The owner of any livestock grazing in trespass on the New Lands is liable to a civil penalty of $1 per head per day for each cow, bull, horse, mule or donkey and 25¢ per head per day for each sheep or goat in trespass and a reasonable value for damages to property injured or destroyed. The Commissioner may take appropriate action to collect all such penalties and damages and seek injunctive relief when appropriate. All payments for such penalties and damages shall be paid to the Commissioner for use as a range improvement fund.

§ 700.727 Impoundment and disposal of unauthorized livestock.

Unauthorized livestock within any range unit of the New Lands which are not removed therefrom within the periods prescribed by the regulation will be impounded and disposed of by the Commissioner as provided herein.

(a) When the Commissioner determines that unauthorized livestock use is occurring, and has definite knowledge of the kind of unauthorized livestock and knows the name and address of the owners, the owner shall be given written notice and a 10 day period shall be allowed for the permittee to solve the unauthorized use without penalty. If after this 10 day period the unauthorized use is not resolved, such livestock may be impounded at any time after five days after written Notice of Intent to Impound Unauthorized Livestock is mailed by certified mail or personally delivered to such owners or their agent.

(b) When the Commissioner determines that unauthorized livestock use is occurring, but does not have complete knowledge of the number and class of livestock, or if the name and address of the owner thereof are unknown, such livestock may be impounded at anytime after 15 days after the date a General Notice of Intent to Impound Unauthorized Livestock is first published in a local newspaper, posted at the nearest chapter house, and in one or more local trading posts.

(c) Unauthorized livestock on the New Lands which are owned by persons given notice under paragraph (a) of this section and any unauthorized livestock in areas for which notice has been posted and published under paragraph (b) of this section, will be impounded without further notice anytime within the 12-month period immediately following the effective date of the notice.

(d) Following the impoundment of unauthorized livestock, a notice of sale of impounded livestock or unauthorized livestock will be published in a local newspaper, posted at the nearest chapter house, and in one or more local trading posts. The notice will describe the livestock and specify the date, time, and place of sale. The date set shall be at least five days after the publication and posting of such notice.

(e) The owners or their agent may redeem the livestock anytime before the time set for the sale by submitting proof of ownership and paying for all expenses incurred in gathering, impounding, and feeding or pasturing the livestock and any trespass fees and/or damages caused by the animals.

(f) Livestock erroneously impounded shall be returned to the rightful owner, and all expenses accruing thereto shall be waived.

(g) If the livestock are not redeemed before the time fixed for their sale, they shall be sold at public sale to the highest bidder. When livestock are sold pursuant to this regulation, the Commissioner shall furnish the buyer a bill of sale or other written instrument evidencing the sale.

(h) The proceeds of any sale of impounded livestock shall be applied as follows:

(1) To the payment of all expenses incurred by the United States in gathering, impounding, and feeding or pasturing the livestock.

(2) Trespass penalties assessed pursuant to § 700.725 shall be paid to a separate account to be administered by the Commissioner for use as a range improvement fund for the New Lands.

(3) Any remaining amount shall be paid over to the owner of said livestock upon his submitting proof of ownership. Any proceeds remaining after payment of the first and second items noted above, not claimed within one year from the date of sale, will be credited to the United States.

§ 700.729 Amendments.

These regulations may be amended or superseded as needed.

§ 700.731 Appeals.

Persons who have filed a claim for a grazing permit and whose claim has been denied by the Range Supervisor may appeal to the Commissioner. Appeals must be made in writing and must be received by the Office not more than 30 days after the date the claim was denied. The appeal shall state with specificity why the decision being appealed is in error and shall incorporate all supporting documents. The Commissioner will issue a decision affirming or reversing the decision of the Range Supervisor within 60 days of receipt of the appeal. Such decision will constitute final action by the Office and will be communicated to the appellant by certified mail.

Dated: March 22, 1991.

Carl J. Kunasek,

Commissioner on Navajo and Hopi Indian Relocation.

[FR Doc. 91-7393 Filed 4-1-91; 8:45 am]

BILLING CODE 7560-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[T.D. 8341]

RIN 1545-A086

Deposits of Employment Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the deposit of Federal employment taxes (including railroad retirement taxes). These final regulations concern the manner in which an employer computes its deposit liability at the close of a specified deposit period. The regulations also reflect the addition of section 6302(g) to the Internal Revenue Code by the Omnibus Budget Reconciliation Act of 1989, Public Law No. 101-239, 103 Stat. 2106, accelerating the deposit due date of employment taxes of $100,000 or more, and its amendment by the Omnibus Budget Reconciliation Act of 1990, Public Law No. 101-508, 104 Stat. 1388. Guidance concerning the acceleration provisions was previously issued in Notice 90-37, 1990-1 C.B. 343, dated May 21, 1990.

EFFECTIVE DATES: This document is effective with respect to deposit periods beginning after March 31, 1991.

