

US EPA ARCHIVE DOCUMENT

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 261**

[FRL-530-Z-92-006; 4118-4]

**Hazardous Waste Management System; General; Identification and Listing of Hazardous Waste; Used Oil****AGENCY:** Environmental Protection Agency.**ACTION:** Final rule.

**SUMMARY:** EPA is today promulgating a final listing decision for used oils based upon the technical criteria provided in the Resource Conservation and Recovery Act (RCRA) sections 1004 and 3001 and in 40 CFR 261.11 (a)(1) and (a)(3). EPA has decided not to list used oils destined for disposal as hazardous waste based on the finding that all used oils do not typically and frequently meet the technical criteria for listing a waste as hazardous waste. This rule, therefore, preserves the status quo for used oil destined for disposal. EPA today is promulgating a modification to the current exclusions from the definition of hazardous waste in 40 CFR 261.4 to provide an exemption for certain types of used oil filters. The Agency today is also providing public notice of the EPA's deferral on a decision whether or not to list residuals from the reprocessing and re-refining of used oil at this time.

The Agency is not taking final action, at this time, on a listing determination and/or management standards for used oils that are recycled as proposed in 1985 and 1991. The Agency will, in the near future, make a final decision on listing of used oil destined for recycling and appropriate management standards for used oil handlers under the authority of RCRA section 3014. If EPA promulgates additional management standards, service station dealers may be eligible to qualify for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 114(c) liability exemption. The Agency also may propose standards controlling the burning of used oil in boilers and furnaces at a later date.

**EFFECTIVE DATE:** June 19, 1992.

**ADDRESSES:** The docket for this rulemaking and regulatory decision is available for public inspection at room 2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The docket number is F-91-UOLF-FFFFF. The public must make an appointment to review docket materials

by calling (202) 260-9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost \$.20 per page.

**FOR FURTHER INFORMATION CONTACT:**

For general information contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Telephone (800) 424-9346 (toll free) or, in the Washington, DC, metropolitan area telephone (703) 920-9810.

For information on specific aspects of this rulemaking and regulatory decision, contact Ms. Rajni D. Joglekar (202) 260-3518 or Ms. Eydie Pines (202) 260-3509, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** The contents of today's notice are listed in the following outline:

- I. Authority
- II. Background
  - A. Regulation as a Hazardous Waste
  - B. Used Oil Recycling Act (UORA)
  - C. Hazardous and Solid Waste Amendments (HSWA)
  - D. November 19, 1986, Decision Not to List Used Oil
  - E. Recent Agency Activities
  - F. September 1991 Supplemental Notice
  - G. Development of Comprehensive Market-Based Used Oil Recycling Program
- III. Summary of Comments Relating to Final Rule
  - A. Listing Used Oil: Summary of Major 1985 & 1991 Comments
  - B. Oil Filters: Summary of Major 1985 & 1991 Comments
- IV. Final Listing Determination
  - A. General
  - B. No List Determination for Used Oil Destined for Disposal
    1. Toxicity of Used Oil
    2. Regulations Governing the Plausible Mismanagement of Used Oil Destined for Disposal
      - a. Overview of RCRA Subtitle C regulations applicable to used oil destined for disposal
      - b. Applicability of RCRA Subtitle I regulations to used oil destined for disposal
      - c. Applicability of RCRA Subtitle D regulations to used oil destined for disposal
      - d. CERCLA reportable quantities (RQs) and used oil destined for disposal
      - e. Toxic Substances Control Act regulations and used oil destined for disposal
      - f. Clean Water Act regulations and used oil destined for disposal
      - g. Safe Drinking Water Act regulations and used oil destined for disposal
      - h. Coast Guard regulations and used oil destined for disposal
      - i. Department of Transportation regulations and used oil destined for disposal
      - j. Summary of no list decision for used oil destined for disposal
  - C. Response to Major Comments

