that the clarified and reformatted language of the final rule will help employers to understand the requirements for stairways and ladders, and will improve safety by minimizing subjective interpretations of the provisions.

II. Hazards Involved

Fall accidents resulting in injuries and fatalities continue to occur at construction sites despite the promulgation of the OSHA Construction Standards in 1971. Examination of available data indicates that these accidents are primarily the result of noncompliance with existing OSHA standards, and that the current standards, in general, properly address the stairway and ladder hazards confronted by construction workers. Nevertheless, upon reviewing compliance problems and public comments received since 1972, OSHA believes that the regulations addressing stairways and ladders need to be updated, reformatted, and clarified to provide employers with appropriate guidance and to make the standards easier to use and understand. OSHA believes that revision of these provisions will significantly increase employer compliance.

Precise accident data for the entire construction industry are not available. However, based upon the 1987 BLS data that have been compiled, OSHA estimates that the annual number of injuries associated with falls from surfaces covered under subpart X is about 24,882.

Although specific accident ratios cannot be projected for the 4.5 million construction workers potentially covered by subpart X, OSHA prepared the following statistical estimates to support proposed subpart X.

- On a yearly basis, OSHA estimated that as many as four fatalities, 5,360 impact injuries, and 1,900 sprain or strain injuries occur on stairways used in construction (summary of Bureau of Labor Statistics data; Exs. 3-15 and 3-16); and

- 65 percent of those injured in stairway accidents require medical treatment (Ex. 3-3, p. 150).

In a Bureau of Labor Statistics study of 1,400 ladder accidents that resulted in injuries (Ex. 3-5), the following findings were made:

- 23 percent of the accidents were in construction;
- 42 percent of those injured were working on the ladder when the accident occurred;

- 66 percent of those injured had not been trained in how to inspect ladders for defects before using them;

- 4 percent of the ladders involved in the accidents did not have uniformly spaced steps;

- 19 percent of the ladders involved in the accidents had one or more defects;

- 39 percent of the ladders involved in the accidents had not been extended three feet above the landing level;

- 53 percent of the non-self-supporting ladders had not been secured or braced at the bottom, and 61 percent had not been secured at the top; and

- 53 percent of the ladders involved in the accidents broke during use.

More recent information prepared for the final regulatory impact analysis (see section IV, below) indicates that a considerable number of accidents still occur. The following summarizes findings made in that analysis:

- On a yearly basis, OSHA estimated that as many as 36 fatalities and 24,882 injuries occurred due to falls from stairways and ladders used in construction.

- On a yearly basis, OSHA estimated that there were 11,570 lost workday injuries and 13,312 non-lost workday injuries due to falls from stairways and ladders used in construction.

Based on its analysis of the above data, and its field experience enforcing construction standards, the Agency has determined that employees using ladders and stairways in construction are exposed to a significant risk of harm. In addition, the above data suggest that compliance with the revised provisions would have prevented accidents more effectively than compliance with the existing standards. Consequently, OSHA believes that the revised standards are necessary to improve employee protection. OSHA has determined that the revised provisions in the final rule provide clearer guidance regarding employers' duties and the appropriate measures for compliance.

For a further discussion of accident rates and significance of risk, see section IV, Regulatory Impact Assessment and Regulatory Flexibility Analysis.

III. Summary and Explanation of the Final Rule

The following discussion, which tracks the final rule paragraph by paragraph, summarizes and explains the significant substantive changes that this final rule makes to the ladder provisions currently in subpart L and the stairway provisions currently in subpart M. The discussion also shows how the final rule differs from the proposed rule and

explains how OSHA determined what the final rule would require. In addition, the Agency received comments on 14 separate specific issues raised in the preamble to the proposed rule and in the hearing notice. These issues are discussed with the appropriate provisions in this preamble.

Section 6(b)(8) of the OSH Act requires OSHA to explain "why a rule promulgated by the Secretary differs substantially from an existing national consensus standard," by publishing "a statement of the reasons why the rule as adopted will better effectuate the purposes of the Act than the national consensus standard." In compliance with that requirement, the Agency has reviewed the standards proposed through this rulemaking with reference to the pertinent consensus standards. OSHA has discussed the relationship between individual regulatory provisions and the corresponding consensus standards in the Summary and Explanation of the final rule. This process was facilitated by the fact that the existing OSHA standards for stairways and ladders, the starting points for development of the proposed rule, are, in effect, the American National Standards Institute (ANSI) consensus standards that were in effect when OSHA was created. Therefore, even allowing for subsequent revisions to the ANSI standards and the Agency's consideration of a widely varied and substantial body of information in the rulemaking record, the requirements of the OSHA final rule would tend to resemble the corresponding provisions of the current ANSI standards. In a case where the Agency has determined that the pertinent ANSI language indicates appropriately what regulation is needed to protect employees from recognized hazards, the Summary and Explanation so indicates. Any case where the Agency has determined that the pertinent ANSI language would not provide appropriate guidance to employers is addressed in the Summary and Explanation.

Subpart X—Stairways and Ladders. As the title states, new subpart X covers the topics of stairways and ladders. The subpart includes provisions for construction, inspection, maintenance, use, fall protection, and the training necessary for employees involved with stairway and ladder construction, use, and repair.

Section 1926.1050 Scope, Application, and Definitions Applicable to This Subpart

Paragraph (a) of § 1926.1050 states the scope and application of subpart X. The subpart applies to all stairways and

ladders found in construction, alteration, repair (including painting and decorating), and demolition workplaces. OSHA notes that additional requirements for ladders used or with scaffolds will be set forth in revised subpart L—Scaffolds, which will be published at a later date. The final rule differs slightly from the proposal in that the references to § 1926.451 (c) and (d) in the proposal have been changed to the more appropriate reference, "subpart L," to clarify the applicable regulation to which OSHA is referring.

OSHA received one comment (Ex. 2-35) on § 1926.1050(a), "Scope." The commenter recommended including "window cleaning" in the scope of subpart X. However, the Agency is not acting on this recommendation because such cleaning operations or services are covered by part 1910, General Industry Safety and Health Standards, not by part 1926, Construction Standards.

Paragraph (b) of § 1926.1050 presents definitions for certain terms used in the standard. Three definitions in this final rulemaking ("cleat," "double-cleat ladder," and "nosing") are the same as those in the existing standard. Except where otherwise indicated, the proposed definitions have elicited no comments and are being promulgated as proposed. Some definitions have been reworded for uniformity with proposed provisions that were revised in the final rule, or for clarity, as noted in the discussion of the terms, below. The following terms have either been added to the final rule or reflect revisions of existing or proposed definitions, as noted.

"Equivalent." This term replaces the existing term "standard strength and construction." It is used in the text of the standard to indicate the circumstances under which OSHA allows alternative means of complying with the standard. The definition states that the employer must demonstrate that an alternative means of compliance will provide a degree of safety that is either equal to or greater than that attained by using a method or item specified in the standard. OSHA's intent is to allow employers to use or design alternate methods or items that provide at least the same level of protection as that afforded by materials of equal strength and construction. There were no comments submitted to the record regarding this term.

"Extension trestle ladder." This word is used to mean a self-supporting portable ladder, adjustable in length, consisting of a trestle ladder base and a vertically adjustable extension section, with a suitable means for locking the ladders together. (Ladders that meet the

criteria set out in the pertinent consensus standards would be considered to be covered by this definition). OSHA has added this definition to the final rule to facilitate compliance with § 1926.1053(a)(3)(iii), which sets the allowed range of rung spacing for extension trestle ladders.

"Failure." This word is used in performance-oriented provisions, such as § 1926.1052(c)(5) (which deals with stairrail strength). To ensure that the term would not be interpreted to mean only breakage or a physical separation of component parts, the proposed definition has been revised to make it clear that load the point where the structural members lost their ability to carry loads, is also considered to be failure. This is a change from the proposed wording that "Load refusal is the point where the ultimate strength is exceeded." The change is made to clarify OSHA's intent.

The one comment (Ex. 2-29) OSHA received concerning this definition expressed the view that OSHA should "[f]ind a better definition for 'failure'" because "[l]oad refusal is nebulous at best." The commenter did not explain the basis for this concern or suggest alternative wording. OSHA notes that in some cases failure will be evidenced by breakage or separation of components that can be easily detected through visual inspection. In other cases the ability of a component to hold its rated load will be destroyed without any permanently visible breakage or separation. Such cases include situations where an object, such as a ladder siderail, buckles after it has been loaded to the point of collapse. The siderail will not support the load and will not return to its original shape when the load is removed. Although the siderail could be straightened, the fact that the rail has sustained severe damage and will easily bend again may not be visibly apparent. While such structural members may show no signs of breakage or separation, the prior damage precludes their future use. Given these circumstances, the Agency believes that the definition, as revised, provides the appropriate guidance to employers.

"Fixed ladder." This term refers to a ladder that, unlike a portable ladder, cannot be readily moved or carried because it is an integral part of a building or structure. The term "fixed ladder" was not defined in the proposal. A commenter (Ex. 2-29) and the ACCSH (Tr. 6/10/87, pp. 19-23) suggested that OSHA add such a definition. OSHA agrees with the above suggestions and recognizes the need to state clearly the

types of ladders that may be used by construction workers.

The final rule's definition of fixed ladder is based on the definitions for "side-step" fixed ladder and "through" fixed ladder found in the ANSI A14.3-1984 American National Standard for Ladders-Fixed-Safety Requirements (Ex. 3-13). OSHA notes that the existing standard regarding fixed ladders, § 1926.450(a)(5), currently references the 1956 edition of ANSI A14.3 (Ex. 3-10). Thus, the promulgation of this definition simply reflects the Agency's interest in updating ANSI references and incorporating them directly into regulatory text.

"Handrail." The definition states that handrails are rails used to provide employees with a handhold for support. "Handrail" is defined in existing § 1926.502(c) as "a bar or pipe supported on brackets from a wall or partition * * * (to provide) a handhold in case of tripping." The revised definition recognizes there are handrails that are adequate even though they are not wall- or partition-mounted bars or pipes and are not used solely to protect employees if they were to trip. For example, OSHA has determined that the top rail of a stairrail system may serve as a handrail when installed according to new § 1926.1052(c)(7).

"Individual-rung/step ladders" means ladders without a side rail or center rail support. Such ladders are made by mounting individual steps or rungs directly to the side or wall of the structure. In the final rule, the term has been defined to clarify the difference from other types of fixed ladders for the design criteria of the rungs.

"Job-made ladder." Existing § 1926.450(b) presents requirements for "job-made ladders", but only implicitly defines the term. The term appeared in § 1926.1053(b)(5) and Issue #4 of the NPRM, but was not defined in the proposal. Job-made ladders are those built by employees, typically at the jobsite (custom-made) for a particular application, rather than manufactured commercially for general sale. The term is being defined in the final rule in response to a suggestion in a written comment (Ex. 2-29) to add a definition for this type of ladder. OSHA recognizes the need to state clearly what the types of ladders are addressed by particular provisions of this standard. This new definition reflects features listed in paragraph 1.3 of ANSI A14.4-1979, Safety Requirements for Job-made Ladders (Ex. 3-14), and the Agency's understanding of what the term means as used in existing § 1926.450(b).

In addition, another comment (Ex. 2-18) stated that § 1926.1053(a)(5), which

addresses individual-rung ladders, should not apply to job-made ladders. In response to this comment, OSHA has determined that the definition of job-made ladders should exclude individual-rung/step ladders to be consistent with § 1926.1053(b)(5)(ii) of the final rule. Therefore, the Agency is promulgating this definition as part of the final rule.

"Lower levels." This term, not found in the existing OSHA standards, is being added for the sake of clarity and uses examples of the areas to which an employee could fall. The term does not apply to the surface on which the employee is working and from which the employee could fall.

"Maximum intended load." This new term means the total load of all employees, equipment, tools, materials, transmitted loads, and other loads. The term is used in § 1926.1053(a)(1) to state clearly the types of loads that must be considered when building a ladder, and is used in § 1926.1053(b)(3) to limit the amount of load that may be placed on a ladder.

The Agency received one comment (Ex. 2-39) relating to the definition in paragraph (b) for "maximum intended load" proposing that OSHA add a definition for "duty rating." The commenter envisioned using the new term in conjunction with the definition of "maximum intended load," to use with labels and markings on the ladder that give the "ladder's rated capacity." The Agency has determined, however, that the pertinent proposed provisions, including the definition of "maximum intended load," provide the appropriate regulation for ladders, so that it is unnecessary to define or use the term "duty rating." Therefore, OSHA is declining to adopt this suggested definition in the final rule.

"Point of access." This new term means all areas such as doorways, passageways, stairway openings, studded walls, and temporary openings, that are used by employees for work-related passage from one area or level to another. The term is used in § 1926.1051(a) of this subpart to indicate where a stairway or ladder must be provided when there is a break in elevation, and includes permanent and temporary travel ways. This definition, which was not set out in the proposed rule, has been added in response to the ACCSH discussion concerning Issue #2 of the specific issues raised in the proposal (Tr. 6-9-87, pp. 233-243, and 6-10-87, pp. 3-6). It is intended to state clearly what OSHA meant when it proposed § 1926.1051(a).

"Portable ladder." This term refers to a ladder that, unlike a fixed ladder, can readily be moved or carried. This term

was not defined in the proposal. As discussed above, the Agency is adding a definition for "fixed ladder" to § 1926.1050(b) in response to a request from a commenter. OSHA is also adding this definition of "portable ladder" to state clearly the distinction between fixed and portable ladders. This definition is consistent with the definitions of "portable ladder"; that appear in the current editions of the pertinent ANSI standards. (A14.1-1982 and A14.2-1982).

Again, OSHA recognizes a need to clarify the types of ladders that are addressed by specific paragraphs in this subpart and therefore promulgates this definition.

"Riser height." This term replaces "rise," which was defined in existing § 1926.502(g). The existing and proposed definitions were identical. The definition, as promulgated, has been amended to clarify that OSHA intends for employers to take the distance between treads and/or platforms/landings and the next higher tread and/or platform/landing into account when measuring riser height dimensions. For the purpose of this standard, the term "tread" used in the new definition includes platforms and landings. In response to a comment concerning the definition of "tread depth" ("tread width" in the proposed rule), discussed further below, the Agency has also added a matching explanation of a stairstep tread's horizontal dimensional components.

One commenter (Ex. 2-27) suggested that the definition of "open riser" from the draft of the proposed ANSI A12.64 standard covering safety requirements for workplace floor openings, stairs, and railing systems, "should be included as more descriptive." However, the commenter did not provide a rationale for this suggestion. Under the most recent ANSI A12.64 draft, the term "open riser" means the "space between the treads of stairs without upright members." OSHA notes that the term "riser height" is used in a provision of the revised standard, § 1926.1052(a)(3), which concerns itself solely with the uniformity of stairway dimensions. The Agency has not concerned itself with the distinction between risers that are open and those that are not because it is not directly relevant to safety. Therefore, OSHA believes there is no need to explain further or expand the terminology concerning this aspect of the standard and therefore declines to adopt the term "open riser." The new term, "riser height," comes directly from the wording in § 1926.1052(a)(3) of the proposal.

"Side-step fixed ladder." This term describes the kind of fixed ladder from which a person getting off at the top has to step to the side of the ladder to reach the landing. This type of ladder was not defined in the proposed rulemaking for subpart X but was used in § 1926.1053(a)(26) and (28) of the proposal. The definition is based on ANSI A14.3-1984 (Ex. 3-13).

"Single-cleat ladder." The existing definition from § 1926.452(a)(2) is expanded to include ladders with side rails that are joined together with rungs and steps, as well as ladders with side rails that are joined by cleats. The revised definition reflects OSHA's belief that rungs and steps can also be safely used to join side rails. The term single-cleat ladder is retained because that is the term in general use by industry.

"Single-rail ladder." This term describes a type of portable ladder that has only one rail, instead of the two or more rails used on other ladders. This definition, while not in the proposed rule, has been added in response to comments (Exs. 2-12, 2-19 and 2-35) and an ACCSH recommendation (Tr. 6-9-87, p. 243) relating to Issue #3 of the proposal. Under that issue, OSHA requested comment on a possible prohibition of the use of this type of ladder, based on paragraph 5.2.10 of A14.1-1968 (Ex. 3-8), and a reference to that standard in existing § 1926.450(a)(3). The Agency noted that existing § 1926.450(a)(3) effectively bars the use of single-rail ladders and asked whether or not such ladders should continue to be prohibited. Based on the comments received for Issue #3, OSHA is explicitly retaining the prohibition on the use of single-rail ladders, under § 1926.1053(b)(19). The Agency recognizes that the definition of "single-rail ladder" is needed to state clearly the types of ladders that are covered by that prohibition, and therefore promulgates this definition.

"Spiral stairway." This term describes stairways that wind around a vertical pole in a cylindrical space. The term, although not defined in the proposal, was used in two paragraphs in proposed subpart X concerning spiral stairways, §§ 1926.1051(a)(1) and 1926.1052(a)(2). A commenter (Ex. 2-27) noted that OSHA had not proposed a definition for this term. OSHA recognized a need to clarify what type of stairway the Agency was referring to in the two paragraphs from the proposed rule that mentioned spiral stairways. Therefore, the Agency is promulgating this definition in the final rule.

"Stairrail system." This term replaces "stair railing," which was defined in existing § 1926.502(i). "Stair railing" has

apparently been incorrectly understood by some persons as referring only to the top member of the required vertical barrier. The revised definition also clearly incorporates OSHA's determination, reflected in proposed § 1926.1052(c), that the top surface of a stairrail system may also serve as a handrail. The final rule is identical to the proposed rule.

"Step stool (ladder type)." This term describes a self-supporting, foldable, portable ladder, nonadjustable in length, 32 inches or less in overall size, with flat steps and without a pail shelf, designed to be climbed on the ladder top cap as well as all steps. The side rails may continue above the top cap. (Step stools that meet the criteria set out in the pertinent consensus standards would be considered to be covered by this definition.) OSHA has added this definition to the final rule to facilitate compliance with § 1926.1053(a)(3)(iii), which sets the allowed range of rung spacing for step stools.

"Through fixed ladder." This term describes the kind of fixed ladder from which a person getting off at the top has to step between the ladder's side rails to reach the landing. This term, though not defined in the proposed rule, was used in proposed § 1926.1053(a)(18), (26), and (27). A commenter (Ex. 2-14) indicated that, without a definition, this term was unclear. The definition in this final rule is based on the ANSI A14.3-1984 (Ex. 3-13) definition for such ladders.

"Tread depth." This term describes the distance, from front to back, of a horizontal stairstep surface (that is, the area intended to be used to walk on). The language in the final rule is essentially identical with that in existing § 1926.502(n) and in the proposal. The term has been changed from tread "width" to tread "depth," in response to a suggestion in the one comment (Ex. 2-8) OSHA received regarding the definition. The commenter stated that "[i]t is ludicrous to describe a stairway [that is] 60 inches wide, for example, as having a tread width of 10 inches." In response to the comment, OSHA notes that tread depth is measured in the direction of travel.

"Unprotected sides and edges." This term refers to areas where there is no wall or guardrail system 39 inches or more in height, or where there is no stairrail system 36 inches or more in height. This definition is consistent with the term as used in existing § 1926.502(p)(8) (which explains the terms used in existing § 1926.500(g), for guarding low-pitched roof perimeters during built-up roofing work) and in proposed § 1926.500(b) in subpart M—Fall Protection (which expands the

coverage of the existing provision to all surfaces regulated by Subpart M).

The following existing definitions are deleted because they are not used in the new subpart: Existing § 1926.502(h) "stair platform" and existing § 1926.502(i) "stair, stairways."

OSHA has used the term "competent person" in subpart X as it is defined in existing § 1926.32(f). Under that definition, a competent person can recognize hazards, knows how to control them, and has the authority to implement the appropriate hazard control measures. OSHA notes that a competent person will have certain skills, knowledge, and authority depending on the work situation confronted. Therefore, someone may be a competent person for the purpose of compliance with one standard, but not for the purposes of another standard.

The Agency further notes that existing § 1926.20(b)(2) requires employers to have competent persons perform frequent and regular inspections of the job sites, materials, and equipment. The Agency has included the term competent person in the final rule, where justified by the record, to underscore the existing requirement and provide clear guidance to employers.

Section 1926.1051 General Requirements

This section specifies where stairways and ladders are to be provided so that employees have safe means of access between levels.

The introductory text of § 1926.1051(a) requires that wherever there is a personnel point of access with no ramp, runway, sloped embankment, or personnel hoist, and the break in elevation is 19 inches or more, a ladder or stairway must be provided. In the final rule, the words "where there is" have been removed the second time they appeared. The provision, as promulgated, is essentially identical with the pertinent existing and proposed provisions, except that the final rule specifies the minimum break in elevation, 19 inches, at which point a means of access between levels is required. Existing § 1926.450(a)(1), like proposed § 1926.1051(a), requires a means of access at all breaks in elevation. By contrast, OSHA notes that existing § 1926.501(a) requires a stairway, ladder, or ramp only where the structure is two or more floors (20 feet) high. This provision only indicates that ladders are an acceptable means of access to those structures. It does not establish 20 feet as the minimum height at which ladders must be provided. The Agency has maintained consistently that

existing § 1926.450, not existing § 1926.501, establishes requirements for the use of ladders in construction work, and carries this coverage forward in the revised standard. OSHA anticipates that one of the benefits of this rulemaking will be the elimination of any apparent inconsistency between the existing standards.

OSHA requested public comment in Issue #2 of the NPRM regarding the height above which the Agency should require employers to provide a means of access. OSHA noted that one suggestion was to require a ladder, stairway, runway or ramp wherever there is a break in elevation of at least 19 inches, or the equivalent of two standard (9½-inch) steps. The Agency points out that this was derived from table D-1, which appears in existing § 1910.24(e), regarding fixed industrial steps.

Eight commenters responded to the issue. Two (Exs. 2-12 and 2-23) favored the suggested 19-inch provision. Two others (Exs. 2-29 and 2-35) suggested using 24 inches. One commenter (Ex. 2-25) backed a 10-foot limit; and three others (Exs. 2-11, 2-31, and 2-37) wanted the existing standards retained without change. In addition to the eight commenters who responded to Issue #2, two commenters (Exs. 2-1 and 2-24) provided input directed at this paragraph. One of these commenters (Ex. 2-1) suggested using a height of 3 feet, and the other (Ex. 2-24) indicated a preference for 2 feet. The ACCSH recommended a 10-inch height limit as the appropriate point at which to require ladders, stairways, runways, or ramps for general and work points of access, entrances, and exits (Tr. 6/9/87, pp. 233-243 and 6/10/87, pp. 3-6).