FOR FURTHER INFORMATION CONTACT: Vincent G. Surabian, telephone 202-566-5985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On Friday, January 4, 1991, the **Federal Register** published (56 FR 395) proposed amendments to the Employment Tax Regulations (26 CFR part 31) under section 6302 of the Internal Revenue Code. Written comments responding to the notice were received and a public hearing was held on February 26, 1991.

Explanation of Provisions

Currently, the determination of whether there is an obligation to deposit and the amount to be deposited is made with reference to the aggregate amount of undeposited taxes on hand at the close of a deposit period. Under these regulations, a determination of whether an employer has a deposit obligation and the amount thereof would instead be made with reference to the aggregate amount of taxes accumulated with respect to wages paid during a specified deposit period. This change is intended to simplify and clarify the application of the penalty provisions under section 6656 of the Internal Revenue Code, as amended by the Omnibus Budget Reconciliation Act of 1989. It is also intended to prevent employers from making small pre-deposits during a deposit in order to postpone an otherwise larger deposit obligation that would arise at the close of the deposit period. This practice was permitted under Rev. Rul. 76–561, 1976–2 C.B. 395, which was issued based on language in the regulations in effect prior to these regulations. The regulations therefore render Rev. Rul. 76–561 obsolete, effective for deposits periods beginning after March 31, 1991.

The regulations also restate the rules set forth in Notice 90–37 regarding the interplay between the statutorily-imposed deposit due dates set forth in section 6302(g) of the Code and the deposit due dates set forth in § 31.6302(c)–1 and § 31.6302(c)–2 of the regulations, and revise these rules to reflect the changes made by the Omnibus Budget Reconciliation Act of 1990.

Pursuant to the Congressional mandate in section 226 of the Railroad Retirement Solvency Act of 1983 that the times prescribed for making deposits of railroad retirement taxes be the same as the times prescribed for making deposits of FICA and withheld income taxes, these regulations are applicable to railroad retirement taxes as well as to FICA and withheld income taxes. Form CT–1, Employer's Annual Railroad Retirement and Unemployment Repayment Tax Return, sets forth instructions for application of the rule in section 6302(g) of the Code for periods prior to the effective date of these final regulations.

One commentator objected to the regulations for "eliminating any consideration of overdeposited amounts from prior periods when applying deposit rules to future unpaid liabilities." Under § 31.6302(c)–1(a)(1)(ii)(*f*), although an overdeposit from one deposit period is credited to the taxpayer's account to satisfy any succeeding deposit obligation within the same return period, the overdeposited amount may not be used to reduce the amount of the aggregate taxes accumulated in the next succeeding deposit period. The taxpayer does of course receive credit for the prior overdeposit in determining the actual amount required to be deposited. As noted above, the regulations are designed to prevent employers from making small pre-deposits during a deposit period in order to postpone an otherwise larger deposit obligation that would arise at the close of the deposit period. If the regulations allowed an overdeposit from a period to reduce the aggregate amount of taxes accumulated in the next period, then employers could accomplish through the use of overdeposits what they cannot accomplish through the use of pre-deposits. Accordingly, the commentator's suggested change to the regulations is not adopted.

Two commentators suggested that § 31.6302(c)–1(a)(1)(ii)(*f*) conflicts with § 1.1461–4 of the Income Tax Regulations and § 35a.9999–3, Q. & A. 39, of the Temporary Employment Tax Regulations. The Service does not believe that the difference between the sections represents a conflict. Rather the difference between the sections reflects a difference between the problem addressed by § 31.6302(c)–1(a)(1)(ii)(*f*) (i.e., adjustments for true overdeposits) and the problem addressed by § 1.1461–4 and Q. & A. 39 of § 35a.9999–3 (i.e., adjustments to initially correct deposits that resulted from overwithholding). Accordingly, the final regulations do not adopt the commentators' suggestion.

Another commentator believed the regulations did not allow employers to make pre-deposits and, therefore, the regulations might tempt some employers to divert the funds to other uses. The regulations are not intended to discourage employers from making voluntary deposits of employment taxes. Voluntary deposits may be made but such deposits do not affect the aggregate amount of taxes accumulated with respect to wages paid during a specified deposit period for purposes of determining the deposit obligation for that deposit period.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administration Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Vincent G. Surabian, Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department have participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Gambling, Income taxes, Lotteries, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Withholding.

Adoption of Amendments to the Regulations

Accordingly, title 26, part 31, of the Code of Federal Regulations is amended as follows:

Paragraph 1. The authority for part 31 continues to read in part:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 31.6302(c)–1 is amended as follows:

1. The heading of paragraph (a) and introductory language in paragraph (a)(1)(i) is revised to read as set forth below.

2. The text of § 31.6302(c)–1(a)(1)(ii) is revised to read as set forth below.

§ 31.6302(c)–1 Use of Government depositaries in connection with taxes under Federal Insurance Contributions Act and income tax withheld.