- V. Used Oil Filter Exemption
  - A. Agency's Decision
  - B. Response to Major Comments
- VI. Used Oil Re-refining and Reprocessing Residuals
- VII. State Authorization
  - A. Applicability of Rule in Authorized States
  - B. Effect on State Authorization
- VIII. Regulatory Impact Analysis
- IX. Regulatory Flexibility Act
- X. Paperwork Reduction Act

**I. Authority**

This regulatory decision is issued under authority of sections 1004, 1006, 2002, 3001 and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments, and as amended by the Used Oil Recycling Act, 42 U.S.C. 6901 *et. seq.*

**II. Background****A. Regulation as a Hazardous Waste**

On December 18, 1978, EPA initially proposed guidelines and regulations for the management of hazardous wastes as well as specific rules for the identification and listing of hazardous wastes under section 3001 of the Resource Conservation and Recovery Act (RCRA) (43 FR 58946). At that time, EPA proposed to list waste lubricating oil and waste hydraulic and cutting oil<sup>1</sup> as hazardous wastes on the basis of their toxicity. In addition, the Agency proposed recycling regulations to regulate (1) the incineration or burning of used lubricating, hydraulic, transformer, transmission, or cutting oil that was hazardous and (2) the use of waste oils in a manner that constituted disposal.<sup>2</sup>

In the May 19, 1980, regulations (45 FR 33084), EPA decided to defer promulgation of the recycling regulations for waste oils in order to consider fully whether waste- and use-specific standards may be implemented in lieu of imposing the full set of Subtitle C regulations on potentially recoverable and valuable materials. At the same time, EPA deferred the listing of waste oil that is destined for disposal so that the entire waste oil issue could be addressed at one time. Under the May 19, 1980, regulations, however, any

<sup>1</sup> The term "waste oil" includes both used and unused oils that may no longer be used for their original purpose.

<sup>2</sup> "Use in a manner constituting disposal" means the placement of hazardous waste directly onto the land in a manner constituting disposal or the use of the solid waste to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land now codified at 40 CFR 261.2(c)(1).

waste oil exhibiting one of the characteristics of hazardous waste (ignitability, corrosivity, reactivity, and toxicity) that was disposed, or accumulated, stored, or treated prior to disposal, became regulated as a hazardous waste subject to all applicable Subtitle C regulations.

#### B. Used Oil Recycling Act (UORA)

In an effort to encourage the recycling of used oil, and in recognition of the potential hazards posed by its mismanagement, Congress passed the Used Oil Recycling Act (UORA) on October 15, 1980 (Pub. L. 96-463). UORA defined used oil as "any oil which has been refined from crude oil, used, and as a result of such use, contaminated by physical or chemical impurities." Among other provisions, UORA required the Agency to make a determination as to the hazardousness of used oil and report the findings to Congress with a detailed statement of the data and other information upon which the determination was based. In addition, the Agency was to establish performance standards and other requirements under section 7 of UORA "may be necessary to protect the public health and the environment from hazards associated with recycled oil" as long as such regulations "do not discourage the recovery or recycling of used oil." These statutory provisions originally were added as section 3012 of RCRA by the UORA and subsequently were amended and redesignated as section 3014 of RCRA under the Hazardous and Solid Waste Amendments of 1984.

In January 1981, EPA submitted to Congress the used oil report mandated by section 8 of the UORA.<sup>3</sup> In the report, EPA indicated its intention to list both used oil and unused waste oil as hazardous under section 3001 of RCRA based on the presence of a number of toxicants in crude or refined oil (e.g., benzene, naphthalene, and phenols), as well as the presence of contaminants in used oil as a result of use (e.g., lead, chromium, and cadmium). In addition, the report cited the environmental and human health threats posed by these used oils and unused waste oils, including the potential threat of leaching ground water non-potable through contamination.