The two commenters who offered 24 inches as an alternative did not provide data or details for their choice (one of those two (Ex. 2-35) suggested using two standard steps at breaks in elevation). The three respondents who wanted to retain the existing standards without change indicated that the regulations do not specify a height requirement and thus provide flexibility. However, OSHA disagrees, as § 1926.450(a)(1) requires that a stairway, ramp, runway, or ladder be provided to "all elevations." The ACCSH recommended a 10-inch limit in contrast with 24 inches in terms of providing for emergency escape. In that light, OSHA does not consider the ACCSH recommendation a direct dismissal of the suggested 19-inch limit requirement for a means of access. Once a means of access is provided, the required 9½-inch step height differs only slightly from the ACCSH's suggestion of 10 inches.

OSHA chose 19 inches, the equivalent height of two standard steps, as a middle ground that clarifies, in performance language, the point at which a means of access must be used. The 19-inch height limit provides a fairly easy climb for employees, who will often be carrying some burden or piece of equipment and thus may be unable to readily pull or push themselves up or down a higher elevation break. If further provides for entry and exit in an emergency.

Accordingly, after consideration of these comments and in light of the ACCSH discussion, OSHA is amending § 1926.1051(a) to require a stairway or ladder at all personnel points of access where there is a break in elevation of 19 inches or more and no ramp, runway, sloped embankment or personnel hoist is provided. Also, in the final rule, OSHA has clarified the paragraph to avoid the misconception that the provision addresses two independent criteria for providing a stairway or ladder. The Agency intends for the introductory text of § 1926.1051(a) to apply to personnel points of access where there is both a break in elevation and an absence of other enumerated means of crossing the break.

The Agency, therefore, is promulgating the introductory text of paragraph (a) as amended.

Under paragraph (a)(1) employees shall not use any spiral stairway during construction when such stairway will not be a permanent part of a structure. This requirement is essentially the same as existing § 1926.501(m), except the language has been changed to clarify that a stairway that will be a permanent part of the installation may be used for access.

OSHA received two comments (Exs. 2-8 and 2-27) about proposed paragraph (a)(1). In response to one of these comments (Ex. 2-8), the Agency has amended the standard to remove the proposed exemption allowing the use of temporary spiral stairways where they provide the only practical means of access during construction. The Agency has removed the words "after completion of the structure" and removed the phrase "except where they provide the only practical means of access during construction."

CAL/OSHA (Ex. 2-8) stated that the exception for temporary spiral stairways should be deleted because:

Spiral stairs have an inherent hazard in that the tread depth is not uniform across the whole width of the tread. This makes for hazardous footing, and could lead to injuries due to slipping or missing a tread completely in the process of climbing or descending the stairs.

OSHA notes that, while CAL/OSHA objects only to the use of temporary spiral stairs, the concern raised by the commenter applies to both the permanent and temporary ladders. OSHA has determined that spiral stairways that are permanently installed and that comply with subpart X, especially § 1926.1052, will afford safe means of access for employees. Upon consideration of the CAL/OSHA comment, the Agency agrees that the use of spiral stairways that will not be made a permanent part of the structure should not be permitted. In particular, OSHA has determined that there would always be a mutual alternative means of access available. Therefore, OSHA believes that there are not situations where the exception would be appropriate. In addition, the Agency believes that efforts to comply with the other provisions of subpart X will not control the hazards that concern CAL/OSHA regarding those spiral stairs that will not be a permanent part of the structure. Therefore, OSHA has made the recommended deletion.

In response to the other comment (Ex. 2-27), OSHA is adding a definition of "spiral stairway" under § 1926.1050(b), as discussed above. That comment also pointed out that the proposal did not explicitly cover permanent installation of spiral stairways. OSHA believes that paragraph (a)(1) as changed, provides sufficient guidance.

Therefore, the Agency is promulgating paragraph (a)(1) as amended.

Paragraph (a)(2) requires that when ladders either provide the only means of access for 25 or more employees, or serve simultaneous two-way traffic, either those ladders must be double-cleated or two or more separate ladders must be used. This is based on existing § 1926.450(b)(1), which covers job-made ladders. The existing paragraph provides only for the use of double-cleated ladders. The final rule recognizes the alternative of using two or more ladders. The language of the final rule is identical to that in the proposal.

Paragraphs (a) (3) and (4) are new requirements addressing the necessity to keep points of access open to permit the free passage of employees. These provisions were not in the proposal. OSHA added these provisions to the standard in response to the ACCSH discussion about Issue #2 (Tr. 6/9/87, pp. 233-243), concerning means of access at breaks in elevation, and to ensure that the Agency's intent in proposing paragraph (a) is clearly understood. Under paragraph (a)(3), when buildings or structures have a

single point of access, the access-way shall be kept clear for employee passage or a second point of access shall be provided. This can occur, for example, when a scaffold is erected in a stairway to do finishing work. Such a scaffold would block the exit so another means of access such as a ladder, is necessary. Paragraph (a)(4) further clarifies OSHA's intention to require open access for employee passage in buildings or structures with two or more points of access.

The ACCSH addressed the need to keep points of access open while the members were discussing the question of what should be considered an appropriate minimum height at which to require a ladder, stairway, runway, or ramp. OSHA believes that the added requirements were implicit in proposed paragraph (a). Indeed, the purpose for which OSHA is requiring stairways and ladders would be defeated if employees were denied free passage through personnel points of access to those stairways and ladders. Accordingly, during the ACCSH review of Issue #2 on June 9, 1987 (Tr. 6/9/87, pp. 233-243), OSHA stated that keeping points of access open was an element of compliance with proposed paragraph (a). The ACCSH, in turn, recommended that OSHA expressly require open access. The Agency agrees that adding explicit regulatory language will provide the clearest guidance to employers. Accordingly, OSHA is promulgating paragraphs (a) (3) and (4) as discussed above.

Paragraph (b) requires employers to provide and install all stairway and ladder fall protection systems required by this subpart and to comply with all other pertinent requirements of this subpart before employees begin the work that necessitates the installation and use of stairways, ladders, and their respective fall protection systems. Compliance with paragraph (b) will ensure that work activities involving the use of stairways and ladders to reach other levels do not begin until the ladder or stairway is safe to use. OSHA has made minor editorial changes in the proposal in response to a comment (Ex. 2-24) that the provisions are too restrictive (noting that ladders are often used to install fall protection equipment) and a comment (Ex. 2-27) requesting clarification. As revised, paragraph (b) distinguishes clearly between the work required to install fall protection systems on stairways and ladders and the work employees perform once those systems have been installed.

OSHA is therefore promulgating paragraph (b) as amended.

Section 1926.1052 Stairways

This section specifies the requirements for all stairways used by construction employees.

Paragraph (a) sets forth the general requirements for the construction of stairways. Paragraph (a)(1) requires stairs that will not be a permanent part of the structure on which construction work is performed to have landings at least 30 inches long and at least 22 inches wide at every 12 feet or less of vertical rise. Except for the provision about the width dimension and where a minor amendment was made for the sake of clarity, the final rule is identical to the proposed rule. This requirement is the same as existing § 1926.501(j), except the existing term "temporary stairs" has been deleted and the phrase "stairways that will not be a permanent part of the structure on which construction work is being performed" has been added to ensure that the requirement is clearly understood. For the final rule, the Agency believes it is appropriate to set out a minimum width for stairways, based on § 1910.24(d) of OSHA's existing general industry standards for fixed industrial stairs. The Agency does not consider this to be a substantive amendment and believes that providing this regulatory language was implicit in the proposal and will give employers necessary guidance.

OSHA did not receive any comments regarding paragraph (a)(1). Therefore, the Agency promulgates § 1926.1052(a)(1) with the changes noted above.

Paragraph (a)(2) requires stairs to be installed at an angle between 30 and 50 degrees from horizontal. This requirement is the same as existing § 1926.501(j) and the proposed rule.

Paragraph (a)(3) requires riser height and tread depth to be uniform, within 1/4 inch, for each flight of stairs, including any foundation structure that serves as a tread of the stairway. This is the same requirement as the proposed rule and existing § 1926.501(k), except that the term "tread width" has been changed to "tread depth," and OSHA has clarified, in response to comments discussed below, the extent to which riser height or tread depth can vary from the "uniform dimensions." The change from "width" to "depth" matches the change made in § 1926.1050(b) for the definition of "tread depth," again reflecting a recommendation from CAL/OSHA (Ex. 2-8).

Two commenters (Exs. 2-8 and 2-24) replied to proposed paragraph (a)(3). Neither indicated they disagreed with the standard, but they suggested that the provisions should allow for minor

variations. In particular, CAL/OSHA (Ex. 2-8) suggested that the Agency limit variations to 1/4-inch. OSHA agrees that the standard should allow for minor variation from uniformity and has determined that the suggested limit is appropriate. Accordingly, OSHA has added a new sentence spelling out that such variations should not be more than 1/4-inch in any stairway system.

Paragraph (a)(4) requires that platforms be provided wherever a door or gate opens onto a stairway, and that the swing of the door not reduce the effective width of the platform to less than 20 inches. This requirement is the same as existing § 1926.500(b)(9) and the proposed rule. OSHA did not receive any comments regarding paragraph (a)(4).

Paragraph (a)(5) requires metal pan landings and metal pan treads to be secured in place before filling. This is based on the requirement to secure only metal pan landings, found in existing § 1926.501(h) and the proposed rule. In response to a comment, the final rule incorporates a requirement that metal pan treads also be secured.

The sole commenter (Ex. 2-8) who addressed paragraph (a)(5) suggested OSHA add the words "and metal pan treads" following "metal pan landings," because of the danger of displacement posed by unsecured metal pan steps. The Agency agrees and has made this change to the paragraph.

Therefore, OSHA is promulgating § 1926.1052(a)(5) as amended.

Paragraph (a)(6) requires all parts of stairways to be free of hazardous projections, such as protruding nails. This requirement is the same as existing § 1926.501(c) and the proposal. No comments were submitted regarding paragraph (a)(6).

Paragraph (a)(7) requires that slippery conditions on stairs be eliminated before stairways can be used to reach other levels. This requirement is similar to existing § 1926.501(e) and the proposed rule, except that the final rule requires the employer to eliminate the hazard before allowing use of the stairway to reach other levels, instead of requiring that the hazard be eliminated as soon as possible.

The one commenter (Ex. 2-1) who addressed proposed paragraph (a)(7) suggested that "as soon as possible" be replaced with the phrase "before the stairways are utilized for general use," because the commenter believed that "the proposal as written would be unenforceable and too restrictive." In response to this comment, the Agency has reworded the provision to provide clearer guidance, as noted above.

Paragraph (b) of § 1926.1052 contains rules relating to temporary treads and landings used on stairways.

Paragraph (b)(1) prohibits foot traffic on stairways with pan stairs that have not received their permanent fillings unless they have been temporarily fitted with wood or other solid material up to the top edge of each pan. This requirement clarifies existing § 1926.501(f). In addition, paragraph (b)(1) requires that such temporary treads and landings must be replaced when they are worn below the level of the top edge of the pan, so that employees are not endangered while using stairs on which permanent treads and landings have not yet been installed. As in the existing standard, temporary treads and landings are not required during construction of the stairway itself.

The one commenter (Ex. 2-33) who addressed this paragraph recommended modifying the paragraph to add language specifying that the full width of the tread opening be filled and that the fill material extend ½ inch above the nosing. The commenter based the ½-inch recommendation on concern that employees may be injured while walking on temporary stairs because the metal pans may have "give," which would expose the metal nosing as a tripping hazard for wet work shoes. OSHA points out that the provisions in paragraph (b)(3) already addresses the requirement for filling the full width and depth of the tread. OSHA has also decided not to adopt the recommendation that the fill material extend ½ inch above the nosing because the Agency believes that the provisions as proposed provide adequate employee protection. In addition, the commenter suggested that the words "wood or other" be added to describe more clearly the type of acceptable solid material that would be usable in a temporary arrangement for the filling. OSHA agrees with this suggestion and has modified the proposed provision accordingly, because the Agency believes that providing an example (wood) of acceptable fill material will help employers comply with the requirements of paragraph (b)(1).

After considering the comments received in response to proposed paragraph (b)(1), OSHA is promulgating paragraph (b)(1) as revised.

Paragraph (b)(2), which is a new provision, requires skeleton metal stairs to be provided with temporary treads and landings prior to any foot traffic if the permanent treads or landings are not to be placed until a later date.

Public comment was requested under Issue #10 of the proposed rule (51 FR

42759) regarding the adequacy of or need for § 1926.1052(b) (1) and (2). Both commenters responding to the issue (Exs. 2-23 and 2-29) expressed approval of the proposed provisions. One of the commenters (Ex. 2-29) also stated that the rule regarding metal pan-type stairways should be written as a performance standard, but did not give any specific information on what revisions were needed. In addition, the ACCSH recommended (Tr. 6/9/87, pp. 268-269) that OSHA prohibit the use of skeleton stairs "until either temporary or permanent treads and landings are installed."

In view of the comments and ACCSH recommendation, OSHA is promulgating paragraph (b)(2) as proposed.

Paragraph (b)(3) requires that treads be made of wood or other solid material, for temporary service on a stairway (i.e., to fill a metal stair pan for temporary use prior to concrete placement) and that the treads be the full width and depth of the stair. The final rule is basically the same as the proposal and existing § 1926.501(g), except that the term "wood treads" has been changed to "treads, made of wood or other solid material" to state clearly that other solid materials can be used. In addition, the Agency has changed the words "full width" to read "installed the full width and depth of the stair," so that the provision reflects OSHA's determination that a stair pan must be filled in completely. Although no commenters directly addressed paragraph (b)(3), OSHA has modified the final rule slightly to be consistent with changes made to paragraphs (b) (1) and (2) of this section and to clarify the regulatory intent. For the reasons discussed above, OSHA is promulgating paragraph (b)(3) as amended.

Two existing provisions pertaining to stairways, paragraphs (d) and (1) of § 1926.501, are not being incorporated into this revision of subpart X because they are redundant with other provisions in the construction standards. Existing § 1926.501(d) requires debris removal on and under stairways. This is already required by existing § 1926.25(a), Housekeeping. Similarly, existing § 1926.501(1), requiring illumination of stairways, simply references existing § 1926.56, Illumination. OSHA received no comments on those proposed deletions. Therefore, the Agency is deleting existing § 1926.501 (d) and (1).

Paragraph (c) of § 1926.1052 sets forth the requirements for stairrails and handrails. It replaces existing § 1926.501(b), which requires stairway railings and guardrails to meet the requirements for stairway railings and

guards and for standard specifications that appear in existing § 1926.500 (f) and (g), respectively. As a minor editorial change in the final rule, OSHA has deleted the phrase "regardless of their height above lower levels" from the introductory text of paragraph (c). OSHA notes that the provisions of the final rule still apply to all stairways regardless of their height above lower levels.

Paragraph (c)(1) requires stairways having four or more risers or rising more than 30 inches (76 cm), whichever is less, to be equipped with one stairrail system along each unprotected side or edge, and with at least one handrail. Proposed paragraph (c)(1) did not provide a 30-inch threshold for installation of stairrail and handrail systems.

As briefly discussed in the definitions section above, a stairrail system is a vertical barrier erected along unprotected sides and edges of a stairway to prevent employees from falling to a lower level. A handrail is a rail used to provide employees a handhold for support while climbing, descending, or resting on a stairway. On many stairways, the top of the stairrail system doubles as the required handrail. The criteria for a stairrail system that also serves as a 55 handrail are set out in paragraph (c)(7), below. If the stairrail is too high or does not provide a proper grasping surface, or if no stairrail is needed because the stairway is enclosed on both sides with walls, then a separate handrail and handrail support must be provided. These requirements are essentially the same as the requirements in existing § 1926.500(e)(1), except that the width-related requirements of the existing rule have been deleted because they are unnecessarily specific and, in any event, do not significantly relate to employee safety.

OSHA did not receive any comments specifically in response to paragraph (c)(1), but three commenters (Exs. 2-12, 2-23, and 2-29) responded to Specific Issue #11, in which OSHA asked whether or not the four-riser threshold for stairrail requirement was appropriate. These three commenters stated that the four-riser threshold was acceptable. The ACCSH discussion of this issue (Tr. 6/10/87, pp. 6-11), while inconclusive, pointed out the need to take variation in riser height into account by setting a minimum height above which stairrails would be required. Based on the ACCSH discussion and OSHA's field experience, the Agency has determined that 30 inches is the appropriate height above

which stairs shall be provided with stairrails. OSHA believes that a threshold height should be set to protect employees from exposure to fall hazards when they use stairs that extend above a minimum height, regardless of the number of risers.

For the reasons discussed above, OSHA is promulgating paragraph (c)(1) as final and incorporating the additional wording described above.

Paragraph (c)(2) requires winding and spiral stairways to be equipped with a handrail offset to prevent employees from walking on those portions of the stairways where the treads are less than 6 inches wide. This is the same requirement as existing § 1926.500(e)(2), except that revised subpart X expands the standard's coverage to include spiral stairways. Spiral stairways have been included under the provision because the problem of too narrow a tread is common to both types of stairways. The final rule unchanged from the proposed rulemaking. No comments were received addressing paragraph (c)(2).

Paragraph (c)(3) regulates stairrail height. OSHA has made some editorial changes for the sake of clarity and has reorganized the proposed provision.

Paragraph (c)(3)(i) requires the height of stairrails installed after the effective date of subpart X to be not less than 36 inches as measured from the upper surface of the stairrail system down to a point on the upper surface of the tread, in line with the face of the riser at the forward edge of the tread.

Paragraph (c)(3)(ii) requires that stairrails installed before the effective date of subpart X have a minimum height of 30 inches and a maximum height of 34 inches, measured the same way as required by paragraph (c)(3)(i) of this section. This provision, which is identical with existing § 1926.500(f)(2), indicates OSHA's recognition that it would be unreasonably burdensome to require that employers retrofit existing stairrails to comply with the revised standard. The Agency notes that employers who replace stairrail systems will be required to comply with paragraph (c)(3)(i). OSHA also observes that the existing specifications for stairrails are identical with the specifications for handrails in existing § 1926.500(f)(4)(ii). OSHA has thus allowed one rail to serve as both a handrail and a stairrail, which will allow employers the flexibility to use a single system to meet both requirements.

A study by the University of Michigan (Ex. 3-6:56) shows that the minimum height for stair railings should be 42 inches, and suggests that even 42 inches may be too low as "the height of the stair railing several steps below the

point where the fall originates is considerably lower than the stair railing height at the point where the fall originates, thus, it appears that a fall during descent may be more likely to project the subject in the direction of this 'lower' railing, and possibly over the railing" (Ex. 3-6:57).

The one commenter responding to proposed paragraph (c)(3) (Ex. 2-27) questioned the rationale for the 36-inch minimum height and stated that the explanation for this requirement needed to be expanded. While the Agency has not adopted the 42-inch minimum height suggested by this study, OSHA's decision to use 36 inches as the minimum height in the final rule reflects its belief that adequate provisions for employee safety require an increased minimum stairrail height. The Agency also points out that this will recognize the limits already established by some existing building codes and allow employers to continue the common practice of combining stairrails and handrails into one railing system.

Paragraph (c)(4) requires midrails, screens, mesh, intermediate vertical members (such as balusters), or equivalent structural members to be placed between the stairway steps and the top of the stairrail system. This is essentially identical to the proposal and essentially the same as existing § 1926.500(f)(2), which requires stairrails to be similar in construction to guardrails. In the final rule, however, the phrase "when there is no wall at least 21 inches (53 cm) high," has been removed from the introductory text of paragraph (c)(4). OSHA has removed the language to avoid any possible conflicting interpretation of paragraphs (c)(4) (i) through (iv) regarding the height at which intermediate rails would be required. The Agency believes this change will clarify its intent without affecting safety, and allow employers flexibility in addressing these provisions.

Paragraph (c)(4)(i) requires midrails to be located midway in height on a stairrail system. This is the same requirement as contained in existing § 1926.500(f)(1). Paragraph (c)(4)(ii) requires screens or mesh, when used, to fill the entire opening between top rails and stairway steps, and paragraph (c)(4)(iii) requires baluster-type members to be no more than 19 inches apart. Paragraph (c)(4)(iv) allows other arrangements of structural members, provided no opening in the system is more than 19 inches wide. These provisions are new requirements as the existing rule only addresses the use of midrails. However, these new rules allow greater flexibility for the

contractor providing fall protection, and are consistent with proposed § 1926.502(b) in the subpart M rulemaking.

No comments were received addressing paragraph (c)(4). Therefore, OSHA is promulgating § 1926.1052(c)(4) as amended.

Paragraph (c)(5) requires handrails and the top rails of stairrail systems to be capable of withstanding, without failure, a force of at least 200 pounds applied within 2 inches of the top surface, in any downward or outward direction, and at any point along the top edge. This is identical to the proposal and essentially the same requirement as contained in existing § 1926.501(b), which references existing § 1926.500(f). The phrase "with a minimum of deflection" that appears in existing § 1926.500(f)(1)(iv) was not carried forward in the new subpart X rulemaking because the Agency believes that the regulatory focus should be on preventing failure rather than on deflection and because of its belief that deflection should not be automatically equated with failure. In § 1926.1050(b), OSHA has defined the term "failure" to mean "load refusal, breakage, or separation of component parts" and further explained in the same definition that "load refusal is the point where the ultimate strength is exceeded." The Agency also notes that, in some cases, deflection indicates failure while in other cases, rail deflection does not indicate failure (where the rail deflects but still restrains falls).

The one comment (Ex. 2-27) regarding paragraph (c)(5) suggested that "greater clarification would be obtained by deletion of 'within 2 inches of the top edge.'" However, OSHA believes that any clarification attained through deleting this language would be more than offset by a lessening of the employee safety OSHA requires from these railings. Therefore, § 1926.1052(c)(5) is promulgated, unchanged from the proposed rule.

Paragraphs (c) (6) and (7) specify the maximum and minimum height for handrails and stairrails that are to serve as handrails, respectively. Although existing § 1926.500(f) (2) and (4)(ii) both specify 30 and 34 inches as appropriate limits, a study by the University of Michigan (Ex. 3-6:43) indicates that 33 inches is the optimum height for handrails, and that a variance from this height of plus-or-minus 3 inches is appropriate. Paragraph (c)(6) requires that handrails be between 30 inches and 37 inches in height throughout the length of the stairway. OSHA has decided that

providing the adequate employee safety requires an increased handrail height.

There were two comments on paragraph (c)(6). One comment (Ex. 2-29) supported handrail height specifications "within the limits of 30 inches to 42 inches per existing standards." However, as noted above, the existing limits for handrail height are 30 to 34 inches.