(a) *Requirement for calendar months beginning after December 31, 1980*—(1) *In general.* (i) In the case of a calendar month which begins after December 31, 1980, but before April 1, 1991—

* * * * *

(ii) In the case of a calendar month which begins after March 31, 1991—

(*a*) Except as provided in § 31.6302(c)–1(a)(1)(ii) (*b*) or (*c*), or § 31.6302(c)–1(b), if with respect to any calendar month the aggregate amount of taxes (as defined in § 31.6302(c)–1(a)(1)(iii)) accumulated with respect to wages paid is $500 or more, but less than $3,000, then the employer shall deposit that

aggregate amount in a Federal Reserve bank or authorized financial institution within 15 calendar days after the close of that calendar month. Taxes accumulated with respect to wages paid in a prior calendar month within the same return period shall not be taken into account in determining the aggregate amount of taxes accumulated if a deposit was required to be made under this section with respect to such tax amounts. Deposits made during the calendar month of taxes with respect to wages paid during that month do not reduce the aggregate amount of taxes accumulated for purposes of determining the deposit requirement (if any) for that month.

Example 1: Employer *A*'s aggregate amount of taxes accumulated with respect to wages paid in April 1991 is $800. Since that amount is in excess of $500, but less than $3,000, *A* must deposit the $800 in a Federal Reserve bank or authorized financial institution by May 15, 1991.

Example 2: Employer *B*'s aggregate amount of taxes accumulated with respect to wages paid in April 1991 is $400. Since that amount is less than $500, *B* has no deposit obligation for the month of April. In May 1991 *B*'s aggregate amount of taxes accumulated with respect to wages paid during the month is $450. Since the $400 in taxes in April was not required to be deposited, that amount is taken into account in determining if a deposit is required for May. The aggregate amount of taxes accumulated with respect to wages paid for the two months is in excess of $500, thus requiring a deposit. Since June 15, 1991, is a Saturday, *B* must deposit the $850 in a Federal Reserve bank or authorized financial institution by Monday, June 17, 1991, pursuant to section 7503 of the Code.

Example 3: The facts are the same as in *Example 2* except that *B* deposits the $400 in taxes from April on May 15, 1991. Because the $400 was not required to be deposited, that amount is taken into account in determining if a deposit obligation exists for May. Since the aggregate amount of taxes accumulated with respect to wages paid for the two months, $850, is in excess of $500, a deposit in the aggregate amount of $850 is required by Monday, June 17, 1991. Since $400 was previously deposited, *B* must deposit an additional $450 by June 17, 1991.

Example 4: On Friday, April 5, 1991, a payroll date, Employer *C* accumulates $450 in taxes with respect to wages paid on that date. Although not required to do so, *C* deposits the $450 in an authorized depository. On Friday, April 19, 1991, *C* accumulates an additional $450 in taxes with respect to wages paid. The aggregate amount of taxes accumulated with respect to wages paid during the calendar month is $900. *C* has a deposit obligation of $900 for the calendar month and must deposit an additional $450 in an authorized depository by May 15, 1991.

(*b*) Except as provided in § 31.6302(c)–1(a)(1)(ii)(*c*) or § 31.6302(c)–1(b), and except in the case of first-time 3-banking-day depositors (as defined in § 31.6302(c)–1(a)(1)(i)(*b*)(*2*)), if with respect to any eighth-monthly period (as defined in § 31.6302(c)–1(a)(1)(i)(*b*)) the aggregate amount of taxes accumulated with respect to wages paid is $3,000 or more, but less than $100,000, the employer shall deposit that aggregate amount in a Federal Reserve bank or authorized financial institution within 3 banking days after the close of that eighth-monthly period. Taxes accumulated with respect to wages paid during a prior eighth-monthly period shall not be taken into account if a deposit was required to be made under this section with respect to tax amounts. Deposits made during the eighth-monthly period of taxes with respect to wages paid during that eighth-monthly period do not reduce the aggregate amount of taxes accumulated for purposes of determining the deposit requirement (if any) for that eighth-monthly period. Solely for purposes of the examples in this paragraph (a)(1)(ii)(*b*) and paragraphs (a)(1)(ii)(*c*), (*d*), and (*f*) of this section, "banking days" are assumed to include all calendar days except Saturdays, Sundays, and Federal holidays.

Example 1: For the eighth-monthly period April 1–3, 1991, Employer *D*'s aggregate amount of taxes accumulated with respect to wages paid is $3,500. Since that amount is in excess of $3,000, but less than $100,000, *D* has a deposit obligation of $3,500 that must be satisfied by April 8, 1991, the third banking day after the close of the eighth-monthly period.

Example 2: For the eighth-monthly period April 1–3, 1991, Employer *E*'s aggregate amount of taxes accumulated with respect to wages paid is $3,500. *E* has a deposit obligation of $3,500 that must be satisfied by April 8, 1991, three banking days after the close of the April 1–3 eighth-monthly period. For the eighth-monthly period April 4–7, 1991, *E*'s aggregate amount of taxes accumulated with respect to wages paid is $2,800. Since *E* was required to make a deposit for the April 1–3 eighth-monthly period, that $3,500 amount is not taken into account in determining any obligations that arise in subsequent eighth-monthly periods. *E* does not have an eighth-monthly deposit obligation with respect to the April 4–7 period.