#### C. Hazardous and Solid Waste Amendments (HSWA)

On November 8, 1984, the Hazardous and Solid Waste Amendments (HSWA)

to RCRA were signed into law. In addition to many other requirements, HSWA reemphasized that the protection of human health and the environment was to be of primary concern in the regulation of hazardous waste. Specific to used oil, the Administrator was required to "promulgate regulation \* \* \* as may be necessary to protect human health and the environment from hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the recovery or recycling of used oil consistent with the protection of human health and the environment." (Emphasis added to highlight HSWA language amending RCRA § 3014(a) (see section 242, Pub. L. 98-616).)

HSWA required EPA to propose whether to identify or list used automobile and truck crankcase oil by November 8, 1985, and to make a final determination as to whether to identify or list any or all used oils by November 8, 1986. On November 29, 1985 (50 FR 49258), EPA proposed to list all used oils as hazardous waste, including petroleum-derived and synthetic oils, based on the presence of toxic constituents at levels of concern during and after use. Also on November 29, 1985, the Agency proposed management standards for recycled used oil (50 FR 49212) and issued final regulations, incorporated at 40 CFR part 266, subpart E, prohibiting the burning of off-specification used oil fuels<sup>4</sup> in non-industrial boilers and furnaces (50 FR 49164). Marketers of used oil fuel and industrial burners of off-specification fuel are required to notify EPA of their activities and to comply with certain administrative requirements. Used oils that meet the used oil fuel specification are exempt from most of the 40 CFR part 266, subpart E regulations.

On March 10, 1986 (51 FR 6206), the Agency published a supplemental notice requesting comments on additional aspects of the proposed listing of used oil as hazardous. In particular, commenters to the November 29, 1985, proposal suggested that EPA consider a regulatory option of only listing used oil as a hazardous waste when disposed, while promulgating special management standards for used oil that is recycled.

<sup>4</sup> Used Oil that exceeds any of the following specification levels is considered to be "off-specification" used oil fuel under 40 CFR 266.40(a): Arsenic—5 ppm, Cadmium—2 ppm, Chromium—10 ppm, Lead—100 ppm, Flash Point—100 °F minimum, Total Halogens—4,000 ppm.

The supplemental notice also contained a request for comments on additional issues related to the "mixture rule" (40 CFR 261.3(a)(2)(iv)), on test methods for determining halogen levels in used oils, and on new data on the composition of used oil and used oil processing residuals.

#### D. November 19, 1986, Decision Not To List Recycled Used Oil

On November 19, 1986, EPA issued a decision not to list as a hazardous waste used oil that is recycled (51 FR 41900). At that time, it was the Agency's belief that the stigmatic effects associated with a hazardous waste listing might discourage the recycling of used oil, thereby resulting in increased disposal of used oil in uncontrolled manners. EPA stated that several residues, wastewaters, and sludges associated with the recycling of used oil may be evaluated to determine if a hazardous waste listing for these residuals was necessary, even if used oil was not listed as a hazardous waste. EPA also outlined a plan that included making a determination of whether or not to list, as a hazardous waste, used oil that is disposed and promulgation of special management standards for recycled oil.

EPA's decision not to list used oil as a hazardous waste based on the potential stigmatic effects was challenged by the Hazardous Waste Treatment Council, the Association of Petroleum Refiners, and the Natural Resources Defense Council. The petitioners claimed that (1) the language of RCRA indicated that in determining whether to list used oil as a hazardous waste, EPA may consider technical characteristics of hazardous waste, but not the "stigma" that a hazardous listing might involve, and (2) that Congress intended EPA to consider the effects of listing on the recycled oil industry only after the initial listing decision.

On October 7, 1988, the Court of Appeals for the District of Columbia found that EPA acted contrary to law in its determination not to list used oil under RCRA § 3001 based on the stigmatic effects. (See *Hazardous Waste Treatment Council v. EPA*, 861 F.2d 270 (D.C. Cir. 1988) [HWTC I].) The court ruled that EPA must determine whether to list any used oils based on the technical criteria for waste listings specified in the statute and in EPA's implementing regulations.