The other commenter (Ex. 2-27) who addressed § 1926.1052(c)(6) suggested that either the standard or Appendix A should have a drawing to depict "the recommended handrail height as the degree of angle of the stairway increases." While OSHA declines to include such a drawing at this time, the Agency may consider the use of some such illustrative representation in future rulemaking.

Paragraph (c)(7) allows any stairrail system between 36 and 37 inches in height to double as a handrail. OSHA intends the proposed 37-inch upper limit for handrails to provide a measure of flexibility, allowing a 1-inch tolerance for the height of a stairrail that also serves as a handrail. There were no comments on paragraph (c)(7). OSHA has revised paragraph (c)(7) to indicate clearly that stairrails that comply with its terms may also be used as handrails. This change also reflects the deletion of the reference to paragraph (c)(7) from the note to paragraph (c)(1).

Paragraph (c)(8) requires stairrail systems and handrails to be surfaced so as to prevent clothes from being snagged (which in turn could cause an employee to trip), and to prevent employee injuries resulting from contacting these rails. This is identical to the proposed rule and is the same requirement as existing § 1926.500(f)(1)(vi)(a) and (4)(i).

The one comment (Ex. 2-29) received addressing paragraph (c)(8) stated that the Agency should "[d]elete any reference to 'snagging of clothing' for this has no appropriate reference in standards for stairways or ladders." However, OSHA notes that while this particular requirement is not based directly on the ANSI consensus standards referenced by the existing OSHA standards, the language clearly indicates the degree of smoothness considered necessary under the standard.

Paragraph (c)(9) requires handrails to provide an adequate handhold for anyone using them. This is identical to the proposed rule and is the same requirement as in existing § 1926.500(f)(4)(i). OSHA did not receive any comments regarding paragraph (c)(9).

Paragraph (c)(10) requires that the ends of stairrail systems and handrails

be constructed so as not to constitute projection hazards. This is identical to the proposed rule and is the same requirement as in existing § 1926.500(f)(1)(vi)(d) and (4)(i). OSHA did not receive any comments regarding paragraph (c)(10).

Paragraph (c)(11) requires handrails that will not be a permanent part of the structure being built to be spaced a minimum of 3 inches away from walls, stairrail systems, and other objects. The proposal would have changed the requirement in existing § 1926.500(f)(4)(iii) for a minimum clearance of 3 inches to a minimum clearance of 1½ inches. The proposed change, which OSHA believed would not affect safety, would have brought the construction standards into conformity with the requirements of many local building codes as well as with paragraph 7.6 of ANSI A12.1-1973, Safety Requirements for Floor and Wall Openings, Railings, and Toeboards (Ex. 3-7). However, OSHA recognizes that local building code requirements are not intended to address the types of temporary handrails covered by this OSHA standard. In drafting the final rule, for reasons discussed further below, OSHA has decided to retain the minimum clearance at 3 inches, and to add the phrase "that will not be a permanent part of the structure being built" to clarify that this paragraph is intended to regulate temporary handrails. Therefore, this provision will not conflict with existing building codes or other criteria that apply to permanent structures.

OSHA received six comments (Exs. 2-1, 2-11, 2-24, 2-31, 2-33, and 2-37) directed at the provisions of proposed paragraph (c)(11). All six were of the opinion that 1½ inches was an insufficient amount of clearance for workers who had items, such as gloves or rings, on their hands. Most of these respondents further stated that the existing 3-inch minimum clearance requirement was appropriate. In response to these comments, the Agency has changed the clearance specification back to 3 inches, the same as set out in the existing standard.

Paragraph (c)(12) requires unprotected sides and edges of stairway landings to be provided with guardrail systems. The provision references the criteria for guardrail systems presented in subpart M. Paragraph (c)(12), which carries forward requirements from existing § 1926.500 (d) and (f) is intended to state clearly that the guardrail requirements, not the stairrail requirements, apply to landing areas. As a minor editorial change, OSHA has incorporated the explanatory note found after the

proposed paragraph into the text of paragraph (c)(12). No comments were received addressing paragraph (c)(12).

Section 1926.1053 Ladders

This section sets forth requirements for all ladders used for construction work. The existing standard, in paragraphs (a) (3), (4), and (5) of § 1926.450, requires manufactured and fixed ladders to comply with the provisions of pertinent American National Standards Institute safety codes. OSHA referenced those ANSI standards when it promulgated § 1926.450 in 1971, to provide guidance for proper design, manufacture, and maintenance of ladders. While specific ANSI standards were identified, the applicable paragraphs were not specified. To eliminate confusion as to which provisions apply and the need for employers to refer to documents outside part 1926, the applicable provisions of the ANSI standards are being incorporated into the text of subpart X. Those provisions are identified in the following discussion. Where the applicable ANSI provisions have been revised in recent editions, the final rule incorporates the more recent language. In addition, OSHA has consolidated the requirements for ladders, to the extent appropriate, so that employers have consistent guidance, whatever type of ladder they use.

Paragraph (a) sets forth the general requirements for constructing and equipping ladders.

Paragraph (a)(1) sets the minimum loads that ladders shall be capable of supporting without failure. After reviewing the pertinent consensus standards, OSHA proposed to adopt the load requirements of ANSI A14.1-1982 and A14.2-1982 for portable ladders and the load requirements of A14.3-1984 for fixed ladders, respectively. Ladders built and tested in conformance with appendix A will be deemed by OSHA to meet the strength requirements of paragraph (a)(1). This includes extra-heavy-duty type 1A ladders built and tested in accordance with the ANSI standards for portable metal ladders (A14.2) and portable reinforced plastic ladders (A14.5). In paragraphs 7.2.1.1 and 7.2.3 (which cite tables 5 and 9) of A14.2-1982, and paragraphs 8.2.1 and 8.2.3 (which cite tables 10 and 14) of A14.5-1982, ANSI prescribes test loads of 300 lbs. and working loads of 1000 lbs. for these extra-heavy-rated ladders. ANSI requires these types of ladders to have a safety factor of only 3.3. However, OSHA believes ANSI's use of the 3.3 factor instead of 4.0 will not present a problem or result in a

lessening of safety. OSHA notes that a high factor of safety is more important on light duty ladders where the residual strength is more significant. For example, a 200 pound capacity ladder is required by ANSI to actually support 800 pounds. Assuming the ladder is properly used by one employee weighing between 200 and 250 pounds, the residual strength is 550-600 pounds. A heavy duty ladder with a 300 pound capacity, under the same circumstances, would have a 750-800 pound residual strength, if a 3.3 factor of safety is used, and a 950-1000 pound residual capacity if a factor of 4.0 is used. Although ANSI does not set forth its rationale for setting a 3.3 safety factor for heavy duty ladders, OSHA believes that the residual capacity obtained by using 3.3 on heavy duty ladders is sufficient. In addition, OSHA believes that the extensive testing procedures required by the ANSI standards are sufficient to ensure that ladders in use are safe.

Appendix A of the final rule references the current ANSI standards for portable wood ladders, portable metal ladders, portable reinforced plastic ladders, fixed ladders, and job-made ladders (Exs. 3-11 through 3-14 and 3-17). While existing § 1926.450(a) (3), (4), and (5) require compliance with the provisions of the referenced ANSI standards, the revised standard takes a performance-oriented approach. This allows design freedom to employers who desire to engineer their own ladders, while notifying employers that compliance with ANSI would be acceptable. Thus, employers who do not desire to or cannot engineer the systems they use have information on how to obtain equipment which complies with the standard.

The Agency notes that, in keeping with ANSI, the load requirements for portable ladders are framed in terms of a safety factor, while the load requirements for fixed ladders are framed in terms of 250-pound loads plus anticipated loads imposed by weather or other factors. The Agency has determined that the distinctions drawn between portable and fixed ladders by the ANSI committees are appropriate. In particular, OSHA believes that the variety of uses to which portable ladders are put and the wear-and-tear those ladders sustain justify the imposition of a strength factor requirement. The Agency believes that compliance with the safety factor requirement will provide appropriate assurance of safety to employees using portable ladders. On the other hand, the Agency believes the comparatively stable and controlled conditions under

which fixed ladders are used justify the imposition of specific weight requirements, instead of a strength factor requirement.

Job-made ladders do not have minimum strength criteria either in the existing OSHA rules or in the ANSI standard for job-made ladders A14.4-1979 (Ex. 3-14). However, their potential use is the same as that of manufactured portable ladders. Therefore, revised subpart X imposes the same strength requirements on them.

In the final rule, OSHA is relocating proposed paragraph (a)(1)(ii) to paragraph (a)(1)(iii) and is adding new paragraph (a)(1)(ii) immediately following the portable ladders provision. OSHA has inserted this other paragraph to reflect its determination that self-supporting portable ladders, such as stepladders, may be properly placed at angles other than 75½ degrees. The amendment serves to indicate clearly that non-self supporting portable ladders, unlike self-supporting ladders, are subject to the 75½-degree inclination test criterion that was applied to all portable ladders in proposed paragraph (a)(1)(i). The Agency has determined that the provisions, as clarified, are consistent with the pertinent ANSI standards.

Paragraph (a)(1)(i) requires each self-supporting portable ladder to be capable of supporting, without failure, four times the maximum intended load applied or transmitted to that ladder. Extra-heavy-duty self-supporting portable metal or reinforced plastic ladders are required to satisfy a strength factor requirement of 3.3. Ladders built and tested in conformance with the applicable provisions of appendix A are deemed to meet the requirements.

The minimum strength requirement for portable ladders is under paragraph (a)(1)(i) is essentially the same requirement as contained in the existing § 1926.450(a) (3) and (4) references to the A14.1-1968 ANSI standard for portable wood ladders (Ex. 3-8) (paragraph 4.1.2.1), and the A14.2-1956 ANSI standard for portable metal ladders (Ex. 3-9) (paragraph 4.2.1). However, the 200-pound load specified by the ANSI provisions noted above has been deleted in favor of the revised rule's performance-oriented language, which addresses more situations.

In the revised rule, breakage, separation of component parts, or load refusal are used as the failure criteria, as some rung deformation will normally result when such loads are applied, and a deformed rung does not necessarily indicate a ladder that is unsafe for use. OSHA is promulgating this rule so that

employers will determine if a rung is so deformed as the result of use that it meets at least one of the failure criteria.

In Issue #6, OSHA asked for comments about possible methods of measuring a ladder's ability to maintain its designed load capacity once it has been placed in service. Following the ANSI A14.1-1982 standard specifications, the proposal required that ladders have a four-to-one strength capacity. Under this issue, OSHA presented deflection as a possible method of evaluating a ladder's strength capacity and integrity, once the ladder is in use.

Ten commenters responded to Issue #6. Several commenters (Exs. 2-16, 2-28, 2-29, and 2-35) approved of visual inspections as sufficient to ensure ladder strength and integrity. Four commenters (Exs. 2-23, 2-30, 2-35, and 2-39) disapproved of deflection as a strength test. In particular, two commenters expressed concern that the deflection testing would not yield accurate results. Another commenter (Ex. 2-35) stated that "the deflection criteria outlined in proposed OSHA could structurally damage the ladder." Also, a commenter (Ex. 2-39) stated that "Testing for maximum allowable deflection would be difficult to conduct in the field and it might be counterproductive."

Three others (Exs. 2-11, 2-31, and 2-37) noted that the explanation of proposed § 1926.1052(c)(5) (51 FR 42754) regarding handrails and the top rail of stairrail systems, states that "deflection should not be automatically equated with failure." The commenters added that "this same theory should be applied to ladder strength capacity." They further stated that "there is no practicable or workable method of measuring ladder deflections in construction industry job site situations." The ACCSH also disapproved of deflection as a test and added that a "competent person's" inspection should be sufficient (Tr. 6/9/87, pp. 255-257).

In light of these comments, OSHA is not adding provisions to subpart X prescribing a test or method for measuring the integrity of a ladder once it has been placed in service. OSHA notes that existing § 1926.20(b)(2) requires that frequent and regular inspections of job sites, materials, and equipment be made by competent persons. Therefore, the Agency has determined that compliance with the above-noted requirement provides the appropriate assurance that ladders are safe for use.

OSHA received two comments (Exs. 2-24 and 2-33) regarding paragraph (a)(1)(i). One commenter (Ex. 2-33) stated that a 20-foot ladder "should be able to hold four workers." The commenter also emphasized the need for OSHA to consider that workers today are generally supposed to be heavier than they were 20 years ago, an apparent reference to the period intervening since the ANSI standards referenced by the existing standards were adopted. OSHA believes that the use of performance-oriented regulatory language is appropriate to deal with the circumstances encountered at construction worksites, including any increase over time in the size of the employees using ladders. Accordingly, proposed paragraph (a)(1)(i) addressed the need to support the maximum intended load and did not set out any requirements based on a specific ladder length or number or weight of workers. Given that employers will be required to provide ladders that support the workers using them, however many or heavy those workers may be, OSHA believes that § 1926.1053(a)(1) (i) and (ii) address the commenters' concerns.

The other commenter (Ex. 2-24) stated that it supported "the inclusion of the nonmandatory appendix" outlining "specific methods for meeting the standards." As noted in paragraphs (a)(1) (i) through (iii), OSHA deems ladders built in conformance with appendix A to meet the strength requirements of paragraph (a)(1). While the appendix does not describe specific methods for meeting the standards, it lists ANSI safety standards that have requirements for building and testing ladders to determine that they have the minimum strength required by the final rule. OSHA notes that ladders that satisfy the pertinent ANSI requirements are readily available. Therefore, OSHA anticipates that employers will have no difficulty in complying with paragraph (a)(1)(i), using the information in appendix A, as currently worded.

Accordingly, after considering the above-discussed comments, OSHA is promulgating paragraph (a)(1)(i) as amended.

Paragraph (a)(1)(ii) requires each non-self supporting portable ladder to be capable of supporting, without failure, at least four times the maximum intended load applied or transmitted to that ladder when the ladder is placed at an angle of 75½ degrees from the horizon. Extra-heavy-duty non-self-supporting portable metal or reinforced plastic ladders are required to be capable of supporting, without failure, at least 3.3 times the maximum intended load

applied in the same manner for other duty-rated ladders of this same type. Ladders built and tested in conformance with the applicable provisions of appendix A are deemed to meet the requirement. The 75½-degree angle of inclination is consistent with the prescribed angle in the design test requirements for portable ladders set out in paragraph 7.3 of ANSI A14.1-1982 (Ex. 3-11) and paragraph 7.2 of ANSI A14.2-1982 (Ex. 3-12). OSHA believes that setting portable ladders at a 75½-degree pitch from horizontal provides the appropriate assurance that those ladders provide the necessary strength, balance, and resistance to sliding. This is also consistent with paragraph 8.3.3 of both ANSI A14.1-1982 (Ex. 3-11) and A14.2-1982 (Ex. 3-12).

As a matter of clarification, in the final rule, OSHA is adding paragraph (a)(1)(ii) to differentiate between portable ladders that would not be subject to the 75½-degree test criteria and those that would be subject.

Paragraph (a)(1)(iii) requires fixed ladders to be capable of supporting, without failure, at least two loads of 250 pounds each, concentrated between any two consecutive points of attachment, plus other anticipated loads such as those caused by winds and ice buildup. The paragraph also requires that each step and rung be capable of supporting a minimum concentrated load of 250 pounds, applied in the middle of its span. This requirement, which is identical to the proposed rule, is based on ANSI A14.3-1984 (Ex. 3-13), paragraph 4.2.1.1. The Agency notes that the ANSI requirement, which is based on loads of 250 pounds, is consistent with OSHA's belief that 250 pounds is the average design weight of an employee with tools.

The single comment (Ex. 2-39) directed to § 1926.1053(a)(1)(ii) simply expressed a preference for the use of "shall" rather than "will" in the parenthetical explanation at the end of the paragraph, where OSHA states that "(Ladders built in conformance with the applicable provisions of appendix A will be deemed to meet this requirement)." OSHA believes that the requirement, as proposed, provide appropriate guidance. Therefore, the Agency declines to make the suggested change. The commenter also suggested that OSHA delete the parentheses, and this has been done.

Paragraph (a)(2) requires ladder rungs, cleats, and steps to be parallel, level, and uniformly spaced when the ladder is in position for use. This requirement is identical to the proposed rule and is based on the existing § 1926.450(a)(3) reference to the ANSI standard for

portable wood ladders, A14.1-1988 (Ex. 3-8), which addresses this in paragraph 4.2.1.2. This provision is based in part on paragraphs 6.2.1.2 and 6.3.5.8 of A14.1-1982 (Ex. 3-11); paragraphs 5.3, 6.1.4, 6.5.4, and 6.6.4 of ANSI A14.2-1982 (Ex. 3-12); and paragraph 5.1.1 of A14.3-1984 (Ex. 3-13). This requirement is also consistent with existing § 1910.25(c)(2)(i)(b). The requirements in paragraph (a)(2) do not currently apply in their entirety to portable metal or fixed ladders. OSHA believes that such requirements should apply to all ladders to protect all employees who use ladders.

The one comment (Ex. 2-24) that addressed proposed paragraph (a)(2) suggested that the regulation include a definition of "uniformly," to allow for "some minor variation due to difficulties of on-site construction." However, the commenter did not suggest any appropriate limits such as those suggested by commenters addressing stairway uniformity. OSHA recognizes that some employers may experience difficulty with on-site construction of ladders whose rungs are to be uniformly spaced. However, OSHA believes that this provision, which restates, in part, paragraph 6.2.1.2 of A14.1-1982 (Ex. 3-11); paragraph 5.3 of ANSI A14.2-1982 (Ex. 3-12), reflects established good industry practice. Furthermore, the Agency anticipates that employers who use reasonable care will encounter no difficulty in obtaining ladders that comply with paragraph (a)(2).

The Agency is therefore promulgating § 1926.1053(a)(2) without change.

Paragraph (a)(3) sets the rung spacing requirements for ladders. Paragraph (a)(3)(i) requires that rungs, cleats, and steps of portable ladders (except step stools and wood extension trestle ladders) and fixed ladders be spaced not less than 10 inches apart, nor more than 14 inches apart, as measured along the side rail. Paragraph (a)(3)(ii) requires that rungs, cleats, and steps on step stools be spaced not less than 8 inches nor more than 18 inches apart. Paragraph (a)(3)(iii) requires that the steps, rungs and cleats on the base section of wood extension trestle ladders be spaced not less than 8 nor more than 18 inches apart and that steps, rungs and cleats on the extension section of such an extension trestle ladder be spaced not less than 6 inches nor more than 12 inches apart. Proposed paragraph (a)(3) had separate requirements for portable and fixed ladders (proposed (a)(3)(i) set rung spacing between 6 and 12 inches) and individual step or rung ladders (proposed paragraph (a)(3)(ii) set

spacing between 6 and 16½ inches). Currently, spacing limits are specified by the ANSI standards for portable wood ladders, portable metal ladders, and fixed ladders, which are referenced in existing § 1926.450(a), (3), (4), and (5), respectively (Exs. 3-8, 3-9, and 3-10). The new limits are based in part on the most recent editions of the pertinent ANSI standards for the most commonly used types of ladders (Exs. 3-11 through 3-14 and 3-17). The consensus standards, as referenced by the existing standards and as revised, in general, provide rung spacing of 12 inches. The exceptions to the general rule are covered by paragraphs (a)(3) (ii) and (iii) of the final rule. The spacing of step stools is based on paragraphs 6.5.4 and 5.3 of ANSI A14.1-1982 and ANSI 14.2-1982, respectively. The spacing for extension trestle ladders is based on paragraph 6.3.5.8 of ANSI A14.1-1982. OSHA has determined that compliance with those ANSI-based provisions will provide appropriate protection to employees who use the specified ladders.

Paragraph (a)(3) is also based on OSHA's review of the record developed for the revision of the Agency's general industry standards for walking or working surfaces (Docket S-041). For example, a study performed for OSHA by the University of Michigan (Ex. 1) noted that the National Safety Council and the Liberty Mutual Insurance Company recommend 12-inch spacing. The authors, however, concluded that:

Though standard practice would appear to agree with the anthropomorphic and biomechanical concerns in this matter, it is still not believed to be significant evidence to support a regulation which would require all fixed ladders to be at a uniform rung spacing at this time. A range of between 10 and 14 inches would, however, seem reasonable for all new ladders until further research could be conducted.

Therefore, OSHA has revised proposed paragraph (a)(3) to reflect the University of Michigan study, the pertinent consensus standards and the rulemaking record.

Issue #7 of the proposed rule solicited comments on two particular points regarding the specifications for the minimum and maximum vertical spacing between ladder rungs, steps, and cleats (§ 1926.1053(a)(3)), and minimum widths for rungs, steps, and cleats (§ 1926.1053(a)(4)). First, the Agency sought comment on the appropriateness of the proposed limits, requesting that commenters who suggested that the limits be made either more or less specific explain their positions.

Most of the comments on Issue #7 did not make clear which of the paragraphs

they intended to address. Most of the commenters on the issue (Exs. 2-23, 2-33, and 2-39) agreed generally with the suggested limits. In addition, one commenter (Ex. 2-12) stated that "as long as it is standard throughout a project, it does not matter. Our ladders are 12" top of rung to top of rung." Also, one comment (Ex. 2-6) suggested that the requirement for rung spacing should be more performance-oriented so that configurations which provide equivalent protection would be allowed. OSHA has determined that it would not be appropriate to adopt the suggestion (Ex. 2-6) to use more performance-oriented language in paragraph (a)(3) because the Agency believes that the proposed requirements are needed to guide employers. Another commenter (Ex. 2-26) stated that 14-inch rung spacing makes more sense than 12-inch spacing because "Fourteen inch is much easier for the average person to climb." OSHA notes that paragraph (a)(3), as revised, sets the upper end of the allowable range for rung spacing at 14 inches. Therefore, a ladder with the rung spacing suggested by the commenter will be permitted. Another commenter (Ex. 2-22) stated that "from a biomechanical/ergonomic standpoint" there is no reason to deviate from 12-inch rung separation. As discussed above, OSHA believes that allowing rungs to be spaced not less than 10 inches nor more than 14 inches provides appropriate protection for employees.

Under Issue #7, OSHA also asked if the proposed limits should be further consolidated so that there is one set of rules for vertical spacing and one minimum width limit. All of the comments on this question favored further consolidation. Several commenters affiliated with the Associated General Contractors of America (Exs. 2-11, 2-31, 2-37 and 2-38) stated that—

Further consolidation of these limits would permit employer flexibility in providing for the varied ladder situations present in field construction operations. The establishment of realistic and workable minimum limits would be the most appropriate solution.

Two comments (Exs. 2-12 and 2-35) simply stated it was a good idea to establish one set of rules for vertical spacing. One comment (Ex. 2-29) suggested that the uniform spacing should be 6 to 16½ inches.