Example 3: For the eighth-monthly period April 1–3, 1991, Employer *F*'s aggregate amount of taxes accumulated with respect to wages paid is $2,800. Since that amount is less than $3,000, no deposit is required with respect to that eighth-monthly period. For the eighth-monthly period April 4–7, 1991, *F*'s aggregate amount of taxes accumulated with respect to wages paid is $2,500. Since *F* was not required to deposit the $2,800 in taxes from the April 1–3 eighth-monthly period, that amount is taken into account in determining *F*'s deposit obligation for the April 4–7 eighth-monthly period. The aggregate amount of taxes accumulated for the two eighth-monthly periods is $5,300. *F* has a deposit obligation of $5,300 that must be satisfied by April 10, 1991, three banking days after the close of the April 4–7 eighth-monthly period.

Example 4: The facts are the same as in *Example 3* except that *F* deposits the $2,800 from the April 1–3 eighth-monthly period on April 4, 1991. Because the $2,800 was not required to be deposited, that amount is taken into account in determining *F*'s deposit obligation for the April 4–7 eighth-monthly period. The aggregate amount of taxes accumulated for the two eighth-monthly periods is $5,300. Since that amount is in excess of $3,000, a deposit obligation exists after the close of the April 4–7 eighth-monthly period. As $2,800 of that amount was previously deposited, *F* has a deposit obligation of $2,500 that must be satisfied by April 10, 1991, three banking days after the close of the April 4–7 eighth-monthly period.

Example 5: On Friday, April 12, 1991, the beginning of an eighth-monthly period (April 12–15), *G* accumulates $3,500 in taxes with respect to wages paid and deposits the $3,500 in an authorized depository on that date although a deposit of the $3,500 was not required to be made on that date. On Monday, April 15, 1991, the end of the April 12–15 eighth-monthly period, *G* accumulates an additional $2,000 in taxes with respect to wages paid. The aggregate amount of taxes accumulated with respect to wages paid during the April 12–15 eighth-monthly period of $5,500. *G* has a deposit obligation for the eighth-monthly period of $5,500. Since $3,500 of that amount was previously deposited, *G* has a remaining deposit obligation of $2,000 that must be satisfied by Thursday, April 18, 1991, three banking days after the close of the eighth-monthly period.

(*c*) If on any day within an eighth-monthly period the aggregate amount of taxes accumulated with respect to wages paid is $100,000 or more, the employer shall deposit that aggregate amount in a Federal Reserve bank or authorized financial institution on the first banking day after that day. Taxes accumulated with respect to wages paid prior to that day shall not be taken into account if a deposit was required under this section with respect to such tax amounts. Taxes deposited on any given day with respect to wages paid on that day do not reduce the aggregate amount of taxes accumulated on that day for purposes of determining the deposit requirement (if any) for that day.

Example 1: On Thursday, April 4, 1991, the beginning of the April 4–7 eighth-monthly period, Employer *H* accumulates $55,000 in taxes with respect to wages paid on that date. On Saturday, April 6, 1991, *H* accumulates an additional $50,000 in taxes with respect to wages paid. *H* has a deposit obligation of $105,000 that must be satisfied by Monday, April 8, the next banking day after Saturday, April 6.

Example 2: On Friday, April 12, 1991, the beginning of the April 12–15 eighth-monthly period, *J* accumulates $60,000 in taxes with respect to wages paid and deposits the

$60,000 in an authorized depository on that date although a deposit of the $60,000 was not required to be made on that date. On Monday, April 15, 1991, the last day in the April 12–15 eighth-monthly period, *J* accumulates an additional $50,000 in taxes with respect to wages paid. On Monday, April 15, the aggregate amount of taxes accumulated with respect to wages paid during the eighth-monthly period to date totals $110,000. *J* has a $110,000 deposit obligation that must be satisfied by the next banking day after the $100,000 threshold is reached. Since $60,000 of the $110,000 was already deposited, *J* has a remaining deposit obligation of $50,000 that must be satisfied by Tuesday, April 16, 1991, the next banking day following April 15th.

Example 3: On Monday, April 1, 1991, Employer *K* accumulates $105,000 in taxes with respect to wages paid on that date. On that same day, *K* deposits in an authorized depository $10,000 of the $105,000 accumulated. *K* has a $105,000 deposit obligation that must be satisfied by the next banking day, April 2, 1991. The $10,000 deposited on April 1 cannot be used to reduce the aggregate amount of accumulated taxes with respect to that date. *K* has a remaining deposit obligation of $95,000 that must be satisfied by April 2, 1991.