#### E. Recent Agency Activities

After the 1988 court decision, EPA began to reevaluate its basis for making a listing determination for used oil. EPA reviewed the statute, the 1985 proposed

<sup>3</sup> Report to Congress: Listing of Waste Oil as a Hazardous Waste Pursuant to section (8)(2), Pub. L. 96-463; U.S. EPA, 1981.

rule, and the many comments received on the proposed rule. Those comments indicated numerous concerns with the proposed listing approach. One of the most frequent concerns voiced by commenters was related to the quality and "representativeness" of the data used by EPA to characterize used oils in 1985. Numerous commenters indicated that "their oils" were not represented by the data and, if they were represented, those oils were characterized after being mixed with other more contaminated oils or with other hazardous wastes. Many commenters submitted data demonstrating that the used oils they generate, particularly industrial used oils, did not contain high levels of toxicants of concern.

In addition, the Agency recognized that much of the information in the 1985 used oil composition data is several years old, as most of the information was collected prior to 1985. Since the time of that data gathering effort, the composition of used automotive oil may have been affected by the phase-down of lead in gasoline. The Agency also recognized the need to collect analytical data addressing specific classes of used oils as collected and stored at the point of generation (*i.e.*, at the generator's facility).

Finally, the toxicity characteristic extraction procedure (EP) (45 FR 33119, May 19, 1980) identified certain used oils as hazardous. Due to the possibility of changes in used oil composition described above and promulgation of the new toxicity characteristic (TC) rule (55 FR 11798, March 29, 1990), the Agency recognized that additional data to characterize the toxicity of used oil was needed prior to making a final hazardous waste listing determination.

#### F. September 1991 Supplemental Notice

On September 23, 1991, EPA published a Supplemental Notice of Proposed Rulemaking (56 FR 48000). The 1991 Supplemental Notice presented supplemental information gathered by EPA and provided to EPA by individuals commenting on previous notices on the listing of used oil and used oil management standards. As discussed above, numerous commenters on the 1985 proposal to list used oil as a hazardous waste contended that the broad listing of all used oils would unfairly subject them to stringent regulation because their used oils are not hazardous. Based on those comments, the Agency has collected a variety of additional information regarding various types of used oil, the management of these used oils, and the potential health and environmental effects posed when these used oils are

mismanaged. The 1991 Supplemental Notice presented this new information to the public and requested comment on the information, particularly on the issue of whether and how the information suggests new concerns that EPA should consider in deciding whether to finalize all or part of its 1985 proposal to list used oil as a hazardous waste.

In addition, the 1991 Supplemental Notice expanded upon the November 29, 1985, proposal (50 FR 49258) to list used oils as hazardous and a March 10, 1986, Supplemental Notice (51 FR 8206) by discussing regulatory alternatives not previously presented in the *Federal Register*. Based on the public comments received relative to these two notices, the Agency investigated several important aspects of used oil regulation. For these aspects, the Agency identified alternative approaches that were not presented explicitly in the earlier notices. Those alternatives were presented in the 1991 Supplemental Notice.

The 1991 Supplemental Notice also discussed the Agency's proposal to amend 40 CFR 261.32 by adding four waste streams from the processing and re-refining of used oil to the list of hazardous wastes from specific sources. The Agency noted its intention to include these residuals in the definition of used oil in its November 29, 1985, proposal to list used oil as hazardous. The wastes from the processing and re-refining of used oil, which are more fully described later, include process residuals from the gravitational or mechanical separation of solids, water, and oil; spent polishing media used to finish used oil; distillation bottoms; and treatment residues from primary wastewater treatment.

The 1991 Supplemental Notice also included a description of several approaches the Agency was considering for the used oil management standards (in addition to, or in place of, those proposed in 1985).

#### G. Development of Comprehensive Market-Based Used Oil Recycling Program

In developing management standards, EPA's efforts will be focused on avoiding any damage to existing recycling markets for used oil consistent with protection of human health and the environment. At the same time, however, the Agency is interested in obtaining the optimal level of used oil recycling. In the Agency's 1991 Supplemental Notice, EPA identified several innovative market-based approaches that it was considering in the process of developing a used oil management program that would be

based on a melding of its authorities under RCRA and the Toxic Substances Control Act (TSCA).