OSHA believes that paragraph (a)(3), as revised, is responsive to those commenters who suggested that OSHA further consolidate the rung spacing requirements. In particular, paragraph (a)(3)(i) sets the same rung spacing

range for all fixed ladders and for virtually all portable ladders.

Paragraph (a)(4) specifies the minimum rung/step length for portable and fixed ladders. Proposed paragraph (a)(4) has been reformatted and amended, for the sake of clarity, so that paragraph (a)(4)(i) covers fixed ladders and individual-rung/step ladders, and paragraph (a)(4)(ii) covers portable ladders.

Paragraph (a)(4)(i) requires that the minimum clear distance between the side rails of fixed ladders (except individual-rung/step ladders) and the minimum clear distance between the sides of individual-rung/step ladders shall be 16 inches. This provision is based on paragraph 5.1.2 of ANSI A14.3-1984.

Paragraph (a)(4)(ii), which is based on ANSI A14.1-1968 (Ex. 3-8), paragraph 4.2.1.3, and ANSI A14.1-1982 (Ex. 3-11), paragraph 6.3.2.4, requires that the minimum clear distance between the side rails of all portable ladders shall be 11½ inches. This provision differs from that which was proposed and from that which has been applied through the existing § 1926.450(a)(4) reference to A14.2-1956. OSHA had already decided, for the sake of clarity, that the minimum clear distance requirements should be consolidated in proposed paragraph (a)(4). Therefore, when the Agency proposed requirements for all portable wood and metal ladders, OSHA adopted the minimum distance requirement (11½ inches) for the most commonly used portable wood ladders, based on the ANSI provisions cited above, and the minimum distance requirement (12 inches) for the most commonly used portable metal ladders (based on the ANSI standard provisions in paragraphs 3.2.1 and 3.3.2 of ANSI A14.2-1956 (Ex. 3-9) and 6.1.3 and 6.2.1 of A14.2-1982 (Ex. 3-12)). In the course of drafting proposed paragraph (a)(4), OSHA decided that it would no longer require the spread between portable ladder rails to increase along with the ladder's height (generally 1 inch per foot of length) because the Agency determined that it was unreasonably burdensome to comply with the requirements for progressive spread. By contrast, OSHA believes that setting a minimum clear distance between the side rails of all ladders provides the appropriate guidance to employers.

As discussed above, OSHA received a unanimously favorable response when it raised the possibility, in Issue #7, that it would further consolidate the minimum width provisions of proposed paragraph (a)(4). In particular, one comment (Ex. 2-8) stated that OSHA should set 12

inches as the minimum rung length for all portable ladders. Another comment (Ex. 2-22) stated that OSHA should consider setting the minimum ladder width at 15 inches "to allow short-heavy subjects to assume their preferred hand separation." Yet another comment (Ex. 2-33) indicated some concern about the adequacy of the 11½-inch minimum width proposed for portable wood ladders, stating that "11½ inches gives my Triple E's only one inch to spare on a ladder width." On the other hand, the ACCSH unanimously recommended that OSHA further consolidate the proposed rung-width requirements by setting the requirement at 11½ inches (Tr. 6/9/87, pp. 257-262). The ACCSH based its suggestion on its perception that an 11½-inch width would enable an "average person" to get both feet on the same rung.

OSHA has determined, consistent with the recommendation of the ACCSH and the comments received, that 11½ inches is the appropriate minimum clear distance between side rails for all portable ladders. The Agency has chosen 11½ inches instead of other limits for portable ladders because OSHA believes that an 11½ inch minimum clear distance will allow safe passage by employees. Indeed, the Agency believes that setting a higher minimum clear distance for portable ladders would not provide significantly greater protection and would unnecessarily make many existing ladders obsolete. Therefore, the Agency has deleted the proposed rule's required 12-inch-minimum clear length for portable metal ladders and reinforced plastic ladders and removed the word "wood" at the end of the sentence. On the other hand, OSHA has retained the existing 16-inch minimum clear distance for fixed and individual-rung/step ladders, as proposed, because the Agency believes that provision is still appropriate. No comments were directed at the provisions for these ladders.

Accordingly, OSHA is promulgating paragraph (a)(4) as revised.

Paragraph (a)(5) requires individual-rung ladders to be shaped such that employees' feet cannot slide off rung ends. This is identical to the proposed rule and is the same requirement applied through the existing § 1926.450(a)(5) reference to ANSI A14.3-1956 (Ex. 3-10), which contains this provision in paragraph 4.1.5.

OSHA received a comment (Ex. 2-18) expressing the view that ANSI A14.3 was "intended to be applied to manufactured ladders, not to job-made ladders." The comment further stated that the use of job-made ladders

constructed with round steel pipe and other materials lacking skid-resistant properties "has not resulted in any significant injuries." The Agency agrees that the proposed paragraph did not explicitly state that job-made ladders would be excluded from coverage. However, OSHA notes that individual-rung/step ladders, that is, those without side rails, such as may be found in use for manhole access, are not job-made ladders, and the rule does not apply to such ladders. To clarify this point, OSHA is adding language to the definition of job-made ladder in the final rule explaining that, by definition, no job-made ladders are individual-rung/step ladders. Therefore job-made ladders would not be subject to the requirements of paragraph (a)(5) and other provisions that specifically address individual-rung/step ladders.

Paragraph (a)(6) requires employers to minimize slipping hazards on ladders. In the final rule, OSHA has divided paragraph (a)(6) into two parts for the sake of clarity. Paragraph (a)(6)(i) requires that the rungs and steps of fixed metal ladders manufactured more than 60 days after the effective date of revised subpart X be corrugated, knurled, dimpled, coated with skid-resistant material, or otherwise treated to minimize slipping. OSHA notes that no such provision is currently applied to fixed ladders and also that ANSI A14.3-1984 does not contain such a requirement. The Agency has determined, however, that such a requirement is necessary for the protection of employees climbing fixed metal ladders.

Paragraph (a)(6)(ii) requires that all portable metal ladders be treated to minimize slipping. This requirement is found in both paragraph 3.1.5 of ANSI A14.2-1956 (Ex. 3-9), which is referenced by existing § 1926.450(a)(4), and in the most recent ANSI edition, A14.2-1982, paragraph 5.5 (Ex. 3-12).

An area of concern addressed by the one commenter (Ex. 2-13) who addressed paragraph (a)(6) was that rebuilding or upgrading existing fixed ladders to meet the newly applicable requirements would impose large costs. The commenter stated that "in our estimation, if all existing fixed ladders would have to be rebuilt or otherwise upgraded to meet these requirements, the cost would be staggering." However, the commenter indicated that existing fixed ladder installations that already substantially met the performance requirements of ANSI A14.3, beginning with the 1974 edition, were exempted in the new ANSI standards.

OSHA based paragraph (a)(6) on the previous and existing ANSI provisions

addressing portable metal ladders, as noted above. OSHA recognizes that there may be some employers whose fixed ladders do not have skid-resistant rungs, and that the process of bringing those existing fixed ladders into compliance would be unreasonably burdensome. OSHA believes that most fixed ladders, though not currently subject to slip-resistance requirements under the ANSI provisions (Ex. 2-14) referenced by existing § 1926.450(a)(5), already have the necessary anti-slip features. However, to avoid imposing unreasonable burdens, the Agency has amended the proposal so that paragraph (a)(6)(i) applies only to fixed ladders installed 60 days after the effective date of revised subpart X. This allows those employers who have not already been using ladders that minimize slipping hazards to bring their operations into conformance with the new requirement, as they replace their existing equipment.

As indicated above, the same commenter (Ex. 2-18) submitted the only substantive response to both proposed paragraphs (a)(5) and (6). As regards paragraph (a)(6), the commenter questioned the application of the proposed provisions to job-made ladders. In particular, the commenter stated that the original ANSI A14.2 standards for portable metal ladders and ANSI A14.3 standard for fixed ladders were not intended to cover job-made ladders. The commenter stated that "For years, standard design of job-made ladders has utilized rungs made of round steel pipe, steel bars, wood dowels or wood slats. In our experience, this practice has not resulted in any significant injuries." However, this was the sole response to the provision, and the commenter offered no evidence to substantiate that contention. OSHA's experience in construction safety and enforcement of its standards indicates that compliance with paragraph (a)(6) will provide appropriate protection from slipping hazards associated with ladder use. Based on that determination, the Agency declines to revise the proposed paragraph to distinguish between job-made ladders and other ladders.

Therefore, § 1926.1053(a)(6) incorporates the changes from the proposed rule discussed above and is being promulgated as amended.

Paragraph (a)(7) prohibits the tying together of ladder sections to make a longer ladder, unless the sections are designed for such use. This is identical to the proposed rule and is the same requirement found in paragraphs 5.2.9 of ANSI A14.1-1968 (Ex. 3-8) and 5.3.6 of ANSI A14.2-1956 (Ex. 3-9), which are imposed through the references to ANSI

in existing § 1926.450(a) (3) and (4), respectively. This provision is also consistent with paragraph 8.3.11 of both A14.1-1982 (Ex. 3-11) and A14.2-1982 (Ex. 3-12), the most recent editions of the pertinent ANSI standards. As discussed earlier, part of the Agency's purpose in revising subpart X is to incorporate particular applicable ANSI provisions that were cited as references under existing OSHA regulations. OSHA did not receive any comments regarding paragraph (a)(7).

Paragraph (a)(8) requires that each stepladder be provided with a metal spreader or other locking device to keep the ladder in an open position when being used. This is unchanged from the proposed rule and is the same requirement as in paragraphs 4.2.1.6 of ANSI A14.1-1968 (Ex. 3-8) and 3.3.8 of ANSI A14.2-1956 (Ex. 3-9), which are imposed through the references to ANSI in existing § 1926.450(a) (3) and (4), respectively. This provision is also consistent with paragraph 6.2.1.6 of A14.1-1982 (Ex. 3-11), and paragraphs 6.1.9 and 8.3.13.2 of A14.2-1982 (Ex. 3-12), the most recent editions of the pertinent ANSI standards. No comments were received addressing paragraph (a)(8).

Paragraph (a)(9) requires that a spliced side rail be equivalent in strength to a side rail of the same length made of one piece of the same material. This is the same requirement as existing § 1926.450(b)(7), which covers job-made ladders. OSHA has determined that proper splices are important on all ladders and has framed this provision accordingly. OSHA did not receive any comments regarding paragraph (a)(9).

Paragraph (a)(10) requires that, except when portable ladders are used to gain access to fixed ladders, two or more separate ladders used to reach an elevated work area shall be offset with a platform or landing between the ladders. This requirement is essentially the same as existing § 1926.450(b)(3), which covers job-made ladders, and the proposed rule, which extended the provision to cover most multiple ladder situations, not just those involving job-made ladders. Proposed (a)(10) required that any separate ladders used to reach an elevated work area be offset with a platform or landing between the ladders, because the Agency believed that the protection required by existing § 1926.450(b)(3) for employees using job-made ladders was also needed by employees using manufactured ladders. In the final rule, OSHA is excluding situations where portable ladders are used to access fixed ladders, such as those used for utility towers, billboards,

and other structures where the bottom of a fixed ladder is elevated to limit access. OSHA notes that in such situations, the most practical means of gaining access to the fixed ladder is the use of a hook-on type portable ladder. Therefore, a platform or landing would not be needed. In addition, OSHA has consolidated the guardrail and falling object protection requirements of proposed paragraphs (a) (11) and (12), respectively, into paragraph (a)(10), so that employers who use platforms and landings will have clear and concise guidance on what fall protection and falling object protection is required.

In Issue #4, OSHA requested public comment on whether or not it is appropriate to extend the coverage of existing § 1926.450(b)(3) to all ladders. OSHA received six comments on the issue. None of the comments referred to the proposed requirements for platforms or landings. One commenter (Ex. 2-28) indicated that the existing requirement is "followed when other than job-made ladders are used." One commenter (Ex. 2-12) stated that they "use only job-made ladders." In addition, a commenter (Ex. 2-6), who apparently opposed merging any of the requirements for job-made and manufactured ladders, expressed the view that "job-built ladders do not have minimum strength criteria in the current standard or in the ANSI standards." The other three commenters (Exs. 2-29, 2-33, and 2-35) supported OSHA's proposal to extend the provisions to all ladders. The ACCSH also recommended that the provisions be applied to all ladders (Tr. 6/9/87, pp. 244-253). Therefore, based on the record, including the comments received, OSHA has decided to promulgate paragraph (a)(10) unchanged.

OSHA has determined that the references to subpart M in proposed paragraphs (a)(11) and (a)(12) can be consolidated into paragraph (a)(10), which will simplify paragraph (a). OSHA notes the provisions of proposed paragraphs (a) (11) and (12) are the subject of another rulemaking and that restating them in this subpart would involve duplication of the Agency's efforts in the other rulemaking. In addition, the Agency notes that the revision produces a paragraph (a)(10) that more closely resembles existing § 1926.450(b)(3).

Three commenters (Exs. 2-11, 2-31, and 2-37) stated that proposed paragraph (a)(12) was not the same as existing § 1926.450(b)(3), because the existing standard does not provide a requirement for overhead protection. Also, the commenters indicated they

wanted OSHA to clarify the proposed requirement so that overhead protection is required only "where the hazard of falling objects exists," to conform with the requirement for toeboards in proposed § 1926.502(j)(1). OSHA observes that the terms "overhead protection" and "falling object protection" refer to the same measures, and that compliance with the requirement for toeboards (defined in existing § 1926.452(a)(31)) in existing § 1926.450(b)(3) results in provision of falling object protection. In addition, regarding the request for clarification, OSHA notes that proposed § 1926.502(j)(1) already provides that toeboards are only required where needed to protect employees from falling objects. The Agency, therefore, has determined that further guidance is not needed but has included a reference to these subpart M provisions in this final rule.

After considering the comments received concerning this provision, OSHA is promulgating paragraph (a)(10) as amended and incorporating the provisions that were proposed as paragraphs (a)(11) and (a)(12) into paragraph (a)(10) of the final rule.

Paragraph (a)(11), which was paragraph (a)(13) of the proposed rule, requires ladder surfaces to be free of puncture and laceration hazards. The Agency has determined that it is appropriate to apply this requirement to both manufactured and job-made ladders, because OSHA believes that ladders, whatever their origin, should not pose risks of puncture wounds, lacerations, or snagging. This provision consolidates and is essentially identical to those imposed through the existing § 1926.450(a) (3), (4), and (5) references to ANSI A14.1-1968 (Ex. 3-8), paragraph 3.1.1.1, ANSI A14.2-1956 (Ex. 3-9), paragraph 3.1, and ANSI A14.3-1956 (Ex. 3-10), paragraphs 4.1.4 and 4.2, respectively. This provision is also consistent with ANSI A14.1-1982 (Ex. 3-11) paragraph 5.1.1.1; A14.2-1982 (Ex. 3-12), paragraph 5; and A14.3-1984 (Ex. 3-13), paragraph 4.1.5, the most recent editions of those standards. These paragraphs from ANSI require ladders to be without defects, such as sharp edges, splinters, and burrs.

Two commenters (Exs. 2-16 and 2-29) addressed proposed paragraph (a)(13) (now paragraph (a)(11) of the final rule). In response to the first commenter, the provision has been slightly reworded to add "be" after the word "shall." The other commenter (Ex. 2-29) stated that OSHA should "delete any reference to 'snagging of clothing' for this has no appropriate reference in standards for

stairways and ladders." However, OSHA has determined that the requirement to prevent snagging hazards, while not based directly on the ANSI consensus standards, is appropriate both to protect employees from snagging hazards and to clarify the Agency's intent concerning the degree of smoothness considered necessary under the standard. Therefore, the Agency has retained the requirement in the final rule.

After considering the comments discussed above, OSHA is promulgating paragraph (a)(11), incorporating the minor change noted above.

Paragraph (a)(12), which was proposed as paragraph (a)(14), prohibits wood ladders from being coated with any opaque covering except as necessary for identification or warning labels. This provision is intended to prohibit covering or painting over any splits or cracks in any wood ladder component that might cause the defect to be undetected by a ladder user. This requirement is consistent with the existing § 1926.450(a)(3) reference to ANSI A14.1-1968 (Ex. 3-8), which addresses this requirement in paragraph 5.1.9. The specific wording of paragraph (a)(12) is based on the most recent editions of the pertinent standards, ANSI A14.1-1982 (Ex. 3-11), paragraph 8.4.6.3, and A14.3-1984 (Ex. 3-13), paragraph 9.3.10. OSHA did not receive any comments regarding proposed paragraph (a)(14) (paragraph (a)(12) of the final rule).

Paragraph (a)(13) (paragraph (a)(15) in the proposed rule) requires a minimum perpendicular clearance of 7 inches between fixed ladder rungs, cleats, and steps, and any obstruction behind the fixed ladder, except in the case of elevator pit ladders. This is essentially the same requirement as contained in the existing § 1926.450(a)(5) reference to ANSI A14.3-1956 (Ex. 3-10), which addresses this in paragraph 5.4. However, in both the proposed and final rule, OSHA has removed the existing provision that allowed for the reduction of minimum clearance to account for unavoidable obstructions. This change is consistent with the most recent edition of the pertinent ANSI A14.3-1984 (Ex. 3-13), paragraph 5.4.2.1. The Agency believes that, in general, the minimum clearance requirement is necessary, regardless of any obstructions, so that employees can get safe footholds on ladders. The final rule differs from the proposal in that, in response to a comment, an exception for elevator pit ladders has been added to the final.

The Agency received one comment (Ex. 2-13) responding to this paragraph (now § 1926.1053(a)(13)). The commenter

requested that OSHA exempt pit ladders mounted to walls inside elevator hoistways from the provisions of the standard because these "ladders are used infrequently for maintenance and then by trained personnel." The commenter added that "There is also a necessity to maintain clearance between the elevator car and the ladder." OSHA has determined that this request is appropriate and notes that elevator hoistways and/or shafts are usually screened or secured from general traffic areas. The Agency considers it reasonable to expect that only those employees who are performing construction work on elevators and elevator areas would have the requisite training and access to the elevator pit ladders. In addition, the Agency observes that paragraph 5.4.2.1 of ANSI A14.3-1984 (Ex. 3-13) specifically excludes elevator pits that comply with the clearance requirements of ANSI A17.1-1981 from its coverage. Therefore, the paragraph has been amended to set the minimum perpendicular clearance for elevator pit ladders at 4½ inches.

As noted above, this revision of subpart X codifies specific ANSI provisions that were cited as references in existing OSHA regulations. For that reason, and based on the rulemaking record, the Agency is promulgating paragraph (a)(13) as revised.

Paragraph (a)(14) (paragraph (a)(16) in the proposed rule) requires a minimum clearance of 30 inches between fixed ladders and any obstruction on the climbing side of the ladder. Where the clearance is less than 30 inches because of unavoidable obstructions, paragraph (a)(15) (redesignated from paragraph (a)(17) in the proposed rule) requires a deflection device to be installed that would guide employees around the obstruction. These requirements are consistent with those imposed through the existing § 1926.450(a)(5) reference to ANSI A14.3-1956 (Ex. 3-10), which addresses these matters in paragraphs 5.1 and 5.7. Paragraphs (a)(14) and (15) are effectively identical to the proposed rule, which reflected the modifications contained in the pertinent provisions in the more recent edition of the consensus standard, ANSI A14.3-1984 (Ex. 3-13), paragraphs 5.4.1.1 and 5.4.1.3, respectively. No comments were received addressing paragraphs (a)(14) and (15) (as renumbered).

Paragraph (a)(16) (paragraph (a)(18) in the proposed rule) specifies minimum and maximum step-across distances at landings for fixed ladders of 7 inches and 12 inches, respectively. The text of the final rule is identical to the proposed paragraph. It is consistent with paragraph 5.6 of ANSI A14.3-1956 (Ex.

3-10), which is referenced in existing § 1926.450(a)(5), except that the existing 2½-inch minimum limit has been replaced by a minimum limit of 7 inches, to be consistent with paragraph (a)(13) in the final rule and with paragraph 5.4.2.2 of the most recent edition of the consensus standard, ANSI A14.3-1984 (Ex. 3-13).

The one commenter (Ex. 2-14) who responded to proposed paragraph (a)(18) (now renumbered as § 1926.1053(a)(16)) pointed out that the term "through fixed ladder" used in the proposal was unclear. To resolve this concern regarding the meaning of the term, the Agency has added a definition for "through fixed ladder" in § 1926.1050(b) of this subpart, as discussed earlier.

Paragraph (a)(17) (paragraph (a)(19) in the proposed rule) requires a minimum of 15 inches of side clearance (from the ladder centerline) for all fixed ladders that do not have cages or wells. This requirement is identical to paragraph 5.20 of ANSI A14.3-1956 (Ex. 3-10), which is applied through the reference to the ANSI standard in existing § 1926.450(a)(5). It is also identical to paragraph 5.4.3 of the most recent edition of the consensus standard, ANSI A14.3-1984 (Ex. 3-13). No comments were received addressing paragraph (a)(17).

Paragraph (a)(18) (paragraph (a)(20) of the proposal) requires fixed ladders to be provided with cages, wells, ladder safety devices, or self-retracting lifelines where the length of climb is less than 24 feet but the top of the ladder is more than 24 feet above lower levels. This requirement is based in part on the existing § 1926.450(a)(5) reference to ANSI A14.3-1956 (Ex. 3-10), which addresses this concept in paragraph 6.1.2. The provision also reflects the updated and clarified language of A14.3-1984 (Ex. 3-13); paragraph 4.1.2. The final rule also allows the use of self-retracting lifelines as alternative fall protection to wells, cages, and ladder safety devices.

One comment (Ex. 2-35) objected to the inclusion of self-retracting lifelines in the list of devices to be used, stating that "We do not expect it was OSHA's intention to have self-retracting lifelines be utilized when the length of line is less than 24'." OSHA notes that this exact requirement appears in the most recent ANSI standard. The Agency believes that the ANSI provisions are appropriate to protect workers in those circumstances. Furthermore, such lifelines are listed as one of several options the employer can select from, and are not items required on all fixed ladders. The Agency expects that

employers will choose devices from the given list of options that adequately protect employees.

After considering the response to the proposed rule, OSHA is issuing paragraph (a)(18) as final, unchanged from the proposed rule.

Paragraph (a)(19) (paragraph (a)(21) of the proposal) requires that employers who install fixed ladders whose total length of climb is at least 24 feet, equip those ladders with either ladder safety devices, self-retracting lifelines together with rest platforms at intervals not to exceed 150 feet, or a cage or well with ladder sections offset and landing platforms provided at maximum intervals of 50 feet. This provision is based on ANSI A14.3-1984 (Ex. 3-13), paragraph 4.1.2.