(*d*) If, with respect to any eighth-monthly period, an employer incurs an obligation to deposit in accordance with § 31.6302(c)–1(a)(1)(ii)(*c*), and later, within the same eighth-monthly period, accumulates with respect to wages paid taxes of $3,000 or more, but less than $100,000, an additional deposit is required in accordance with § 31.6302(c)–1(a)(1)(ii)(*b*). However, if the amount of taxes is $100,000 or more, an additional deposit is required in accordance with § 31.6302(c)–1(a)(1)(ii)(*c*).

Example: On Tuesday, April 2, 1991, Employer *L* accumulates $110,000 in aggregate taxes with respect to wages paid. In accordance with paragraph (a)(1)(ii)(*c*) of this section, *L* has a $110,000 deposit obligation that must be satisfied by Wednesday, April 3, 1991, the next banking day following April 2. On Wednesday, April 3, 1991, *L* accumulates an additional $10,000 in taxes with respect to wages paid that date. In accordance with paragraph (a)(1)(ii)(*b*) of this section, *L* now has an additional deposit obligation of $10,000 that must be satisfied by Monday, April 8, 1991, the 3rd banking day following the close of the April 1–3 eighth-monthly period. The obligation to deposit the $10,000 is separate and distinct from the obligation to deposit the $110,000.

(*e*) An employer will be considered to have satisfied the deposit obligation imposed by paragraphs (a)(1)(ii) (*b*), (*c*) and (*d*) of this section if—

(*1*) The deposit that is made is not less than 95 percent of the aggregate amount of taxes accumulated with respect to wages paid during the period for which the deposit is made, and

(*2*) If the eighth-monthly period (or, in the case of a deposit required under paragraph (a)(1)(ii)(*c*) of this section, the day on which the obligation arose) is in a month other than the last month of the return period, the employer deposits any remaining amount due with the first deposit otherwise required to be made after the fifteenth day of the following month. In the case of the last month of the return period, see § 31.6302(c)–1(a)(1)(iv).

(*f*) Any excess of a deposit over the actual taxes required to be deposited to date (overdeposit) during the return period shall be applied in order of time to each of the employer's succeeding deposit obligations within the same return period. In the determination of the aggregate amount of taxes accumulated with respect to wages paid in succeeding deposit periods, the overdeposit does not reduce the aggregate amount accumulated although the overdeposit is credited to the depositor's account.

Example: Employer *M*'s deposit obligation for the eighth-monthly period April 1–3, 1991, is $3,200. On April 8, 1991, three banking days after the close of the eighth-monthly period, *M* deposits $4,000 in an authorized depository, $800 in excess of the amount required to be deposited. During the eighth-monthly period April 4–7, 1991, *M* accumulates $3,750 in taxes with respect to wages paid during such period. Although the $800 overdeposit for the April 1–3 eighth-monthly period is credited to *M*'s account, it may not be used to determine whether a deposit obligation exists for the April 4–7 eighth-monthly period. The two deposit obligations are separate and distinct. Since the amount of taxes accumulated with respect to the April 4–7 eighth-monthly period is an amount greater than $3,000, a deposit is required under paragraph (a)(1)(ii)(*b*) of this section within three banking days after the close of the period. *M* has a remaining deposit obligation of $2,950 ($3,750 accumulated less $800 overdeposit) that must be satisfied by April 10, 1991, three banking days after the close of the period.

(*g*) The periods within which taxes must be deposited under this section are determined, in the case of employers paying advance earned income credit amounts, by reference to the amount of taxes required to be deposited after reduction for advance amounts paid to employees.

(*h*) For purposes of this paragraph (a)(1)(ii), the term "wages paid" includes all amounts included in wages, e.g., under section 3121(v) of the Code, regardless of whether they have actually been paid.

* * * * *

Par. 3. Section 31.6302(c)–2 is amended as follows:

1. The heading of paragraph (a)(1) of § 31.6302(c)–2 is revised to read as set forth below.

2. In the first sentence of paragraph (a)(1), the language "after December 31, 1983," is removed in the three places it appears and the language "after December 31, 1983, and before April 1, 1991," is added in its place.

3. Section 31.6302(c)–2(a)(2) is revised to read as set forth below.

§ 31.6302(c)–2 Use of Government depositaries in connection with employee and employer taxes under Railroad Retirement Tax Act.