EPA has devoted considerable resources toward the development of alternative market-based management programs. The Agency's preliminary examination indicates that there are important linkages between possible section 3014 management standards and the design of alternative incentive systems. In general, management standards that impose significant costs on used oil handlers may hamper the effectiveness of market-based programs because they discourage recycling and create unintended opportunities for fraud. Furthermore, management standards that are compatible with a particular market-based program (or no program at all) may be incompatible with other plausible alternative programs. The Agency believes that the success of any market-based program could be significantly affected by the design of incentive-compatible management standards.

Accordingly, when EPA issues its rulemaking on recycled used oil, it will address the issue of market-based approaches. In doing so, the Agency will consider how market-based approaches to used oil recycling can complement management standards, promote environmentally responsive behavior and minimize compliance costs.

### III. Summary of Comments Relating to Final Rule

#### A. Listing Used Oil: Summary of Major 1985 & 1991 Comments-

Many comments were received on the various aspects of the proposed listing of used oil. Most commenters opposed the listing of used oil as a hazardous waste. The reasons given included that EPA's sampling was unrepresentative and flawed, that used oil is no more hazardous than virgin oil, and the belief that the levels of constituents EPA found in used oils do not present a threat to human health. A large number of commenters challenged the scope of the listing and provided a number of examples where certain used oils should not be included in the listing because they do not contain the hazardous constituents of concern at concentrations exceeding health-based levels that would cause the used oil to be listed.

On November 29, 1985 (50 FR 49239), EPA proposed to list all used oils as hazardous waste, including petroleum-derived and synthetic oils, based on the presence of toxic constituents at levels of concern as a result of use or

adulteration after use. A sampling and analysis effort was undertaken by EPA in 1989 and 1990 to characterize specific categories of used oil to determine whether these used oils were hazardous at the point of generation. EPA's study was undertaken to address comments received in response to the November 1985 proposal to list all used oils wherein commenters claimed that certain types of used oil were not hazardous at the point of generation but rather were adulterated subsequent to use.

A number of commenters responded that "their" oil (such as electrical insulating or metalworking oil) did not contain toxic constituents of concern, as demonstrated by EPA's own data, and therefore, should not be listed as hazardous waste. Other commenters stated that used oil containing toxic constituents would be adequately regulated by the existing characteristics framework, such as the TC. These commenters believed that used oil exhibiting the TC and destined for disposal would be regulated as hazardous waste, while used oil not exhibiting the TC should not be regulated under any circumstances.

Some commenters proposed that only those used oils that contain certain toxic constituents, such as lead, arsenic, cadmium, chromium, 1,1,1-trichloroethane, trichloroethylene, tetrachloroethylene, toluene, and naphthalene, should be included in the listing. One commenter indicated that storage tank data rather than point of generation data should be used to make listing determination since most of the used oil management occurs after storage. Some commenters asserted that EPA's concern is not with used oil itself but the mixing of used oil with other constituents that may render the used oil hazardous only because of post-use adulteration. Therefore, instead of listing all used oils, commenters recommended that EPA should list used oils as hazardous only if other substances have been added after the oil's initial use.

The Supplemental Notice of September 23, 1991 (56 FR 448041), presented three options for identifying used oil as a hazardous waste. Option One was to list all used oils as proposed in November 29, 1985 (50 FR 49239). Option Two was to list categories of used oil that were found to be "typically and frequently" hazardous because of the presence of lead, polycyclic aromatic hydrocarbons (PAHs), arsenic, cadmium, chromium, and benzene. Option Three was to not list used oils as hazardous, but rely on management

standards developed under RCRA § 3014 to control mismanagement of used oil. The commenters overwhelmingly supported Option Three, not to list used oil as a hazardous waste, but rely on management standards.