OSHA received one comment (Ex. 2-43) addressing paragraph (a)(21) (§ 1926.1053(a)(19) of the final rule). The commenter noted that the paragraph requires rest platforms for fixed ladders at intervals of 150 feet, in apparent contradiction with the requirement that ladder sections not exceed 50 feet in length. OSHA notes that the provisions of paragraph (a)(19) (ii) and (iii) are alternatives between which employers will choose, so they need not be consistent.

After considering the response to the proposed rule, OSHA is promulgating paragraph (a)(19) without change.

Paragraphs (a) (20) and (21) (paragraphs (a) (22) and (23) of the proposed rule, respectively) establish the requirements for fixed ladder cage and well construction. Paragraph (a)(20), which addresses cages for fixed ladders, covers placement and spacing of horizontal bands and vertical bars; internal clearances; keeping the insides clear of projections; and requirements for cage tops and bottoms. Paragraph (a)(21), which addresses wells for fixed ladders, covers ladder encirclement; keeping them free of projections; inside clear widths; and bottom heights. Those provisions are based, in part, on paragraph 6.1 of the ANSI standard that is referenced by existing § 1926.450(a)(5), A14.3-1956 (Ex. 3-10). However, the language in the paragraphs in this rulemaking reflects the updated and clarified language of ANSI A14.3-1984 (Ex. 3-13), paragraphs 6.1 and 6.2. Significant differences between the 1956 and 1984 ANSI documents, and therefore, between the existing and revised rule, are as follows:

- Maximum cage size is increased from 28 to 30 inches to allow easier employee movement;
- Wells are now required to encircle the ladder completely and be free of projections; wells must now have an

inside clear width of at least 30 inches; and

- The bottom access opening shall not be less than 7 feet nor more than 8 feet high.

No comments were received addressing paragraphs (a) (20) and (21) (as redesignated).

Paragraph (a)(22) (paragraph (a)(24) of the proposed rule) sets forth the requirements for ladder safety devices. Those provisions are based, in part, on the reference in existing § 1926.450(a)(5) to ANSI A14.3-1956 (Ex. 3-10), which covers this topic in paragraph 6.5. Those paragraphs also reflect the updated and clarified language of ANSI A14.3-1984 (Ex. 3-13), paragraph 7. Based on the Agency's review of the record, as discussed below, OSHA promulgates paragraph (a)(22) without change.

Paragraph (a)(22)(i) requires that ladder safety devices and related support systems (such as a ladder to which they are attached) be capable of withstanding, without failure, a drop test consisting of an 18-inch (.41 m) drop of a 500-pound (226 kg) weight. This provision is based on ANSI A14.3-1984 (Ex. 3-13), paragraph 7.1.3.

Paragraph (a)(22)(ii) requires the devices to be of a design that permits employees using the system to ascend or descend without continually having to manipulate any part of the system. The requirement is based on paragraph 7.3.1 of ANSI A14.3-1984.

Paragraph (a)(22)(iii) requires that ladder safety devices limit the descending velocity of an employee to 7 feet (2.1 m) per second or less within 2 feet (.61 m) after a fall occurs. In establishing the velocity limit for ladder safety devices, OSHA reviewed a National Bureau of Standards (NBS) report (Ex. 3-18) that suggested a maximum descent rate for descent devices of 15 feet per second for an uninjured employee and 10 feet (3.1 m) per second for an injured employee. Descent devices are used for escapes, with workers traveling down a rope or line without obstructions in the descent path. In adapting the NBS recommendations into regulatory language, OSHA proposed a more conservative velocity limit of 7 feet (2.1 m) per second for ladder safety devices because the Agency believes that an employee descending faster than that could be injured through contact with the ladder during a fall. Seven feet per second represents the speed attained after a free-fall of approximately 1 foot (30.5 cm). OSHA believes that in addition to providing protection from the force of the fall, this limit enables an employee to either regain control on the

ladder or descend at a reasonable and safe speed.

OSHA requested comments and data in Issue #12 of the proposal on whether or not the descent rates suggested by NBS would provide adequate protection. The only comment on this issue came from the ACCSH, which recommended that OSHA adopt the 7 feet-per-second limit (Tr. 6/10/87, pp. 11-13). The one comment (Ex. 2-3) specifically made on § 1926.1053(a)(24) (§ 1926.1053(a)(22) of the final rule) was directed to paragraph (a)(24)(iii), and expressed the belief that these requirements, as specified, would "effectively eliminate all flexible and rigid rail systems in use today." The commenter added that "I believe the intent is to have those units with descent capability only meet the descent per second criteria." OSHA disagrees with this comment. The specified criteria do not prohibit the use of systems that completely stop or arrest the fall of employees. The provision is intended to limit the maximum fall velocity, not the minimum fall velocity. Upon review of the record, including the above-mentioned comment, OSHA believes that the requirements of paragraph (a)(22)(iii) are necessary for protection of employees who use ladder safety devices including those equipped with a descent slide mechanism. However, OSHA requests that interested parties submit any additional information that would be pertinent to this issue. The Agency would take any such information into account and would initiate further regulatory action if that was appropriate.

Paragraph (a)(22)(iv) requires that the maximum length of the connection between the carrier or lifeline and the point of attachment to the body belt not exceed 9 inches (23 cm). This requirement is based on a recommendation contained in Drs. Chaffin and Stobbe's report, "Ergonomic Considerations Related to Selected Fall Prevention Aspects of Scaffolds and Ladders as Presented in OSHA Standard, 29 CFR part 1910, subpart D" (Ex. 3-19), which indicates that this distance is needed to ascend and descend a ladder in a position that is not awkward. No comments were received on this paragraph.

Paragraph (a)(23) (paragraph (a)(25) of the proposed rule) specifies the mounting requirements for ladder safety devices for fixed ladders. The final rule is the same as the proposal except that the introductory text has the additional language "The mounting of" and "for fixed ladders" to clarify its application. Paragraph (a)(23)(i) requires mountings for rigid carriers to be attached at each

end of the carrier, with intermediate mountings spaced along the entire length of the carrier. This is based on ANSI A14.3-1984 (Ex. 3-13), paragraph 7.3.4. Paragraph (a)(23)(ii) requires that mountings for flexible carriers be attached at each end of the carrier, and that when the system is exposed to wind, cable guides be installed at a minimum spacing of 25 feet (7.6 m) and a maximum spacing of 40 feet (12.2 m) along the entire length of the carrier to prevent wind damage to the system. These are the same requirements as in ANSI A14.3-1984, paragraph 7.3.5. Paragraph (a)(23)(iii) requires that the design and installation of mountings and cable guides not reduce the design strength of the ladder. This is based on ANSI A14.3-1984, paragraph 7.1.4. OSHA did not receive any comments addressing paragraph (a)(23). Accordingly, OSHA promulgates § 1926.1053(a)(23) as clarified.

Paragraphs (a) (24) through (26) (paragraphs (a) (26) through (28) of the proposed rule), respectively address extensions for side rail ladders.

Paragraph (a)(24) requires that side rails extend 42 inches above the top of the access level or landing platform served by the ladder. This provision is based on paragraph 5.3.2.1 of ANSI A14.3-194 (Ex. 3-13). Existing § 1926.450(a)(9) requires that ladder side rails extend at least "36 inches above the landing." OSHA has increased the minimum extension for fixed ladders to coordinate this requirement and the requirements for guardrails. The extension requirement for portable ladders (still at least 36 inches) appears in paragraph (b)(1), below.

Paragraph (a)(25), which is based on paragraph 5.3.2.2 of ANSI A14.3-1984 (Ex. 3-13), requires that the extension of a through ladder have no steps or rungs, that the extension be flared so the side rails provide between 24 and 30 inches of clearance when ladder safety devices are not provided, and that the extension be flared no more than 36 inches when ladder safety devices are provided. These are the same requirements as in ANSI A14.3-1956 (Ex. 3-10), paragraph 6.3, referenced by existing § 1926.450(a)(5), except the minimum and maximum side rail flare is changed from 18 inches and 24 inches, to 24 inches and 30 inches, respectively, to reflect ANSI A14.3-1984 (Ex. 3-13) and to provide employees with appropriate protection from fall hazards.

Paragraph (a)(26) requires that the side rails and the steps or rungs shall be continuous for side-step fixed ladder extensions. This provision is based on paragraph 5.3.2.3 of ANSI A14.3-1984 (Ex. 3-13). OSHA did not receive any

comments regarding paragraphs (a) (24) through (26).

Paragraph (a)(27) (paragraph (a)(29) of the proposed rule) requires individual-rung ladders, except those covered by manhole covers or hatches, to extend at least 42 inches above access levels or landing platforms or be equipped with either horizontal or vertical grab bars. The final rule differs from the proposal only insofar as the proposal has been revised to state that the extension shall be "at least" 42 inches, rather than exactly 42 inches. This additional language, which was inadvertently omitted from the proposal, is needed to keep the OSHA standard consistent with ANSI A14.3-1984 (Ex. 3-13), paragraph 5.3.3.1, and to avoid imposing unreasonable burdens on employers whose individual-rung/step ladders extend more than 42 inches above access levels or landing platforms. This provision is also consistent with A14.3-1956, paragraph 6.3, which is referenced by existing § 1926.450(a)(5). No comments were received addressing redesignated paragraph (a)(27).

Paragraph (b) sets forth the requirements for safe ladder use by construction employees. The introductory text explains that these requirements apply to all ladders, including job-made ladders except as otherwise indicated. One commenter (Ex. 2-14) suggested a rearrangement of certain provisions. OSHA has determined that the format of the ladder use requirements, as proposed, is appropriate because the regulatory language has been organized so that employers receive clear guidance and the proper emphasis is placed on the ladder use requirements.

Paragraph (b)(1) requires that side rails of portable ladders extend at least 3 feet above the upper level or surface to which the ladder is used to gain access. The requirement further provides that when such extensions are not possible because of the ladder length, the ladder shall be secured at the top to a rigid, nondeflecting support, and employees shall be provided with a grasping device such as a grabrail. This is essentially the same provision as in existing § 1926.450(a)(9), except that the revised rule requires the securing of the ladder and does not limit alternative solutions to grabrails. This provision also differs from existing § 1926.450(a)(9) in that this provision unlike the existing standard applies only to portable ladders. The side rail extension requirements for fixed ladders appear in paragraph (a)(24), as redesignated, above. The final rule is identical to proposed paragraph (b)(1) except that where the 3-foot extension is not possible, the final rule

requires that the ladder be secured "at its top to a rigid support that will not deflect," while the proposal only required securing the ladder "at the top." In addition, OSHA added the term "portable" to the proposed provision to make it clear that only portable ladders were covered by this paragraph and has inserted a new sentence to clarify that the ladder deflection under load should not, by itself, cause the ladder to slip off its support.

The one commenter (Ex. 2-21) regarding paragraph (b)(1), stated that the proposed paragraph should be clarified to address specifically how much less than 3 feet above the upper landing surface a ladder which complied with paragraph (b)(1) could be. The commenter also stated that OSHA should "set a minimum ladder length necessary to prevent the ladder from slipping from its support due to bending deflection even though the ladder is secured at the top." To address this concern, the Agency has revised proposed paragraph (b)(1) to require that ladders extending less than three feet be secured at the top to a rigid support that will not deflect and that such ladders be of sufficient length that they will not slip from the support due to bending deflection.

Accordingly, the Agency is promulgating paragraph (b)(1) as revised.

Paragraph (b)(2) requires ladders to be free of oil, grease, and other slipping hazards. This requirement, which is identical to the proposed rule, is based on paragraph 8.3.4. of both ANSI A14.1-1982 (Ex. 3-11) and A14.1-1982 (Ex. 3-12) and paragraph 9.2.5 of ANSI A14.3-1984 (Ex. 3-13), the pertinent provisions of the most recent editions of the consensus standards. The provisions of the final rule, unlike the existing provisions in § 1926.450(a) (3), (4), and (5) (which cover only oil and grease), covers all slip hazards. Paragraph (b)(2) is otherwise consistent with the existing § 1926.450(a)(3) reference to ANSI A14.1-1968 (Ex. 3-8), which in paragraph 5.1.1 requires ladder rungs to be "kept free of grease and oil"; the existing § 1926.450(a)(4) reference to ANSI A14.2-1956 (Ex. 3-9), which requires in paragraph 8 that ladders "be maintained in safe condition;" and the existing 1926.450(a)(5) reference to ANSI A14.3-1956 (Ex. 3-10), which requires in paragraph 5.2.6.4 that ladders be "cleaned of oil, grease, or slippery materials." However, oil and grease are only two of many slip-causing substances and, therefore, paragraph (b)(2) uses broader language. OSHA did

not receive any comments regarding paragraph (b)(2).

Paragraph (b)(3) requires that ladders not be loaded beyond the maximum intended load for which they were built, nor beyond their manufacturer's rated capacity. This requirement is consistent with paragraph 6.1 of ANSI A14.1-1982 (Ex. 3-11), paragraph 5 of ANSI A14.2-1982 (Ex. 3-12), and paragraph 4.2 of ANSI A14.3-1984 (Ex. 3-13). This paragraph is also consistent with requirements set through the existing § 1926.450(a)(3) reference to ANSI A14.1-1968 (Ex. 3-8), which addressed portable wood ladders in paragraph 5.2.2. Under the proposed rule, employers were required to ensure that ladders, whether fixed or portable, were not loaded beyond their maximum intended load-carrying capacity, or the rated capacity. OSHA has revised the proposed paragraph in response to a commenter's request for clarification (Ex. 2-29), by changing "their maximum intended load-carrying capacity" to "the maximum intended load for which they were built," and adding the word "manufacturer's" to "rated capacity" in the final rule. OSHA believes that the language changes clarify the provision's intended applicability without altering any material provision of the standard.

After consideration of the above-noted comment on the proposed rule, OSHA is promulgating paragraph (b)(3) as clarified.

Paragraph (b)(4) requires that ladders be used only for the purpose for which they were designed. The final rule is identical to the proposed rule. This provision is based on paragraphs 8.3.1 and 8.4.3 of ANSI A14.1-1982 (Ex. 3-11), paragraph 8.3.1 of ANSI A14.2-1982 (Ex. 3-12), and paragraph 9.1 of ANSI A14.3-1984 (Ex. 3-13). It is also consistent with the requirements applied through the existing § 1926.450(a)(3) reference to ANSI A14.1-1968 (Ex. 3-8). Paragraph 5.2.12 of A14.1-1968 prohibits using ladders as guys, braces, skids, or for other than their intended purpose. This provision is also based on existing § 1926.450(a)(7), which prohibits using ladders in a horizontal position as a scaffold platform, or a runway. OSHA determined that it was appropriate for this requirement to apply to all ladders, not just to portable ladders, because misuse of any ladder can result in employee injury. OSHA did not receive any comments regarding paragraph (b)(4).

Paragraph (b)(5) sets requirements for the angles at which ladders must be positioned. These provisions reflect OSHA determination of how ladders must be positioned so they are stable when climbed. The requirements for

specific types of ladders have been reformatted to appear as separate subparagraphs in the final rule, for the sake of clarity.

Paragraph (b)(5)(i) requires non-self-supporting ladders to be used at an angle such that the horizontal distance between the top support and the foot of the ladder is approximately one-quarter of the working length of the ladder. This provision is based on paragraph 8.3.3 of both ANSI A14.1-1982 (Ex. 3-11) and ANSI A14.2-1982 (Ex. 3-12).

Paragraph (b)(5)(ii) incorporates paragraph 4.4.1 of ANSI A14.4-1979 (Ex. 3-14), Safety Requirements of Job-Made Ladders, which requires that wood job-made ladders with spliced side rails be used at an angle such that the horizontal distance is one eighth the working length of the ladder. In the final rule, the word "ratio" in the second sentence has been replaced with "horizontal distance," to match the terminology of the first sentence. OSHA is making this minor editorial change for the sake of clarity.

Paragraph (b)(5)(iii) requires fixed ladders to be used at a pitch no greater than 90 degrees from the horizontal as measured to the back side of the ladder. This provision is based on paragraph 1.4.3 of the most recent edition of the ANSI standard, A14.3-1984 (Ex. 3-13), and is consistent with the requirement set out in paragraph 7.1 of ANSI A14.3-1956 (Ex. 3-10), which is applied through the reference to ANSI in existing § 1926.450(a)(5). No comments were received addressing paragraph (b)(5). The Agency is therefore promulgating § 1926.1053(b)(5) with the minor revision discussed above.

Paragraphs (b) (6) through (8) replace existing § 1926.450(a)(6), which requires that ladder feet be set on a substantial base, and existing § 1926.450(a)(10), which requires portable ladders that are in use to be tied, blocked, or otherwise secured to prevent their being displaced. The revised rules more clearly identify the hazards to be protected against by requiring employers to secure ladders where the footing is unstable, not level, or slippery, or where the ladder can accidentally be displaced by traffic or workplace activities.

Paragraph (b)(6) requires ladders to be used only on stable and level surfaces unless secured to prevent accidental displacement. This requirement is consistent with existing § 1926.450(a)(6), which requires "a substantial base;" and with the existing § 1926.450(a)(3) reference to ANSI A14.1-1968 (Ex. 3-8), which in paragraphs 5.2.3 and 5.2.5 require a "secure" and "stable" footing for ladders. The requirement that the surface that must be level or the ladders

must be secured is based on ANSI A14.1-1982 (Ex. 3-11), paragraph 8.3.4, and is included because surfaces that are not level may not provide suitable support for unsecured ladders.

OSHA did not receive any public comments addressing paragraph (b)(6). The ACCSH discussed the provisions of this paragraph at considerable length, together with paragraphs (b) (7) through (9) of this same section (Tr. 6/10/87, pp. 28-45), but did not recommend that OSHA make any changes to the language in § 1926.1053(b)(6). Therefore, OSHA is promulgating § 1926.1053(b)(6) as a final rule, without change from the proposed rule.

Paragraph (b)(7) prohibits the use of ladders on slippery surfaces unless they are secured or provided with slip-resistant feet. In the final rule the proposed explanatory note that slip-resistant feet not be used as a substitute for placing, lashing, or holding the ladder has been edited and incorporated into the text of the paragraph. This requirement is based on ANSI A14.1-1982 (Ex. 3-11), paragraph 8.3.4. This provision is also consistent with the requirement applied through the existing § 1926.450(a)(3) reference to ANSI A14.1-1968 (Ex. 3-8), which addresses slip resistance in paragraph 5.2.20.

OSHA did not receive any public comments addressing paragraph (b)(7). The ACCSH discussed this paragraph along with paragraphs (b) (6) through (9) and recommended that the explanatory note specifying that slip-resistant feet are not a substitute for the various methods of securing ladders on slick or slippery surfaces be merged into the text of the paragraph (Tr. 6/10/87, pp. 43-46). The ACCSH mentioned this provision while discussing the requirements for ladders, but did not make a recommendation (Tr. 6/10/87, p. 42). In Issue X-1 of the notice of informal public hearing (53 FR 2048, Jan. 26, 1988) (Ex. 5), OSHA sought testimony and supporting information regarding the ACCSH recommendation.

OSHA did not receive any testimony regarding either paragraph (b)(7) or Issue X-1. Nonetheless, the Agency agrees with the ACCSH that it is appropriate to incorporate the note as part of the text of the paragraph. OSHA, therefore, promulgates the § 1926.1053(b)(7) note as consolidated, with minor revisions.

Paragraph (b)(8) requires ladders placed in passageways, doorways, or any location where they can be displaced by workplace activities or traffic, to be secured in place, or a barricade system used to keep activities and traffic away from the ladder. This

provision is very similar to existing § 1926.450(a)(8). The only substantive change from the existing rule is the addition of language allowing the ladders to be tied off or otherwise secured. OSHA believes that if a ladder is secured against displacement then no problem exists. The type of tie-off required would vary, depending on the type of activity taking place and the likelihood of ladder displacement.

OSHA did not receive any comments regarding paragraph (b)(8). Therefore, § 1926.1053(b)(8) is promulgated as final, incorporating the above-described editorial change.

Paragraph (b)(9) requires the area around the top and bottom of ladders to be kept clear. This is unchanged from the proposed rule and is the same requirement that is already applied to portable ladders through existing § 1926.450(a)(6). OSHA has determined that it is appropriate for this requirement to cover all ladders.

No comments were received addressing paragraph (b)(9). The ACCSH mentioned this provision while discussing the requirements for ladders, but did not make a recommendation (Tr. 6/10/87, p. 42). OSHA is therefore promulgating § 1926.1053(b)(9) as final, unchanged from the proposed rule.

Paragraph (b)(10) requires the tops of non-self-supporting ladders to be placed such that the two side rails are equally supported, or provided with a single support attachment. The final rule is identical to the proposed rule. This requirement is intended to ensure proper ladder stability and is based on the requirements imposed through the existing § 1926.450(a)(4) reference to ANSI A14.2-1956 (Ex. 3-9), which addresses this in paragraph 5.3.2, and on paragraph 8.3.5 of both ANSI A14.1-1982 (Ex. 3-11) and ANSI A14.2-1982 (Ex. 3-12). OSHA did not receive any comments regarding paragraph (b)(10).

Paragraph (b)(11) provides that ladders shall not be moved, shifted, or extended while occupied. The final rule is unchanged from the proposal. Essentially, this is a new provision, although existing § 1926.450(a)(3) references ANSI A14.1-1968 (Ex. 3-8), which, in paragraph 5.2.17, contains a prohibition against extending a ladder while occupied. The final rule is, effectively, based on paragraph 8.3.15 of both ANSI A14.1-1982 (Ex. 3-11) and A14.2-1982 (Ex. 3-12), which prohibit relocating a ladder while it is occupied, and on paragraph 8.3.13.1 of both 1982 ANSI standards, which prohibit extending a ladder while it is occupied. No comments were received addressing paragraph (b)(11).

Paragraph (b)(12) requires ladders to have nonconductive side rails if those ladders are used where the employee or the ladder could contact exposed energized equipment, except as provided in § 1926.951(c)(1) of Subpart V—Power Transmission and Distribution. This provision is based on paragraphs 8.3.8 and 8.3.21 of both ANSI A14.1-1982 (Ex. 3-11) and ANSI A14.2-1982 (Ex. 3-12). It is also consistent with the requirements of existing § 1926.450(a)(11), which prohibits using portable metal ladders for or near electrical work, except insofar as the existing rule does not reference subpart V and, therefore, potentially conflicts with that standard (see, for example, § 1926.951(c)(1)). This final rule is substantively the same as the proposed rule, except the final rule has been editorially revised to be consistent with the related 29 CFR part 1910 provision contained in the final rule for the Electrical Safety Related Work Practices published August 6, 1990 (55 FR 32019).