(a) *Requirement*—(1) *In general: After 1983 and before April 1, 1991.* * * *

(2) *In general; after March 31, 1991.* In the case of a calendar month which begins after March 31, 1991, if, at a time prescribed under § 31.6302(c)–1(a)(1)(ii) or (v) for the deposit of accumulated taxes, the aggregate amount of accumulated employee tax withheld after March 31, 1991, under section 3202 and employer tax imposed after March 31, 1991, under section 3221(a) and (b) equals an amount required to be deposited under § 31.6302(c)–1(a)(1)(ii) or (v), the employer shall deposit the accumulated railroad retirement taxes described in sections 3202 and 3221 at the time and in the manner prescribed in § 31.6302(c)–1(a)(1)(ii) or (v) (except that accumulated railroad retirement taxes described in section 3221(c) shall in no case be required to be deposited earlier than the first day on which a deposit is otherwise required by § 31.6302(c)–1(a)(1)(ii) to be made after the 15th day of the month following the month in which the section 3221(c) tax arises). Notwithstanding the preceding sentence, and notwithstanding § 31.6302(c)–1(a)(1)(v), if, for the calendar year prior to the calendar year preceding the current calendar year, the aggregate amount of taxes imposed under sections 3202 and 3221 with respect to an employer equalled or exceeded $1 million, such employer shall deposit the aggregate amount of railroad retirement taxes required to be deposited for the current calendar year in accordance with Revenue Procedure 83–90, 1983–2 C.B. 615 (relating to transfers by wire to the Treasury).

* * * * *

Par. 4. In the second sentence of paragraph (b)(2) of § 31.6302(c)–2, the language "paragraph (a)(1)" is removed and the language "paragraph (a)(1) or (a)(2) of this section" is added in its place.

Approved: March 25, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91-7601 Filed 3-27-91; 3:54 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7, 70, and 75

RIN 1219-AA27

Approval, Exposure Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period; close of record.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for post-hearing comments on the Agency's proposed regulations on the use of diesel-powered equipment in underground coal mines. The extension will allow interested parties an opportunity to review all hearing transcripts before submitting post-hearing comments.

DATE: Post-hearing comments must be received on or before May 10, 1991, at which time the rulemaking record will close.

ADDRESS: Send comments to the Office of Standards, Regulations and Variances, MSHA, room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA (703) 235-1910.

SUPPLEMENTARY INFORMATION: On October 4, 1989, MSHA published proposed regulations that addressed approval, exposure monitoring, and safety requirements in 30 CFR parts 7, 70, and 75 for the use of diesel-powered equipment in underground coal mines (54 FR 40950). The written comment period for this proposed rule ended on July 6, 1990. In the comments to the proposed rule, MSHA received a request for public hearings.

On December 27, 1990, and January 30, 1991, MSHA published notices of public hearings (55 FR 53184 and 56 FR 3433, respectively). The notices stated that MSHA would accept additional written post-hearing comments until March 26, 1991. Due to requests from the mining community, MSHA is extending the post-hearing comment period to May 10, 1991. All interested parties are encouraged to submit comments prior to that date.

Dated: March 26, 1991.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 91-7592 Filed 4-1-91; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 53

[OST Docket No. 46987; Enactment]

RIN 2105-AB68

Coast Guard Whistleblower Protection

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This final rule implements the whistleblower protection provisions contained in Public Law 100-456. The rule applies to the United States Coast Guard, the Board for Correction of Military Records of the Coast Guard, and the Department of Transportation's Inspector General. It establishes procedures to ensure that members of the United States Coast Guard are protected from reprisals for making, or preparing to make, lawful communications to a Member of Congress or an Inspector General. In addition, the rule specifically requires the reporting and investigation of reprisal allegations, and provides for remedies when reprisal is found, including disciplinary action against any person taking reprisal and the correction of military records when appropriate.

DATES: Effective May 2, 1991.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement (C-50), room 10424 (202) 366-9306, or Robert H. Joost, Chairman, Board for Correction of Military Records (C-60), room 5432 (202) 366-9335, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Public Law 100-456 sets forth specific protections to be afforded to members of the Armed Forces who make lawful communications to a Member of Congress or to an Inspector General. Public Law 101-225, a technical correction, clarifies that, when the Coast Guard is not operating as a service in the Navy, Coast Guard members must submit complaints under this Act to the Inspector General of the Department of Transportation, and that the Secretary of Transportation may, if necessary, provide final review of the action.

Members of the Armed Forces who become aware of information evidencing wrongdoing or waste of funds generally have a duty to report such information through the chain of command. Public Law 100-456 establishes that those individuals also have the right to communicate directly with a Member of Congress or an Inspector General, unless the communication is unlawful under applicable law or regulation. When these individuals make lawful disclosures, the statute mandates that they be protected from adverse personnel consequences, or the threat of such consequences. These individuals have the right to a prompt investigation and administrative review of claims of reprisals. If any claim of reprisal is found meritorious, the Secretary of Transportation is required to initiate appropriate corrective action, and the Board for Correction of Military Records should entertain any application for correction of records submitted by an aggrieved member.

The Department published a notice of proposed rulemaking (NPRM) to implement these statutory changes on June 26, 1990 (55 FR 25983). The NPRM, which contains an extensive discussion of the statute and proposed regulatory language, provided a 60-day comment period, which closed on August 27, 1990. No comments were filed in response to the NPRM. The Department is therefore adopting the notice as proposed with minor clarifying changes that more closely track the statutory language.