The one comment (Ex. 2-44) regarding paragraph (b)(12) suggested that OSHA require protection for employees working on ladders near power lines. The commenter recommended that the Agency adopt the provisions of existing § 1926.451(d)(6) to protect employees working on ladders from electrical hazards. OSHA has determined that compliance with final rule (b)(12) and with § 1926.951(c) will adequately protect employees performing construction work on ladders from powerline hazards. Therefore, OSHA has not made the suggested change. Accordingly, § 1926.1053(b)(12) is promulgated as a final rule, incorporating the above-discussed revision.

Paragraph (b)(13) prohibits using the tops or top step of a stepladder as a step. The final rule is almost identical to the proposed rule, except that the final rule clarifies OSHA's concern that the top step of a step ladder without a cap should not be used for this purpose, either. This provision is based on paragraph 8.3.2 of both ANSI A14.1-1982 (Ex. 3-11) and ANSI A14.2-1982 (Ex. 3-12). The same provision appears in ANSI A14.1-1968 (Ex. 3-8), paragraph 5.2.13, which is applied to portable wood ladders through the existing § 1926.450(a)(3) reference to ANSI. The revised rule, however, applies to all stepladders and not just to wood stepladders.

OSHA received one comment (Ex. 2-16) responding to paragraph (b)(13). The commenter expressed the view that the prohibition on the use of tops of stepladders as steps should be extended to "the top step of stepladders and the

top two steps or rungs of straight ladders." However, the commenter did not provide a rationale for this recommendation, and OSHA believes that such a rule would preclude ladders from being used as access between levels. As noted in the proposed rule, this provision is based on an ANSI standard and referenced by an existing OSHA regulation. On the basis of the one comment received, the Agency does not believe it has sufficient data to support making the recommended change.

After consideration of the comment to paragraph (b)(13), OSHA is promulgating the paragraph as final, without any change from the version found in the proposed rulemaking.

Paragraph (b)(14) prohibits using the cross-balancing on the rear support section of stepladders for climbing unless the rear section is so designed and recommended for such use by the manufacturer by providing steps for climbing on both front and rear sections. This provision is based, in part, on paragraph 8.3.2(2) of ANSI A14.1-1982 (Ex. 3-11) and paragraph 8.3.16 of ANSI A14.2-1982 (Ex. 3-12). It is also consistent with the requirements applied through the existing § 1926.450(a)(3) reference to ANSI A14.1-1968 (Ex. 3-8), paragraph 5.2.22, except it applies to all stepladders and not just to wood stepladders. OSHA notes that the current ANSI provisions allow ladder users to step or stand on "rear braces of a self-supporting ladder" if the braces are designed and recommended for that purpose by the manufacturer. OSHA has revised the proposed provision to reflect the wording in the consensus standards in this final rule. No comments were received addressing paragraph (b)(14).

Paragraph (b)(15) requires that ladders be inspected for visible defects by a competent person on a periodic basis, based on use and wear, and after any occurrence that could affect their safe use. This provision is based on paragraph 8.4.1 of both ANSI A14.1-1982 (Ex. 3-11) and ANSI A14.2-1982 (Ex. 3-12) and paragraph 9.3.1 of ANSI A14.3-1984 (Ex. 3-13). It is also consistent with the requirements applied through the references to ANSI A14.1-1968, ANSI A14.2-1956, and ANSI A14.3-1956 in existing § 1926.450(a) (3), (4), and (5), respectively. This provision also clarifies the requirements of existing § 1926.450(a)(2). Proposed paragraph (b)(15) would have required ladders to be inspected for visible defects prior to the first use of each workshift and after any occurrence that could affect their use. This proposed provision was not fully consistent with the requirements

imposed through the references to ANSI in the existing standards. In particular, paragraphs 5.1.10 and 5.2.4 of A14.1-1968 and A14.2-1956, respectively, required "frequent" inspection and paragraph 8 of A14.3-1956 required "regular" inspection. As explained below, the Agency has changed the proposal's wording "prior to the first use of each workshift" to read "on a periodic basis," and has also added the words "by a competent person" after "shall be inspected."

Public comment was requested on the inspection requirement in paragraph (b)(15) in Issue #5 of the proposed rulemaking. In particular, OSHA solicited comments on the specified frequency of inspections. OSHA noted that the proposed requirement for inspection prior to first use in a workshift was suggested, rather than required by the pertinent ANSI standards.

A number of respondents (Exs. 2-11, 2-28, 2-29, 2-30, 2-31 and 2-37) expressed some opposition to the proposed changes in the inspection requirements. One of these commenters (Ex. 2-29) stated that "[t]he existing standard for inspection of ladders is adequate" and that the proposed change is "not necessary."

Other commenters who supported retention of the existing standard (Exs. 2-11, 2-31, and 2-37) stated, in part, that inspection prior to the first use of each workshift would be "restrictive" and "unworkable." They added that "there is little evidence to substantiate that ladder accidents are caused by defective ladders." Another (Ex. 2-30) stated that substantial evidence did "not exist that defective ladders chiefly cause ladder accidents." However, the commenters who stated that defective ladders were not a chief cause of ladder accidents did not provide further data or evidence to substantiate their contentions. One more comment (Ex. 2-28) expressing some opposition to the proposed requirement stated, in part, that the proposed frequency of inspections would be unnecessary as this type of inspection should be conducted before ladder is used in the field.

On the other hand, as discussed above in the Hazards Involved section, a Bureau of Labor Statistics survey (Ex. 3-5) indicates that of the ladders that were involved in the accidents studied, 19 percent had one or more defects, and 53 percent of all non-self-supporting ladders broke during use (51 FR 42751). Notwithstanding the comments discussed above, OSHA is not convinced of the merit of the argument that defective ladders are not a chief

cause of ladder accidents. The record reflects that ladder defects are important factors in many ladder accidents.

Six other commenters (Exs. 2-12, 2-16, 2-23, 2-33, 2-35, and 2-42) basically supported the required frequency of inspections from the proposal. One of these four (Ex. 2-23) considered the proposal "practical," while another (Ex. 2-12) added that inspections should be performed "frequently." Yet another (Ex. 2-16) suggested "prior to each use and formally once a year" as the criteria for the required frequency. One commenter (Ex. 2-35) commended OSHA for providing ANSI inspection procedures, and recommended that OSHA reference the 1982 editions and require that reinforced plastic ladders meet the same inspection procedures. One other commenter (Ex. 2-33) indicated he favored ladder inspection but did not specify a preferred interval for this inspection stating: "The brief time to make sure a ladder is safe is better than the many hours trying to figure out why a ladder failed later on." Also, a commenter (Ex. 2-42) stated that ladders should be inspected on a "regular" basis, as necessary, and that a ladder "moved around a lot or moved often requires inspection more often." In addition, the ACCSH supported the requirement for inspections prior to each use, as found in the proposal (Tr. 6/9/87, pp. 253-255).

Based on the BLS study, the variety of responses from the commenters, the ACCSH recommendation, and the existing OSHA rules and ANSI consensus standard, OSHA finds these inspections to be of considerable importance. However, while the Agency believes that inspection prior to the first use in each workshift can be an important way of ensuring that only safe ladders are used, the record, including the comments, and ANSI do not support a requirement for inspections on a daily basis. OSHA has decided, therefore, to maintain the thrust of the proposal to emphasize the need for ladder inspections, and to allow some flexibility at the same time. Consequently, OSHA is replacing "prior to the first use of each workshift" in the proposed rule with the words "on a periodic basis" in the final, and is thus matching the ANSI terminology for this requirement.

In addition, while responding under Issue #5, some commenters (Exs. 2-11, 2-30, 2-31, and 2-37) indicated that any record retention provision associated with the inspections under this paragraph would be burdensome to employers. OSHA notes, however, that the provision did not require

recordkeeping. The ACCSH recommended that a "competent person" (defined in § 1926.32(f)), representing the employer, should examine ladders covered under the standard (Tr. 6/9/87, p. 266). OSHA agrees with the ACCSH and, accordingly, has added language regarding inspection by a competent person to the standard.

The issue also referred to the applicable ANSI standards, paragraph 8.4.1 of both ANSI A14.1-1982 (Ex. 3-11) and ANSI A14.2-1982 (Ex. 3-12), regarding the nature of inspections required after a ladder has been put into service. One commenter (Ex. 2-28) questioned how such inspections are to be performed, and asked whether they had to remove and lay a ladder down to meet the requirements of paragraph (b)(15). The commenter went on to suggest that "A general visual inspection from the bottom of the ladder and while climbing the ladder conducted before [the] first use would be reasonable." OSHA intends that these inspections can be performed visually from a ladder's base by a competent person, without taking a ladder down.

After considering the comments submitted to the record, the Agency is issuing paragraph (b)(15) as a final rule, incorporating the changes to the final rule discussed above.

Paragraph (b)(16) provides that portable ladders with structural defects be immediately withdrawn from service and marked or tagged to show that they should not be used until repaired. To allow for fixed ladders and to take into account that these ladders likely cannot be readily removed from service until repaired, the proposed rule gave employers the alternative of either tagging defective ladders or removing them from service. This was essentially the same rule as existing § 1926.450(a)(2). One difference, however, was that the existing requirement to check for rung corrosion was being deleted because the requirement is now covered in paragraph (b)(15). The proposal also added an exception allowing tagging for defective ladders that are not immediately removed from service or cannot be removed. The proposed language was intended to make it clear that ladders can be reused after they have been properly repaired. In the final rule, OSHA has made several minor editorial and format changes. Paragraph (b)(16) now applies only to portable ladders. A new paragraph (b)(17) applies to fixed ladders, and proposed paragraph (b)(17) has been renumbered as paragraph (b)(18) of the final rule to

accommodate the new paragraph (b)(17).

The one comment (Ex. 2-29) OSHA received regarding paragraph (b)(16) stated that "Ladders with structural defects shall be immediately withdrawn from service." The commenter further stated that "[r]egulations should not allow alternate action of 'do not use' tag." In consideration of this comment, OSHA has revised and redesignated provisions of the proposed rule to differentiate between fixed ladders, which may not necessarily be physically removed from service, and portable ladders, to which the provision regarding immediate removal from service will apply. Therefore, paragraph (b)(16) now applies only to portable ladders. OSHA intends that portable ladders be marked or tagged and removed from use so they are not inadvertently used before they are repaired. Accordingly, OSHA promulgates paragraph (b)(16), as revised.

In paragraph (b)(17) of the final rule, covering fixed ladders, the language from proposed paragraph (b)(16) explaining that tagging is allowed as an alternative to physical removal of a defective ladder from service has been supplemented by two additional alternatives for fixed ladders. Paragraph (b)(17) has been reformatted to indicate clearly that complying with any one of the three alternatives will satisfy the standard. The final standard states, in paragraph (b)(17)(ii), that fixed ladders may also be marked in a manner that readily identifies them as defective, or, in paragraph (b)(17)(iii), blocked to prevent access or use (such as with a plywood attachment that spans several rungs). The language change for the final rule reflects OSHA's determination that employees can be warned not to use a defective ladder by means other than tagging. In recognition of the permanent placement of fixed ladders, which makes it burdensome to physically remove them for repair, OSHA has determined that either tagging, marking, or blocking defective fixed ladders is appropriate. Accordingly, the Agency has shifted the requirements for fixed ladders to paragraph (b)(17) of the final rule.

Therefore, OSHA is promulgating paragraph (b)(17) as final, incorporating the changes to the proposed rule as discussed above.

Paragraph (b)(18) (paragraph (b)(17) of the proposed rule) requires ladder repairs to restore the ladder to a condition meeting the design criteria of the ladder, before the ladder is returned to use. This requirement is part of the ANSI standards (A14.1-1968, A14.2-

1956, A14.3-1956) referenced in existing § 1926.450(a) (3), (4), and (5), and is also covered in the pertinent provisions of the current ANSI standards, require that ladders be kept in "safe condition." OSHA determined that the existing requirements do not clearly state what constitutes a safe condition. Based on its review of the record, the Agency concluded that a repaired ladder must satisfy the same criteria that applied when the ladder was built or manufactured for it to be considered safe for use. This means that if, for example, a Type 1A extra-heavy-duty-rated ladder has a broken rung, the replacement rung also must be capable of satisfying the requirements set out in § 1926.1053(a)(1). The Agency proposed to add paragraph (b)(18) (as renumbered) to indicate what an employer must do before returning a ladder to service after it has been removed from service in compliance with paragraph (b)(16) or (b)(17) of the final rule. OSHA has added the language "before the ladder is returned to use" to paragraph (b)(18) (as renumbered) to clarify the proposed provision. The additional language does not change employers' responsibilities from those set by the proposed standard. It simply makes explicit the Agency's intention to prohibit reuse of ladders which have uncorrected defects. The Agency did not receive any comments addressing this paragraph.

These provisions are being promulgated to reduce the significant risk of harm for employees using ladders and to eliminate the need for employers to refer to documents outside part 1926. OSHA has determined that paragraph (b)(18) provides additional and necessary language to convey its regulatory intent and is, therefore, issuing § 1926.1053(b)(18) as a final rule.

Paragraph (b)(19) prohibits the use of single-rail ladders. Although this prohibition was not set out as § 1926.1053(b)(19) in the proposal, it was addressed in Issue #3 of the proposed rule. OSHA raised the issue based on the existing § 1926.450(a)(3) reference to ANSI A14.1-1968 (Ex. 3-8), which, in paragraph 5.2.10, prohibited the use of wooden single-rail ladders. (This provision is not found in the more recent version of ANSI's standard.) In the issue, OSHA raised the question whether it should continue its prohibition on the use of wooden single-rail ladder or expand it to all types of construction materials, such as metal and plastic. The issue also noted that subsequent editions of ANSI A14.1 have not contained the prohibition. However, paragraph 6 of the most recent edition, A14.1-1982, clearly indicates that the

consensus standard covers only multiple-rail ladders, so the absence of an explicit prohibition does not mean that ANSI now accepts the use of single-rail ladders.

OSHA received three comments directed at Issue #3. Two of the three commenters (Exs. 2-29 and 2-35) backed the prohibition against the use of all single-rail ladders, and the third (Ex. 2-12) stated that his company does not use this kind of ladder. The ACCSH also recommended that OSHA continue to prohibit single-rail ladders (Tr. 6/9/87, p. 243).

Based on the comments received and OSHA's belief that single-rail ladders are inherently difficult to use and hazardous because of their instability, the Agency is promulgating paragraph (b)(19) as final.

Paragraph (b)(20), which originally appeared in Issue X-2 of the hearing notice (53 FR 2054), provides that a person using a ladder to ascend or descend shall be directed to face the ladder. This provision is based on existing § 1910.26(c)(3)(v) of the general industry standards and on input from the ACCSH (Tr. 6/10/87, pp. 13-19), regarding safe methods of climbing ladders. OSHA does not currently apply the general industry standard to construction operations. The language has been renumbered from paragraph (b)(18) (as it was originally designated under the issue) to accommodate other provisions that are being added to the final rule.

OSHA received no input in response to the issue. Based on OSHA's determinations that facing the ladder while climbing, as required in general industry by existing § 1910.26(c)(3)(v), is also necessary to address the Agency and ACCSH concerns for the safety of construction industry employees using ladders, OSHA is promulgating the provision as paragraph (b)(20) in the final rule.

Paragraph (b)(21), which originally appeared as a provision of paragraph (b)(19) in Issue X-2 of the hearing notice (53 FR 2054), requires that each employee use at least one hand to grasp the ladder when progressing up and/or down the ladder. This provision addresses the importance of proper and careful use of ladders in situations when a worker needs to take an item up or down a ladder. Based on former § 1910.25(d)(2)(vi), which was deleted in 1984 because it was written using the word "should" rather than "shall," and was thus unenforceable, paragraph (b)(21) has been renumbered from paragraph (b)(19) (as set out in Issue X-2 of the hearing notice), to accommodate

other provisions being added to the final rule. The former general industry standard had not been applied to construction operations. The other provision of paragraph (b)(19) in Issue X-2, which limited what could be carried by employees climbing a ladder, has been relocated to paragraph (b)(22) of the final rule, for the sake of clarity.

At its meeting of June 10, 1987, the ACCSH discussed safe methods of climbing ladders and the concerns raised by the need to carry materials or equipment up or down a ladder (Tr. 6/10/87, pp. 13-19). The ACCSH recommended that OSHA prohibit employees from carrying loads up a ladder that will prevent the employees from having one hand on the ladder at all times. OSHA adopted this recommendation and added some other points addressed by the ACCSH in their discussion as the basis for paragraph (b)(19) under Issue X-2 of the hearing notice (Ex. 5). Since that time, it has been determined that the provision can be read in a way that allows unsafe climbing. It can be read to mean that only one hand needs to be on (touching) the ladder at all times; that it may be the same hand at all times; and that the one hand may simply slide up the ladder side rail, thus permitting the carrying of objects of any size, weight, or bulk. OSHA decided that the provisions needed to be written to state more clearly the ACCSH's intent, which the Agency believes was to require that one hand grasp the ladder at all times, so that as one hand moves, the other hand maintains contact by grasping the ladder. No comments were received on this issue before the record was closed August 11, 1989.

The Agency notes that the ANSI requirements for the use of portable wood and metal ladders state, in paragraph 8.3.7 of both A14.1-1982 (Ex. 3-11) and A14.2-1982 (Ex. 3-12), respectively, that a "user shall maintain a firm hold on the ladder." OSHA also points out that under section (4) of the ANSI labeling requirements for proper climbing and use of portable ladders, in paragraphs 9.2.2. and 9.2.3 of these same code editions, users are instructed to "maintain a firm grip" and "use both hands in climbing." This language from the ANSI labeling requirements is the wording with which the public and workforce has become familiar through reading the warning/instructional labels that manufacturers affix to their portable ladders. Consequently, OSHA has modified the language recommended by the ACCSH to reflect the ANSI consensus language. However, the Agency has decided not to adopt the

ANSI phrase "use both hands in climbing" because that language might be interpreted to mean that small items could not be carried by hand when an individual is climbing a ladder.

In the final rule, OSHA has clarified its intent by changing the words "at least one hand on the ladder at all times," used in the hearing notice, to read "at least one hand to grasp the ladder when progressing up and/or down the ladder." This rephrasing more clearly reflects the Agency's intention to require employees to grasp the ladder with at least one hand while climbing.

In concurrence with the ACCSH recommendation, OSHA is promulgating paragraph (b)(21) as a final rule, and incorporating the editorial change noted above.

Paragraph (b)(22) requires that an employee climbing a ladder shall not carry any object or load that could cause the employee to lose balance and fall. As noted above, paragraph (b)(22) is based on the provision in paragraph (b)(19) of Issue X-2 that limited what an employee could carry while climbing. This provision addresses the importance of proper and careful use of ladders in situations when a worker needs to take an item up or down a ladder. Based on former § 1910.25(d)(2)(vi), which was deleted in 1984 because it was written using the word "should" rather than "shall" and was thus unenforceable, paragraph (b)(22) has been renumbered from paragraph (b)(19) in Issue X-2 of the hearing notice. The former general industry standard had not been applied to construction operations.

As discussed in relation to paragraph (b)(21), the ACCSH recommended that OSHA limit carrying of loads while climbing ladders (Tr. 6/10/87, pp. 13-19). The Agency has framed paragraph (b)(22) to take the ACCSH concerns into account. Although OSHA believes that small items such as hammers, pliers, measuring tapes, nails, paint brushes, and similar items should be carried in pouches, holster, or belt loops, the language in the final rule would not preclude an employee from carrying such items while climbing a ladder so long as the items don't impede the employee's ability to maintain full control while climbing or descending the ladder. It is OSHA's belief that the employee's focus and attention while climbing up and/or down a ladder should be on making a safe ascent or descent and not on transporting items up and down the ladder. OSHA notes that an employee who needs to take a large or heavy object to a different level by means of a ladder can pull the object up or lower it with a handline.

In concurrence with the ACCSH recommendation and for the reasons described above, OSHA is promulgating paragraph (b)(22) as a final rule.

A number of paragraphs from existing § 1926.450 are being deleted as they are to be replaced by the more performance-oriented provisions of § 1926.1053(a)(1): Existing § 1926.450(b)(2); the first line of paragraph (b)(3); and paragraphs (b) (4), (5), (6), and (8) through (12) of that same section are specification-type requirements for job-made ladders. OSHA has determined that these paragraphs do not adequately address all necessary aspects of job-made ladder construction. In addition, the provisions of existing § 1926.450(b) (6), (10), and (11) were developed for manufactured portable wood ladders and not job-made ladders. The language of the final rule corrects these problems. Contractors who wish to refer to a guide table for the construction of job-made ladders may use their own design tables if they are compatible with § 1926.1053(a)(1), or use the ANSI standard for job-made ladders, A14.4-1979, which is listed in appendix A.

Section 1926.1060 Training

The introductory text states that this section clarifies the requirements of § 1926.21(b)(2). Upon reviewing the record and the provisions of proposed § 1926.1060, the Agency has determined that the training requirements in this section simply clarify the safety training and education requirements in existing § 1926.21. Therefore, OSHA is deleting the proposed language "In addition to the requirements of § 1926.21, Safety training and education, the following training requirements apply to this subpart." In addition, the Agency is deleting the rest of the introductory text to § 1926.1060, which read "However, the provisions of this section may be cited only when a citation is being issued concurrently under the provisions of § 1926.1051, § 1926.1052, or § 1926.1053 of this subpart." OSHA has determined that the sentence is not appropriate regulatory language.

Under the introductory text to paragraph (a), employers are required to provide a training program for each employee who uses ladders or stairways, as necessary. This training is intended to instruct each employee to recognize and minimize the hazards associated with ladder or stairway use.

Paragraph (a)(1) clarifies the types of hazards and lists subject areas to be addressed in the training programs conducted for employees using ladders and stairways. Stairways and ladders are safe only when they are designed,

built, located, maintained, and used properly. This paragraph identifies components of the requisite training, but does not specify the details of the training program. Employers are required to ensure that each employee is trained by a competent person in the following areas, as applicable: The nature of fall hazards in the work area; the correct procedures for providing fall protection; the proper way to build, use, place, and maintain stairways and ladders; the maximum intended loads of the ladders used; and the standards contained in subpart X.

This approach to training provides flexibility for the employer in designing the training program. The proposed paragraph has been amended to require that the training be provided by a "competent person." This provision was added at the recommendation of the ACCSH (Tr. 6/9/87, p. 266). OSHA agrees that the involvement of a competent person in the program provides appropriate assurance that employees will be adequately trained. OSHA has also deleted the words "and instructed" from the introductory text of proposed paragraph (a)(1), for the sake of clarity.

OSHA solicited comments under Issue #8 regarding employee training and retraining on stairway and ladder use. Altogether, the Agency received 16 comments for both Issue #8 and proposed § 1926.1060. In the issue, OSHA asked for data on the costs and effectiveness of training requirements in reducing the risk of injuries or fatalities, and whether more or less specific requirements were appropriate. In addition, commenters were asked to respond with information about currently available safety programs and their adequacy; the safety records of employees who have been trained; the scope and necessary elements of training programs; the relationship of the additional specific provisions in § 1926.1060(a)(2) (redesignated as paragraph (b) in the final rule) with the more general § 1926.21 requirements; the relationship of costs to benefits under this issue area; and possible recordkeeping burdens these provisions might involve.

Costs or burdens attributable to such training or retraining are already imposed through OSHA's regulations in § 1926.21. OSHA notes that § 1926.21(b)(2) requires employers to "instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury." The

Agency's intent in Issue #8 was to get some comment and discussion on whether a specific clarification of the training requirements would be worthwhile, and not to broaden or expand the scope of the training or add a burden to the industry not already imposed by § 1926.21.

The Associated General Contractors of America, Inc. (AGC) (Ex. 2-37) and two of the local chapters (Exs. 2-11 and 2-31) indicated that they had "flexible, cost effective, and practical" training programs already in place. A number of commenters (Exs. 2-6, 2-11, 2-14, 2-23, 2-24, 2-30, 2-31, 2-37, and 2-38) stated that the existing training requirements of § 1926.21 were adequate and should not be expanded as proposed. Most of them (Exs. 2-11, 2-23, 2-24, 2-37, and 2-38) indicated that the existing training requirements were already burdensome given, among other factors, the industry's high employee turnover. OSHA recognizes that employee turnover can substantially increase an employer's training burden. The Agency, however, has determined that the required training and retraining are needed to protect employees from serious hazards. OSHA has framed the training requirements in performance-oriented language, allowing employers the flexibility to establish cost-effective programs and thus to reconcile the need for training with the employers' circumstances.

Some comments (Exs. 2-11, 2-24, 2-30, 2-31, and 2-37) stated that having two training requirements would place employers in "double jeopardy" because, as one comment (Ex. 2-24) explained, employers could receive "two citations for what really is a single violation." However, OSHA has determined that the commenters' are mistaken in their interpretation of the proposal. The Agency notes that in a case where two or more provisions could apply to a single violation the more specific rule always takes precedence over the more general rule. Therefore, only § 1926.1060 would be cited if an employer does not adequately train employees in relation to subpart X.

One comment (Ex. 2-14) stated that placing training requirements in proposed § 1926.1060 was redundant and reduced the effectiveness of the existing standard. That comment also suggested that any change in training requirements should be accomplished through revision of existing § 1926.21.

OSHA notes that § 1926.21(b)(2) requires employers to:

Instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work

environment to control or eliminate any hazards or the exposure to illness or injury.

The Agency believes that the specific training requirements in this final rule are necessary to provide additional information as a supplement to the existing general training requirements that apply to stairways and ladders. The specific requirements are also necessary to indicate what subpart X training programs are expected to cover and how frequently training is to be provided. Rather than take on the complex task of revising a general provision that applies to many different activities, OSHA has included the necessary additional information in revised subpart X, along with the rest of the provisions that relate specifically to stairways and ladders.

Three commenters (Exs. 2-28, 2-29, and 2-39) stated that the training provisions should be more specific. Two of those commenters (Exs. 2-29 and 2-39) submitted information on particular training programs and materials. OSHA has not made the suggested change because the Agency believes that employers are in the best position to select the training program and materials that are appropriate for their operations. The training materials in the record are available for employers who wish to use them in designing their own programs.

Other comments (Exs. 2-13, 2-22, 2-27, 2-28, 2-39, and 2-42) supported the proposed training requirements. One comment (Ex. 2-28) indicated that proposed § 1926.1060 did not appear to impose a recordkeeping burden. Another comment (Ex. 2-43) suggested that OSHA also require training in tying off. Yet another comment (Ex. 2-27) supported "further expansion" of the training requirements. OSHA has not made these suggested changes because the Agency believes that the proposed performance-oriented language allows employers the flexibility necessary to establish programs that appropriately address their circumstances.

Paragraph (b) requires retraining to be provided for each employee, as necessary, so that the employee maintains the understanding and knowledge acquired through compliance with this section. This provision was proposed as § 1926.1060(a)(2), and has been redesignated as paragraph (b) for editorial purposes. To clarify OSHA's intent and allow flexibility regarding the frequency of such retraining, the final rule differs from the proposal in several minor respects: OSHA has removed the words "Training and" from the beginning of the paragraph and has added the phrase "so that each employee maintains the understanding

and knowledge acquired through compliance with this section" at the end of the provision.

OSHA requested public comment on the frequency of retraining in Issue #8 of the NPRM. As noted above, OSHA is aware of the construction industry's generally high level of employee turnover and current training responsibilities. The Agency notes, however, that none of the commenters had recommendations regarding the appropriate frequency of retraining. Therefore, OSHA continues to believe that the most reasonable course is to require retraining as necessary. Accordingly, the Agency is promulgating (b) as amended.

Appendix A to subpart X provides information for employers seeking to comply with the ladder loading and strength requirements of § 1926.1053(a)(1), and lists the applicable ANSI standards that an employer can use to purchase, design, or build ladders that would be considered to meet the OSHA standard. In the final rule, proposed appendix A has been amended for the sake of clarity and to eliminate redundancy.

Specific Issues

In the specific issues section of the proposed rule (51 FR 42758 and 42759, Nov. 25, 1986), OSHA sought public comments on 12 separate issues to identify or raise particular points encompassed by this rulemaking that it felt merited attention. In addition, OSHA sought testimony on two specific issues in the hearing notice (53 FR 2054, Jan. 26, 1988). All but two of these issues have already been discussed above. The provisions addressed in the two remaining issues are discussed below.

OSHA sought comments under Issue #1 on the following concerns affected by the revised subpart: The level of current industry practices meeting the new or revised provisions; the practicality and effectiveness of the suggested changes in preventing or lessening the severity of accidents; any previously undiscussed costs or savings; and any pertinent reports indicating the need for additional changes. In the responses to the proposed rule, OSHA received three comments directed to this issue.

One commenter (Ex. 2-39) stated that while it had no specific injury data, it urged the use of the American National Standards Institute's (ANSI) Bi-Level Fall Victim Report Form for ladders in the A14 Portable Ladder Standard (from the Appendixes to ANSI A14.1-1982 and A14.2-1982) as a way to pinpoint ladder injury problems. OSHA appreciates the suggestion and will consider ways in

which these forms can be used in consultation with the Department's Bureau of Labor Statistics, to enhance data collection efforts.

Two of the three commenters (Exs. 2-23 and 2-28) who responded to Issue #1 indicated that they felt the industry generally complied with the current requirements. One of them (Ex. 2-23) further indicated that the new regulations would add clarity and uniformity.

Issue #9 of the proposed rule (p. 42759) asked for comments regarding the use of specific numerical limits, such as the stairway slope requirement in proposed § 1926.1052(a)(2). OSHA proposed those provisions, which are based on existing rules and consensus standards, to state clearly what the Agency has determined is necessary for workplace safety. OSHA stated its belief that the use of specific limits in certain provisions promotes consistency, while minimizing legal disputes over the intent of a requirement, but also noted this may: Increase costs without increasing safety; discourage technical innovation; prevent the use of safe alternatives; and fail to anticipate the varying needs and situations covered by the standard.

OSHA received nine comments in response to Issue #9. Two commenters (Exs. 2-23 and 2-35) supported the balance of specific numeric limits and performance language that the Agency has set out under the standards. Responses from two more commenters (Exs. 2-6 and 2-12) did not clearly support either approach. The ACCSH recommended continuing the use of specification language as already required in the standard (Tr. 6/9/87, pp. 266-268). On the other hand, one commenter (Ex. 2-29) came out against specification language altogether, and the other four (Exs. 2-11, 2-31, 2-37, and 2-38) favored performance-oriented language, but indicated that adding a non-mandatory appendix as a guideline to applying the standard would be of value to contractors.

OSHA notes that there was some balance of opinion among the nine commenters and the ACCSH recommendation in response to the issue, and no position was backed by a substantial number of proponents. In addition, those commenters who stated their support for performance-oriented language did not specify particular points where specification language was inappropriate. As noted in the proposal, OSHA has drafted the new standard largely using performance language, and the standard includes only such specification language as the Agency

considers necessary for employee safety.

IV. Regulatory Impact Assessment and Regulatory Flexibility Analysis

Introduction

In accordance with Executive Order 12291 (46 FR 13193, Feb. 17, 1981) OSHA has analyzed the economic impact of this final rulemaking. Under the criteria established in Executive Order 12291, the promulgation of this revision of subpart X will be a "minor" action. This rule will not cause a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions, and will not result in 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.

Revised subparts L, M, and X cover surfaces and areas that are currently covered under the existing subparts L and M. OSHA has reorganized these subparts in order to construct a more logical ordering of its standards and to facilitate employers in finding the sections appropriate to their concerns.

Affected industries and population at risk. The entire construction industry would be affected by the changes to the existing subparts L and M in view of the extensive use of ladders and stairways in all sectors of the industry. In terms of the two-digit Standard Industrial Classification (SIC) codes, OSHA determined that the revision could potentially affect all firms in SIC 15 (Building Construction—General Contractors and Operative Builders), SIC 16 (Construction Other Than Building Construction—General Contractors), and SIC 17 (Construction—Special Trades Contractors). In 1987, there were approximately 540,000 establishments affected by subparts L and M. The majority of business firms classified under SIC 17 are subcontractors to the general contractors classified under SICs 15 and 16. Rather than classifying these sectors by their two-digit SIC designations, OSHA used the type of finished construction product as the basis for classifying the construction industry into the following four general sectors:

1. Single-family housing,
2. Other residential, (e.g., hotels, apartments),
3. Nonresidential (e.g., commercial and institutional buildings), and
4. Heavy construction (e.g., bridges, utilities).

OSHA estimated that all of the approximately 4.5 million construction workers frequently work on ladders and stairways.

Significance of risk. On the basis of data from the Supplementary Data System (SDS) and Occupational Injury and Illness (OII) reports from the Bureau of Labor Statistics (BLS), OSHA estimates that the annual number of injuries in construction due to falls from ladders and stairways would be 208,260.

In addition, there are approximately 36 fatalities associated with falls from ladders and stairways in construction each year.

Consequently, OSHA concludes that the construction injuries and fatalities due to falls from ladders and stairways present a significant hazard which should be reduced.

Feasibility. OSHA determined that compliance with the revised subpart X will be technologically feasible because it requires the use of readily available technology and equipment, such as sufficiently strong stair rails and ladders.

Benefits. Benefits from this revision to the standard would accrue to those workers who are at risk from hazards associated with practices involving ladders and stairways in the construction industry. OSHA estimates that full compliance with the revised standard would prevent approximately 24 fatalities, 18,757 injuries (of which 8,722 would have been lost workday injuries and 10,035 would have been non-lost workday injuries), and 156,996 lost workdays (see table A). OSHA also determined that full compliance with the existing standard would prevent 21 fatalities, 17,800 injuries (of which 8,277 would have been lost workday injuries and 9,523 would have been non-lost workday injuries), and 148,986 lost workdays. Under conditions of full compliance, therefore, the revised standard would be more protective than the existing standard as three more fatalities would be prevented, 957 more injuries would be prevented (including 445 lost workday injuries and 512 non-lost workday injuries), and 8,010 fewer workdays would be lost.

TABLE A—FATALITIES AND INJURIES PREVENTABLE BY FULL COMPLIANCE WITH THE REVISED AND EXISTING STANDARDS

Nature of accident	Number of accidents prevented		
	Revised standard	Existing standard	Difference
Fatalities	24	21	3
Injuries:			
Lost workday	8,722	8,277	445
Non-lost workday	10,035	9,523	512

TABLE A—FATALITIES AND INJURIES PREVENTABLE BY FULL COMPLIANCE WITH THE REVISED AND EXISTING STANDARDS—Continued

Nature of accident	Number of accidents prevented		
	Revised standard	Existing standard	Difference
Total	18,757	17,800	957
Lost workdays	156,996	148,986	8,010

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

The prevention of accidents involves significant nonmonetizable benefits (such as the avoidance of pain and suffering) but also involves substantial monetizable benefits to workers, industry, and society.

Using a willingness-to-pay methodology, the benefits of injuries prevented by the revised standard would be \$265 million annually. In addition, approximately 24 fatalities per year would be prevented.

Another measure of the benefits of the reduction of accidents is the savings to industry of Workers' Compensation payments. Full compliance with the revised standard could substantially reduce compensation payments, which cover medical costs and part of lost wages; accidents also cause significant costs to industry through lost productivity, administrative costs, and new hiring and training costs.

Full compliance with the revised standard would prevent approximately 3 fatalities and 957 injuries more than would be prevented by full compliance with the existing standard. The corresponding monetizable annual benefits (not including the lives saved) would be from \$6 million to \$14 million more than those under the existing standard.

Costs. Using the baseline of current industry practice, OSHA estimated that the total costs of full compliance with the revised standard would be \$27.61 million annually, and that the annual costs of full compliance with the existing standard would be \$20.11 million.

Thus, the incremental cost increase in going from full compliance with the existing provisions to full compliance with the revised subpart X would amount to \$7.50 million, which is attributable to additional labor time associated with increased training and the use of safe work practices. Table B shows the costs of the revised and existing standards by construction sector.

Cost Effectiveness

Full compliance with the revised standard would provide a safer construction work environment but at a

higher cost than that provided by full compliance with the existing standard. After carefully evaluating both regulatory and nonregulatory alternatives, OSHA has concluded that the revised subpart X standard is the more cost-effective alternative. The revised subpart X standard will increase the number of lives saved and injuries prevented without unnecessarily burdening industry. As a result, the potential annual monetizable benefits to society may be over \$200 million.

OSHA also believes that overall compliance with the provisions of the revised standard is likely to be greater than it has been under the existing standard. This is due to the performance-oriented requirements which increase the flexibility of compliance, and to the training requirements which increase awareness of hazards and compliance with safe work practice requirements. The reorganization and clarification of requirements is also expected to contribute to improved compliance levels.

TABLE B—COMPARISON OF COSTS OF COMPLIANCE WITH THE REVISED SUBPART X AND WITH THE EXISTING SUBPARTS L AND M BY CONSTRUCTION SECTOR BASELINE: CURRENT INDUSTRY PRACTICE

(Dollar amounts in millions)

Sector	Costs of compliance		Net increase for revised standard
	Revised subpart X	Existing subparts L and M	
Single-family housing	\$6.98	\$5.08	\$1.90
Other residential	4.76	3.47	1.29
Nonresidential	9.74	7.09	2.65
Heavy	6.13	4.47	1.66
Total	27.61	20.11	7.50

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

Regulatory flexibility certification. Pursuant to the Regulatory Flexibility Act (Pub. L. 96-353, 84 Stat. 1164 [5 U.S.C. 60 et seq.]), OSHA has made an assessment of the impact of the revised standard and has concluded that it would not have a significant impact upon a substantial number of small entities. The important criterion that governs a Regulatory Flexibility Analysis is whether the revised standard would impose significant costs upon small entities. "Significance" is determined by the impact upon profits, market share, and on the entities' financial viability. In particular, the revised standards' effect upon small entities relative to its effect upon large entities needs to be specifically evaluated. That is, OSHA must determine whether the revision will have a relatively greater negative effect on small entities than upon large

entities, thereby putting small entities at a competitive disadvantage, and if so, whether there are ways to minimize any differentially adverse effects without increasing worker risk.

If the costs of compliance for small firms are relatively minor and are proportional to the size of the firm, then there is no significant differential effect. In those cases involving larger absolute costs, small firms may have greater difficulty in obtaining financing, and in those cases involving economies of scale in compliance, the burden on small firms will be greater than the burden on large firms. The revised subpart X, however, requires minimal capital expenditures. The costs of compliance primarily depend upon the amount of ladder use and stairway footage, which typically depend upon the scale of operation of the entity. In addition, these costs would be a minimal component of the overall costs of the facilities. As a result, small entities would not be put at a competitive disadvantage due to these compliance costs. Thus, OSHA concluded that this revised standard will not have a significant adverse impact upon a substantial number of small entities.

V. Environmental Assessment

Finding of No Significant Impact

This final rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR part 1500), and OSHA's DOL NEPA Procedures (29 CFR part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the final rule will have no significant environmental impact.

The revisions to 29 CFR 1926.1050-1926.1060, subpart X—Stairways and Ladders, focus on the reduction of accidents or injuries by means of work practices and procedures, proper use and handling of equipment, and training, as well as on changes in language, definition, and format of the standard. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment. As such, these revisions are, therefore, categorized as excluded actions according to subpart B, § 11.10, of the DOL NEPA regulations. IV. Regulatory Impact Assessment and Regulatory Flexibility Analysis.

Introduction

In accordance with Executive Order 12291 (46 FR 13193, Feb. 17, 1981) OSHA

has analyzed the economic impact of this final rulemaking. Under the criteria established in Executive Order 12291, the promulgation of this revision of subpart X will be a "minor" action. This rule will not cause a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions, and will not result in significant adverse effects on

VI. Recordkeeping

There are no collections of information in this final rule. Therefore, approval by OMB under the Paperwork Reduction Act is not necessary. However, public comment was requested in Issue #8 regarding whether the training requirements impose an implicit recordkeeping requirement on employers. The one comment (Ex. 2-28) received on this issue supported OSHA's finding that no recordkeeping burden is imposed by the training provisions of § 1926.1060.

VII. State Plan Standards

The 25 states and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within 6 months of the publication date of the final rule. These states and territories are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, New York (for state and local government employees only), Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a comparable standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states and territories.

VIII. Federalism

The Final Rule has been reviewed in accordance with Executive Order 12612 (52 FR 41685, Oct. 30, 1987) regarding Federalism. The Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with states prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt State

laws relating to issues with respect to which Federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption only if it submits, and obtains Federal approval of a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan States must, among other things, be at least as effective in providing safe and obtains Federal approval of a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Where such standards are applicable to products distributed or used in interstate commerce, they may not unduly burden commerce and must be justified by compelling local conditions, see section 18(c)(2).

The Federal standard on construction operations involving stairways and ladders addresses hazards that are not unique to any one state or region of the country. Nonetheless, States with occupational safety and health plans approved under section 18 of the OSH Act will be able to develop their own State standards to deal with any special problems which might be encountered in a particular State. Moreover, because this standard is written in general, performance-oriented terms, there is considerable flexibility for State plans to require, and for affected employers to use, methods of compliance which are appropriate to the working conditions covered by the standard.

In brief, this final rule addresses a clear national problem related to occupational safety and health in the construction industry. Those states which have elected to participate under section 18 of the OSH Act are not preempted by this standard, and will be able to address any special conditions within the framework of the Federal Act while ensuring that the state standards are at least as effective as that standard.

Authority: This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

List of Subjects in 29 CFR Part 1926

Construction safety, Construction industry, Ladders and scaffolds, Occupational safety and health, Protective equipment, Safety.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333), Secretary of Labor's Order No. 1-90 (55 FR 9033), and 29 CFR part 1911, 29 CFR part 1926 is amended as set forth below.

Signed at Washington, DC, this 5th day of November, 1990.

Gerard F. Scannell,
Assistant Secretary of Labor.

PART 1926—[AMENDED]

1. The authority citation for subpart L of part 1926 continues to read as follows:

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 37536) as applicable.

2. The heading for subpart L is revised to read as follows:

Subpart L—Scaffolding

§ 1926.450 [Reserved]

3. Section § 1926.450 is removed and reserved.

§ 1926.452 [Amended]

4. Paragraph (a) of 1926.452 is removed and reserved.

Subpart M—[Amended]

5. The authority citation for subpart M of part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 37536) * * *.

6. The heading for subpart M is revised to read as follows:

Subpart M—Floor and Wall Openings

§ 1926.500 [Amended]

7. Paragraphs (e) and (f)(2) of § 1926.500 are removed and reserved.

§ 1926.501 [Reserved]

8. Section 1926.501 is removed and reserved.

9. Subpart X of part 1926 is revised to read as follows:

Subpart X—Stairways and Ladders

Sec.

1926.1050 Scope, application, and definitions applicable to this subpart.

1926.1051 General requirements.

1926.1052 Stairways.

1926.1053 Ladders.

1926.1054-1926.1059 [Reserved]

1926.1060 Training requirements.

Appendix A to Subpart X—Ladders

Subpart X—Stairways and Ladders

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1-90 (55 FR 9033); and 29 CFR part 1911.

§ 1926.1050 Scope, application, and definitions applicable to this subpart.

(a) *Scope and application.* This subpart applies to all stairways and ladders used in construction, alteration, repair (including painting and decorating), and demolition workplaces covered under 29 CFR part 1926, and also sets forth, in specified circumstances, when ladders and stairways are required to be provided. Additional requirements for ladders used on or with scaffolds are contained in Subpart L—Scaffolds.

(b) Definitions.

Cleat means a ladder crosspiece of rectangular cross section placed on edge upon which a person may step while ascending or descending a ladder.

Double-cleat ladder means a ladder similar in construction to a single-cleat ladder, but with a center rail to allow simultaneous two-way traffic for employees ascending or descending.

Equivalent means alternative designs, materials, or methods that the employer can demonstrate will provide an equal or greater degree of safety for employees than the method or item specified in the standard.

Extension trestle ladder means a self-supporting portable ladder, adjustable in length, consisting of a trestle ladder base and a vertically adjustable extension section, with a suitable means for locking the ladders together.

Failure means load refusal, breakage, or separation of component parts. Load refusal is the point where the structural members lose their ability to carry the loads.

Fixed ladder means a ladder that cannot be readily moved or carried because it is an integral part of a building or structure. A *side-step fixed ladder* is a fixed ladder that requires a person getting off at the top to step to the side of the ladder side rails to reach the landing. A *through fixed ladder* is a

fixed ladder that requires a person getting off at the top to step between the side rails of the ladder to reach the landing.

Handrail means a rail used to provide employees with a handhold for support.

Individual-rung/step ladders means ladders without a side rail or center rail support. Such ladders are made by mounting individual steps or rungs directly to the side or wall of the structure.

Job-made ladder means a ladder that is fabricated by employees, typically at the construction site, and is not commercially manufactured. This definition does not apply to any individual-rung/step ladders.

Lower levels means those areas to which an employee can fall from a stairway or ladder. Such areas include ground levels, floors, roofs, ramps, runways, excavations, pits, tanks, material, water, equipment, and similar surfaces. It does not include the surface from which the employee falls.

Maximum intended load means the total load of all employees, equipment, tools, materials, transmitted loads, and other loads anticipated to be applied to a ladder component at any one time.

Nosing means that portion of a tread projecting beyond the face of the riser immediately below.

Point of access means all areas used by employees for work-related passage from one area or level to another. Such open areas include doorways, passageways, stairway openings, studded walls, and various other permanent or temporary openings used for such travel.