Regulatory Impact

I certify under the criteria of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities. Furthermore, it is not a major rule under Executive Order 12291, nor a significant rule under DOT Regulatory Policies and Procedures, 44 FR 11034, for the same reason. The economic impact is so minimal that it does not warrant preparation of a full regulatory evaluation. The final rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and I have determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Finally, I have determined that this rulemaking is not a major

Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and that an environmental impact statement is not required. The rule does not establish any new requirements under the Paperwork Reduction Act.

List of Subjects in 33 CFR Part 53

Administrative practice and procedure, Fraud, Investigations, Military personnel, Whistleblowing.

Accordingly, title 33 of the Code of Federal Regulations is amended to add part 53 as follows:

PART 53—COAST GUARD WHISTLEBLOWER PROTECTION

Sec.
53.1 Purpose.
53.3 Applicability.
53.5 Definitions.
53.7 Requirements.
53.9 Responsibilities.
53.11 Procedures.

Authority: 10 U.S.C. 1034, Pub. L. 100-456, Pub. L. 101-225.

§ 53.1 Purpose.

This part:

(a) Establishes policy and implements section 1034 of title 10 of the United States Code to provide protection against reprisal to members of the Coast Guard for making a lawful communication to a Member of Congress or an Inspector General.

(b) Assigns responsibilities and delegates authority for such protection and prescribes operating procedures.

§ 53.3 Applicability.

This part applies to members of the United States Coast Guard, the Board for Correction of Military Records of the Coast Guard, and the Department of Transportation's Office of the Inspector General.

§ 53.5 Definitions.

As used in this part, the following terms shall have the meaning stated, except as otherwise provided:

Board for Correction of Military Records of the Coast Guard. The Department of Transportation Board for Correction of Military Records of the Coast Guard (Board) is empowered under 10 U.S.C. 1552 to make corrections of Coast Guard military records. The Board is part of the Office of the General Counsel in the Office of the Secretary of Transportation.

Corrective Action. Any action deemed necessary to make the complainant whole, changes in agency regulations or practices, and/or administrative or disciplinary action against offending personnel, or referral to the U.S. Attorney General or courtmartial convening authority of any evidence of criminal violation.

Inspector General. The Inspector General in the Office of Inspector General of the Department of Transportation, as appointed under the Inspector General Act of 1978.

Law Specialist. A commissioned officer of the Coast Guard designated for special duty (law).

Member of the Coast Guard. Any past or present Coast Guard uniformed personnel, officer or enlisted, regular or reserve. This definition includes cadets of the Coast Guard Academy.

Member of Congress. In addition to a Representative or a Senator, the term includes any Delegate or Resident Commissioner to Congress.

Personnel Action. Any action taken regarding a member of the Coast Guard that adversely affects or has the potential to adversely affect the member's position or his or her career. Such actions include, but are not limited to, a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; or a decision concerning a promotion, pay, benefits, awards, or training.

Reprisal. Taking or threatening to take an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action against a member of the Coast Guard for making or preparing to make a communication to a Member of Congress or an Inspector General.

Secretary. The Secretary of Transportation or his or her delegate.

§ 53.7 Requirements.

(a) No person within the Department of Transportation may restrict a member of the Coast Guard from lawfully communicating with a Member of Congress or an Inspector General.

(b) Members of the Coast Guard shall be free from reprisal for making or preparing to make lawful communications to Members of Congress or an Inspector General.

(c) Any employee or member of the Coast Guard who has the authority to take, direct others to take, or recommend or approve any personnel action shall not, under such authority, take, withhold, threaten to take, or threaten to withhold a personnel action regarding any member of the Coast Guard in reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General.

§ 53.9 Responsibilities.

(a) The Inspector General, Department of Transportation shall:

(1) Expeditiously investigate any allegation, if such allegation is submitted, that a personnel action has been taken (or threatened) in reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General concerning a complaint or disclosure of information that the member reasonably believes constitutes evidence of a violation of law or regulation, mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. No investigation is required when such allegation is submitted more than 60 days after the Coast Guard member became aware of the personnel action that is the subject of the allegation.

(2) Initiate a separate investigation of the information the Coast Guard member believes evidences wrongdoing if such investigation has not already been initiated. The Inspector General is not required to make such an investigation if the information that the Coast Guard member believes evidences wrongdoing relates to actions that took place during combat.

(3) Complete the investigation of the allegation of reprisal and issue a report not later than 90 days after receipt of the allegation, which shall include a thorough review of the facts and circumstances relevant to the allegation, the relevant documents acquired during the investigation, and summaries of interviews conducted. The Inspector General may forward a recommendation as to the disposition of the complaint.

(4) Submit a copy of the investigation report to the Secretary of Transportation and to the Coast Guard member making the allegation not later than 30 days after the completion of the investigation. The copy of the report issued to the Coast Guard member may exclude any information not otherwise available to the Coast Guard member under the Freedom of Information Act (5 U.S.C. 552).

(5) If a determination is made that the report cannot be issued within 90 days of receipt of the allegation, notify the Secretary and the Coast Guard member making the allegation of the reasons why the report will not be submitted within that time, and state when the report will be submitted.