Portable ladder means a ladder than can be readily moved or carried.

Riser height means the vertical distance from the top of a tread to the top of the next higher tread or platform/landing or the distance from the top of a platform/landing to the top of the next higher tread or platform/landing.

Side-step fixed ladder. See "Fixed ladder."

Single-cleat ladder means a ladder consisting of a pair of side rails, connected together by cleats, rungs, or steps.

Single-rail ladder means a portable ladder with rungs, cleats, or steps mounted on a single rail instead of the normal two rails used on most other ladders.

Spiral stairway means a series of steps attached to a vertical pole and progressing upward in a winding fashion within a cylindrical space.

Stairrail system means a vertical barrier erected along the unprotected sides and edges of a stairway to prevent

employees from falling to lower levels. The top surface of a stairrail system may also be a "handrail."

Step stool (ladder type) means a self-supporting, foldable, portable ladder, nonadjustable in length, 32 inches or less in overall size, with flat steps and without a pail shelf, designed to be climbed on the ladder top cap as well as all steps. The side rails may continue above the top cap.

Through fixed ladder. See "Fixed ladder."

Tread depth means the horizontal distance from front to back of a tread (excluding nosing, if any).

Unprotected sides and edges means any side or edge (except at entrances to points of access) of a stairway where there is no stairrail system or wall 36 inches (.9 m) or more in height, and any side or edge (except at entrances to points of access) of a stairway landing, or ladder platform where there is no wall or guardrail system 39 inches (1 m) or more in height.

§ 1926.1051 General requirements.

(a) A stairway or ladder shall be provided at all personnel points of access where there is a break in elevation of 19 inches (48 cm) or more, and no ramp, runway, sloped embankment, or personnel hoist is provided.

(1) Employees shall not use any spiral stairways that will not be a permanent part of the structure on which construction work is being performed.

(2) A double-cleated ladder or two or more separate ladders shall be provided when ladders are the only mean of access or exit from a working area for 25 or more employees, or when a ladder is to serve simultaneous two-way traffic.

(3) When a building or structure has only one point of access between levels, that point of access shall be kept clear to permit free passage of employees. When work must be performed or equipment must be used such that free passage at that point of access is restricted, a second point of access shall be provided and used.

(4) When a building or structure has two or more points of access between levels, at least one point of access shall be kept clear to permit free passage of employees.

(b) Employers shall provide and install all stairway and ladder fall protection systems required by this subpart and shall comply with all other pertinent requirements of this subpart before employees begin the work that necessitates the installation and use of stairways, ladders, and their respective fall protection systems.

§ 1926.1052 Stairways.

(a) *General.* The following requirements apply to all stairways as indicated:

(1) Stairways that will not be a permanent part of the structure on which construction work is being performed shall have landings of not less than 30 inches (76 cm) in the direction of travel and extend at least 22 inches (56 cm) in width at every 12 feet (3.7 m) or less of vertical rise.

(2) Stairs shall be installed between 30° and 50° from horizontal.

(3) Riser height and tread depth shall be uniform within each flight of stairs, including any foundation structure used as one or more treads of the stairs. Variations in riser height or tread depth shall not be over 1/4-inch (0.6 cm) in any stairway system.

(4) Where doors or gates open directly on a stairway, a platform shall be provided, and the swing of the door shall not reduce the effective width of the platform to less than 20 inches (51 cm).

(5) Metal pan landings and metal pan treads, when used, shall be secured in place before filling with concrete or other material.

(6) All parts of stairways shall be free of hazardous projections, such as protruding nails.

(7) Slippery conditions on stairways shall be eliminated before the stairways are used to reach other levels.

(b) *Temporary service.* The following requirements apply to all stairways as indicated:

(1) Except during stairway construction, foot traffic is prohibited on stairways with pan stairs where the treads and/or landings are to be filled in with concrete or other material at a later date, unless the stairs are temporarily fitted with wood or other solid material at least to the top edge of each pan. Such temporary treads and landings shall be replaced when worn below the level of the top edge of the pan.

(2) Except during stairway construction, foot traffic is prohibited on skeleton metal stairs where permanent treads and/or landings are to be installed at a later date, unless the stairs are fitted with secured temporary treads and landings long enough to cover the entire tread and/or landing area.

(3) Treads for temporary service shall be made of wood or other solid material, and shall be installed the full width and depth of the stair.

(c) *Stairrails and handrails.* The following requirements apply to all stairways as indicated:

(1) Stairways having four or more risers or rising more than 30 inches (76 cm), whichever is less, shall be equipped

with at least one handrail and one stairrail system along each unprotected side or edge. However, when the top edge of a stairrail system also serves as a handrail, paragraph (c)(7) of this section applies.

(2) Winding and spiral stairways shall be equipped with a handrail offset sufficiently to prevent walking on those portions of the stairways where the tread width is less than 6 inches (15 cm).

(3) The height of stairrails shall be as follows:

(i) Stairrails installed after March 15, 1991, shall be not less than 36 inches (91.5 cm) from the upper surface of the stairrail system to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(ii) Stairrails installed before March 15, 1991, shall be not less than 30 inches (76 cm) nor more than 34 inches (86 cm) from the upper surface of the stairrail system to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(4) Midrails, screens, mesh, intermediate vertical members, or equivalent intermediate structural members, shall be provided between the top rail of the stairrail system and the stairway steps.

(i) Midrails, when used, shall be located at a height midway between the top edge of the stairrail system and the stairway steps.

(ii) Screens or mesh, when used, shall extend from the top rail to the stairway step, and along the entire opening between top rail supports.

(iii) When intermediate vertical members, such as balusters, are used between posts, they shall be not more than 19 inches (48 cm) apart.

(iv) Other structural members, when used, shall be installed such that there are no openings in the stairrail system that are more than 19 inches (48 cm) wide.

(5) Handrails and the top rails of stairrail systems shall be capable of withstanding, with failure, a force of at least 200 pounds (890 n) applied within 2 inches (5 cm) of the top edge, in any downward or outward direction, at any point along the top edge.

(6) The height of handrails shall be not more than 37 inches (94 cm) nor less than 30 inches (76 cm) from the upper surface of the handrail to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(7) When the top edge of a stairrail system also serves as a handrail, the height of the top edge shall be not more than 37 inches (94 cm) nor less than 36 inches (91.5 cm) from the upper surface of the stairrail system to the surface of

the tread, in line with the face of the riser at the forward edge of the tread.

(8) Stairrail systems and handrails shall be so surfaced as to prevent injury to employees from punctures or lacerations, and to prevent snagging of clothing.

(9) Handrails shall provide an adequate handhold for employees grasping them to avoid falling.

(10) The ends of stairrail systems and handrails shall be constructed so as not to constitute a projection hazard.

(11) Handrails that will not be a permanent part of the structure being built shall have a minimum clearance of 3 inches (8 cm) between the handrail and walls, stairrail systems, and other objects.

(12) Unprotected sides and edges of stairway landings shall be provided with guardrail systems. Guardrail system criteria are contained in subpart M of this part.

§ 1926.1053 Ladders.

(a) *General.* The following requirements apply to all ladders as indicated, including job-made ladders.

(1) Ladders shall be capable of supporting the following loads without failure:

(i) Each self-supporting portable ladder: At least four times the maximum intended load, except that each extra-heavy-duty type 1A metal or plastic ladder shall sustain at least 3.3 times the maximum intended load. The ability of a ladder to sustain the loads indicated in this paragraph shall be determined by applying or transmitting the requisite load to the ladder in a downward vertical direction. Ladders built and tested in conformance with the applicable provisions of appendix A of this subpart will be deemed to meet this requirement.

(ii) Each portable ladder that is not self-supporting: At least four times the maximum intended load, except that each extra-heavy-duty type 1A metal or plastic ladders shall sustain 3.3 times the maximum intended load. The ability of a ladder to sustain the loads indicated in this paragraph shall be determined by applying or transmitting the requisite load to the ladder in a downward vertical direction when the ladder is placed at an angle of 75½ degrees from the horizontal. Ladders built and tested in conformance with the applicable provisions of appendix A will be deemed to meet this requirement.

(iii) Each fixed ladder: At least two loads of 250 pounds (114 kg) each, concentrated between any two consecutive attachments (the number and position of additional concentrated loads of 250 pounds (114 kg) each,

determined from anticipated usage of the ladder, shall also be included), plus anticipated loads caused by ice buildup, winds, rigging, and impact loads resulting from the use of ladder safety devices. Each step or rung shall be capable of supporting a single concentrated load of at least 250 pounds (114 kg) applied in the middle of the step or rung. Ladders built in conformance with the applicable provisions of appendix A will be deemed to meet this requirement.

(2) Ladder rungs, cleats, and steps shall be parallel, level, and uniformly spaced when the ladder is in position for use.

(3)(i) Rungs, cleats, and steps of portable ladders (except as provided below) and fixed ladders shall be spaced not less than 10 inches (25 cm) apart, nor more than 14 inches (36 cm) apart, as measured along the ladder's side rails.

(ii) Rungs, cleats, and steps of step stools shall be not less than 8 inches (20 cm) apart, nor more than 12 inches (31 cm) apart, as measured between center lines of the rungs, cleats, and steps.

(iii) Rungs, cleats, and steps of the base section of extension trestle ladders shall be not less than 8 inches (20 cm) nor more than 18 inches (46 cm) apart, as measured between center lines of the rungs, cleats, and steps. The rung spacing on the extension section of the extension trestle ladder shall be not less than 6 inches (15 cm) nor more than 12 inches (31 cm).

(4)(i) The minimum clear distance between the sides of individual-rung/step ladders and the minimum clear distance between the side rails of other fixed ladders shall be 16 inches (41 cm).

(ii) The minimum clear distance between side rails for all portable ladders shall be 1½ inches (29 cm).

(5) The rungs of individual-run/step ladders shall be shaped such that employees' feet cannot slide off the end of the rungs.

(6)(i) The rungs and steps of fixed metal ladders manufactured after January 14, 1991, shall be corrugated, knurled, dimpled, coated with skid-resistant material, or otherwise treated to minimize slipping.

(ii) The rungs and steps of portable metal ladders shall be corrugated, knurled, dimpled, coated with skid-resistant material, or otherwise treated to minimize slipping.

(7) Ladders shall not be tied or fastened together to provide longer sections unless they are specifically designed for such use.

(8) A metal spreader or locking device shall be provided on each stepladder to hold the front and back sections in an

open position when the ladder is being used.

(9) When splicing is required to obtain a given length of side rail, the resulting side rail must be at least equivalent in strength to a one-piece side rail made of the same material.

(10) Except when portable ladders are used to gain access to fixed ladders (such as those on utility towers, billboards, and other structures where the bottom of the fixed ladder is elevated to limit access), when two or more separate ladders are used to reach an elevated work area, the ladders shall be offset with a platform or landing between the ladders. (The requirements to have guardrail systems with toeboards for falling object and overhead protection on platforms and landings are set forth in subpart M of this part.)

(11) Ladder components shall be surfaced so as to prevent injury to an employee from punctures or lacerations, and to prevent snagging of clothing.

(12) Wood ladders shall not be coated with any opaque covering, except for identification or warning labels which may be placed on one face only of a side rail.

(13) The minimum perpendicular clearance between fixed ladder rungs, cleats, and steps, and any obstruction behind the ladder shall be 7 inches (18 cm), except in the case of an elevator pit ladder, for which a minimum perpendicular clearance of 4½ inches (11 cm) is required.

(14) The minimum perpendicular clearance between the center line of fixed ladder rungs, cleats, and steps, and any obstruction on the climbing side of the ladder shall be 30 inches (76 cm), except as provided in paragraph (a)(15) of this section.

(15) When unavoidable obstructions are encountered, the minimum perpendicular clearance between the centerline of fixed ladder rungs, cleats, and steps, and the obstruction on the climbing side of the ladder may be reduced to 24 inches (61 cm), provided that a deflection device is installed to guide employees around the obstruction.

(16) Through fixed ladders at their point of access/egress shall have a step-across distance of not less than 7 inches (18 cm) nor more than 12 inches (30 cm) as measured from the centerline of the steps or rungs to the nearest edge of the landing area. If the normal step-across distance exceeds 12 inches (30 cm), a landing platform shall be provided to reduce the distance to the specified limit.

(17) Fixed ladders without cages or wells shall have a clear width to the

nearest permanent object of at least 15 inches (38 cm) on each side of the centerline of the ladder.

(18) Fixed ladders shall be provided with cages, wells, ladder safety devices, or self-retracting lifelines where the length of climb is less than 24 feet (7.3 m) but the top of the ladder is at a distance greater than 24 feet (7.3 m) above lower levels.

(19) Where the total length of a climb equals or exceeds 24 feet (7.3 m), fixed ladders shall be equipped with one of the following:

- (i) Ladder safety devices; or
- (ii) Self-retracting lifelines, and rest platforms at intervals not to exceed 150 feet (45.7 m); or
- (iii) A cage or well, and multiple ladder sections, each ladder section not to exceed 50 feet (15.2 m) in length. Ladder sections shall be offset from adjacent sections, and landing platforms shall be provided at maximum intervals of 50 feet (15.2 m).

(20) Cages for fixed ladders shall conform to all of the following:

- (i) Horizontal bands shall be fastened to the side rails of rail ladders, or directly to the structure, building, or equipment for individual-rung ladders;
- (ii) Vertical bars shall be on the inside of the horizontal bands and shall be fastened to them;
- (iii) Cages shall extend not less than 27 inches (68 cm), or more than 30 inches (76 cm) from the centerline of the step or rung (excluding the flare at the bottom of the cage), and shall not be less than 27 inches (68 cm) in width;

(iv) The inside of the cage shall be clear of projections;

(v) Horizontal bands shall be spaced not more than 4 feet (1.2 m) on center vertically; horizontally;

(vi) Vertical bars shall be spaced at intervals not more than 9½ inches (24 cm) on center;

(vii) The bottom of the cage shall be at a level not less than 7 feet (2.1 m) nor more than 8 feet (2.4 m) above the point of access to the bottom of the ladder. The bottom of the cage shall be flared not less than 4 inches (10 cm) all around within the distance between the bottom horizontal band and the next higher band;

(viii) The top of the cage shall be a minimum of 42 inches (1.1 m) above the top of the platform, or the point of access at the top of the ladder, with provision for access to the platform or other point of access.

(21) Wells for fixed ladders shall conform to all of the following:

- (i) They shall completely encircle the ladder;
- (ii) They shall be free of projections;

(iii) Their inside face on the climbing side of the ladder shall extend not less than 27 inches (68 cm) nor more than 30 inches (76 cm) from the centerline of the step or rung;

(iv) The inside clear width shall be at least 30 inches (76 cm);

(v) The bottom of the wall on the access side shall start at a level not less than 7 feet (2.1 m) nor more than 8 feet (2.4 m) above the point of access to the bottom of the ladder.

(22) Ladder safety devices, and related support systems, for fixed ladders shall conform to all of the following:

(i) They shall be capable of withstanding without failure a drop test consisting of an 18-inch (41 cm) drop of a 500-pound (226 kg) weight;

(ii) They shall permit the employee using the device to ascend or descend without continually having to hold, push or pull any part of the device, leaving both hands free for climbing;

(iii) They shall be activated within 2 feet (.61 m) after a fall occurs, and limit the descending velocity of an employee to 7 feet/sec. (2.1 m/sec.) or less;

(iv) The connection between the carrier or lifeline and the point of attachment to the body belt or harness shall not exceed 9 inches (23 cm) in length.

(23) The mounting of ladder safety devices for fixed ladders shall conform to the following:

(i) Mountings for rigid carriers shall be attached at each end of the carrier, with intermediate mountings, as necessary, spaced along the entire length of the carrier, to provide the strength necessary to stop employees' falls.

(ii) Mountings for flexible carriers shall be attached at each end of the carrier. When the system is exposed to wind, cable guides for flexible carriers shall be installed at a minimum spacing of 25 feet (7.6 m) and maximum spacing of 40 feet (12.2 m) along the entire length of the carrier, to prevent wind damage to the system.

(iii) The design and installation of mountings and cable guides shall not reduce the design strength of the ladder.

(24) The side rails of through or side-step fixed ladders shall extend 42 inches (1.1 m) above the top of the access level or landing platform served by the ladder. For a parapet ladder, the access level shall be the roof if the parapet is cut to permit passage through the parapet; if the parapet is continuous, the access level shall be the top of the parapet.

(25) For through-fixed-ladder extensions, the steps or rungs shall be omitted from the extension and the extension of the side rails shall be flared

to provide not less than 24 inches (61 cm) nor more than 30 inches (76 cm) clearance between side rails. Where ladder safety devices are provided, the maximum clearance between side rails of the extensions shall not exceed 36 inches (91 cm).

(26) For side-step fixed ladders, the side rails and the steps or rungs shall be continuous in the extension.

(27) Individual-rung/step ladders, except those used where their access openings are covered with manhole covers or hatches, shall extend at least 42 inches (1.1 m) above an access level or landing platform either by the continuation of the rung spacings as horizontal grab bars or by providing vertical grab bars that shall have the same lateral spacing as the vertical legs of the rungs.

(b) Use. The following requirements apply to the use of all ladders, including job-made ladders, except as otherwise indicated:

(1) When portable ladders are used for access to an upper landing surface, the ladder side rails shall extend at least 3 feet (.9 m) above the upper landing surface to which the ladder is used to gain access; or, when such an extension is not possible because of the ladder's length, then the ladder shall be secured at its top to a rigid support that will not deflect, and a grasping device, such as a grabrail, shall be provided to assist employees in mounting and dismounting the ladder. In no case shall the extension be such that ladder deflection under a load would, by itself, cause the ladder to slip off its support.

(2) Ladders shall be maintained free of oil, grease, and other slipping hazards.

(3) Ladders shall not be loaded beyond the maximum intended load for which they were built, nor beyond their manufacturer's rated capacity.

(4) Ladders shall be used only for the purpose for which they were designed.

(5)(i) Non-self-supporting ladders shall be used at an angle such that the horizontal distance from the top support to the foot of the ladder is approximately one-quarter of the working length of the ladder (the distance along the ladder between the foot and the top support).

(ii) Wood job-made ladders with spliced side rails shall be used at an angle such that the horizontal distance is one-eighth the working length of the ladder.

(iii) Fixed ladders shall be used at a pitch no greater than 90 degrees from the horizontal, as measured to the back side of the ladder.

(6) Ladders shall be used only on stable and level surfaces unless secured to prevent accidental displacement.

(7) Ladders shall not be used on slippery surfaces unless secured or provided with slip-resistant feet to prevent accidental displacement. Slip-resistant feet shall not be used as a substitute for care in placing, lashing, or holding a ladder that is used upon slippery surfaces including, but not limited to, flat metal or concrete surfaces that are constructed so they cannot be prevented from becoming slippery.

(8) Ladders placed in any location where they can be displaced by workplace activities or traffic, such as in passageways, doorways, or driveways, shall be secured to prevent accidental displacement, or a barricade shall be used to keep the activities or traffic away from the ladder.

(9) The area around the top and bottom of ladders shall be kept clear.

(10) The top of a non-self-supporting ladder shall be placed with the two rails supported equally unless it is equipped with a single support attachment.

(11) Ladders shall not be moved, shifted, or extended while occupied.

(12) Ladders shall have nonconductive siderails if they are used where the employee or the ladder could contact exposed energized electrical equipment, except as provided in § 1926.951(c)(1) of this part.

(13) The top or top step of a stepladder shall not be used as a step.

(14) Cross-bracing on the rear section of stepladders shall not be used for climbing unless the ladders are designed and provided with steps for climbing on both front and rear sections.

(15) Ladders shall be inspected by a competent person for visible defects on a periodic basis and after any occurrence that could affect their safe use.

(16) Portable ladders with structural defects, such as, but not limited to, broken or missing rungs, cleats, or steps,

broken or split rails, corroded components, or other faulty or defective components, shall either be immediately marked in a manner that readily identifies them as defective, or be tagged with "Do Not Use" or similar language, and shall be withdrawn from service until repaired.

(17) Fixed ladders with structural defects, such as, but not limited to, broken or missing rungs, cleats, or steps, broken or split rails, or corroded components, shall be withdrawn from service until repaired. The requirement to withdraw a defective ladder from service is satisfied if the ladder is either:

(i) Immediately tagged with "Do Not Use" or similar language,

(ii) Marked in a manner that readily identifies it as defective;

(iii) Or blocked (such as with a plywood attachment that spans several rungs).

(18) Ladder repairs shall restore the ladder to a condition meeting its original design criteria, before the ladder is returned to use.

(19) Single-rail ladders shall not be used.

(20) When ascending or descending a ladder, the user shall face the ladder.

(21) Each employee shall use at least one hand to grasp the ladder when progressing up and/or down the ladder.

(22) An employee shall not carry any object or load that could cause the employee to lose balance and fall.

§§ 1926.1054–1926.1059 [Reserved]

§ 1926.1060 Training requirements.

The following training provisions clarify the requirements of § 1926.21(b)(2), regarding the hazards addressed in subpart X.

(a) The employer shall provide a training program for each employee using ladders and stairways, as necessary. The program shall enable each employee to recognize hazards related to ladders and stairways, and shall train each employee in the

procedures to be followed to minimize these hazards.

(1) The employer shall ensure that each employee has been trained by a competent person in the following areas, as applicable:

(i) The nature of fall hazards in the work area;

(ii) The correct procedures for erecting, maintaining, and disassembling the fall protection systems to be used;

(iii) The proper construction, use, placement, and care in handling of all stairways and ladders;

(iv) The maximum intended load-carrying capacities of ladders used; and

(v) The standards contained in this subpart.

(b) Retraining shall be provided for each employee as necessary so that the employee maintains the understanding and knowledge acquired through compliance with this section.

Appendix A to Subpart X—Ladders

This appendix serves as a non-mandatory guideline to assist employers in complying with the ladder loading and strength requirements of § 1926.1053(a)(1). A ladder designed and built in accordance with the applicable national consensus standards, as set forth below, will be considered to meet the requirements of § 1926.1053(a)(1):

- Manufactured portable wood ladders: American National Standards Institute (ANSI) A14.1–1982—American National Standard for Ladders—Portable Wood-Safety Requirements.

- Manufactured portable metal ladders: ANSI A14.2–1982—American National Standard for Ladders—Portable Metal-Safety Requirements.

- Manufactured fixed ladders: ANSI A14.3–1984—American National Standard for Ladders—Fixed-Safety Requirements.

- Job-made ladders: ANSI A14.4–1979—Safety Requirements for Job-Made Ladders.

- Plastic ladders: ANSI A14.5–1982—American National Standard for Ladders—Portable Reinforced Plastic-Safety Requirements.

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