(6) At the request of the Board, submit a copy of the investigative report to the Board.

(7) After the final action with respect to an allegation filed under this part, whenever possible, interview the person who made the allegation to determine

the views of that person concerning the disposition of the matter.

(b) The Board shall, in accordance with its regulations (33 CFR part 52):

(1) Consider under 10 U.S.C. 1552 and 33 CFR part 52 an application for the correction of records made by a Coast Guard member who has filed a timely complaint with the Inspector General, alleging that a personnel action was taken in reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General. This may include oral argument, examining and cross-examining witnesses, taking depositions, and conducting an evidentiary hearing at the Board's discretion.

(2) Review the report of any investigation by the Inspector General into the Coast Guard member's allegation of reprisal.

(3) As deemed necessary, request the Inspector General to gather further evidence and issue a further report to the Board.

(4) Issue a final decision concerning the application for the correction of military records under this part not later than 180 days after receipt of a complete application.

(c) If the Board elects to hold an administrative hearing, the Coast Guard member may be represented by a Coast Guard law specialist if:

(1) The Inspector General, in the report of the investigation, finds there is probable cause to believe that a personnel action was taken, withheld, or threatened in reprisal for the Coast Guard member making or preparing to make a lawful communication to a Member of Congress or an Inspector General;

(2) The Chief Counsel of the Coast Guard determines that the case is unusually complex or otherwise requires the assistance of a law specialist to ensure proper presentation of the legal issues in the case; and

(3) The Coast Guard member is not represented by outside counsel chosen by the member.

(d) If the Board elects to hold an administrative hearing, the Board must ensure that the Coast Guard member may examine witnesses through deposition, serve interrogatories, and request the production of evidence, including evidence in the Inspector General investigatory record but not included in the report released to the member.

(e) If the Board determines that a personnel action was taken in reprisal for a Coast Guard member making or preparing to make a lawful communication to a Member of Congress or an Inspector General, the Board may forward its recommendation to the Secretary for the institution of appropriate administrative or disciplinary action against the individual or individuals found to have taken reprisal, and direct any appropriate correction of the member's records.

(f) The Board shall notify the Inspector General of the Board's decision concerning an application for the correction of military records of a Coast Guard member who alleged reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General, and of any recommendation to the Secretary for appropriate administrative or disciplinary action against the individual or individuals found to have taken reprisal.

(g) When reprisal is found, the Secretary shall ensure that appropriate corrective action is taken.

§ 53.11 Procedures.

(a) Any member of the Coast Guard, who reasonably believes a personnel action (including the withholding of an action) was taken or threatened in reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General, may file a complaint with the DOT Inspector General Hotline under this part. Such a complaint may be filed by telephone, or by letter addressed to the Department of Transportation, Office of Inspector General, Hotline Center, P.O. Box 23178, Washington, D.C. 20026-0178. Telephone Numbers: 1-800-424-9071, FTS 8-366-1461. The commercial number is (202) 366-1461.

(b) The complaint should include the name, address, and telephone number of the complainant; the name and location of the activity where the alleged violation occurred; the personnel action taken, or threatened, that is alleged to be motivated by reprisal; the individual(s) believed to be responsible for the personnel action; the date when the alleged reprisal occurred; and any information that suggests or evidences a connection between the communication and reprisal. The complaint should also include a description of the communication to a Member of Congress or an Inspector General including a copy of any written communication and a brief summary of any oral communication showing date of communication, subject matter, and the name of the person or official to whom the communication was made.

(c) A member of the Coast Guard who is alleging reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General, may submit an application for the correction of military records to the Board, in accordance with regulations governing the Board. See 33 CFR part 52.

(d) An application submitted under paragraph (c) of this section shall be considered in accordance with regulations governing the Board. See 33 CFR part 52.

Issued in Washington, DC, on March 26, 1991.

Samuel K. Skinner,

Secretary.

[FR Doc. 91-7600 Filed 4-1-91; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA/OSW FR-91-015; FR-3914-2]

RIN 2050-AA78

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic; Hydrocarbon Recovery Operations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On November 7, 1990, the Agency proposed to extend the compliance date for the Toxicity Characteristic until January 25, 1993 for produced groundwater from free phase hydrocarbon recovery operations at certain petroleum industry sites—namely, refineries, marketing terminals, and bulk plants. Made aware of likely disruptions to cleanup operations at these facilities after the Toxicity Characteristic rulemaking process, the Agency concluded that an extension of the compliance date would ensure that these operations would not be interrupted and thereby avoid setbacks in their remediation activities.

The Agency is today making final this proposed extension. However, the scope of the extension has been expanded to include free hydrocarbon recovery operations at petroleum pipeline and transportation sector spill sites as well as petroleum refineries, marketing terminals, and bulk plants. Additionally, free phase hydrocarbon recovery operations involving infiltration galleries will not be included in the scope of the extension.

EFFECTIVE DATE: March 25, 1991.