A few commenters stated that as a result of EPA's program to phase down lead in gasoline, lead concentrations in used oil have declined. In addition, some commenters claimed that EPA's analyses of used oil were based on too few samples and that these samples were unrepresentative of actual conditions. Some commenters expressed a reluctance to have EPA list used oil as a hazardous waste, but urged EPA, if used oil is to be listed, to list only those used oils that are disposed and not list used oils that are recycled.

A few commenters supported the proposal to list all used oils as hazardous waste. They stated that used oil has been historically mismanaged and presents a threat to human health and the environment.

#### *B. Oil Filters: Summary of Major 1985 and 1991 Comments*

Many comments were received on the various issues raised by EPA concerning used oil filters. In response to the November 1985 proposal to list all used oil as hazardous waste, EPA received many comments on the effect of such a listing on used oil filters. Commenters to the 1985 rule stated that used oil filters would contain used oil and, thus, would be classified as hazardous waste under the mixture rule at 40 CFR 261.3(a)(2)(iv). Further, commenters stated that, due to the weight of used oil filters, small service stations and automobile repair shops would exceed the conditionally exempt small quantity generator definition because they would generate greater than 100 kg of hazardous waste in a calendar month. Commenters suggested that EPA exclude used oil filters from the definition of hazardous waste. Many suggested that EPA require that used oil filters be drained prior to disposal and pass the "Paint Filter Test" (SW-846 Method 9095) to qualify for such an exclusion.

A few commenters on the 1985 proposal expressed concern with any exclusion from the definition of hazardous waste for used oil filters. These commenters stated that used oil filters, particularly large filters, could contain significant quantities of oil. Further, these commenters pointed out that contaminants and toxic constituents may be concentrated in oil filters. The commenters suggested that EPA conduct additional studies on the

environmental and human health risks associated with the disposal of used oil filters.

In September 1991, EPA proposed to exempt used oil filters from the definition of hazardous waste if the filter has been crushed or drained. Thus, such filters would not have to be managed as a hazardous waste, even if individual filters exhibited a hazardous characteristic.

Most of the commenters supported EPA's proposal to exclude from the definition of hazardous waste (40 CFR 261.4(b)) used oil filters that have been drained and crushed. Commenters to the September 23, 1991 proposal raised the following two concerns regarding the proposed exemption:

1. Draining and crushing are not the only acceptable technologies for removing used oil from filters and may not be the best technologies.

2. Used oil filters do not exhibit the toxicity characteristic and should be exempt from Subtitle C regulation.

Some commenters suggested that draining used oil filters for 24 hours was sufficient and that after this time period, crushing was not necessary. This position was supported by some commenters that indicated that the cost of a crusher ranges from \$1,000 to \$10,000, which could be prohibitive for smaller service stations. One commenter submitted data on 31 used oil filters from trucks using gasoline (5 filters) and diesel (26 filters), which had been gravity drained for four to twenty hours. The data indicate that none of the filters exhibited the TC.

Those commenters that did not support the exclusion stated that oil filters can contain significant quantities of used oil that draining alone will not remove. The commenters disagreed as to what constitutes proper "draining and crushing." Commenters disagreed as to what constitutes adequate draining and whether crushing should be done in addition to draining. Some commenters requested that the Agency develop specifications for crushing. Other commenters stated that draining alone is not sufficient, but should be followed by crushing/dismantling and followed by recycling. Their rationale was that even after draining, filters contain 3 to 4 ounces of used oil and thus, 12 million gallons of used oil would be disposed of in Subtitle D landfills annually. Those commenters that did not support a blanket exclusion for used oil filters generally stated that the generator should test the filter with the TCLP. Based on the results of the test, the generator should handle the filters

accordingly, unless the filter will be reclaimed.

#### IV. Final Listing Determination

##### A. General

EPA regulations, based on RCRA sections 1004(5) and 3001, at 40 CFR 261.11 set forth the technical criteria to determine whether a solid waste should be listed as a hazardous waste. EPA used the technical criteria in 40 CFR 261.11 (a)(1) and (a)(3) in making today's used oil listing determinations. Subsection (a)(1) of 40 CFR 261.11 allows the Administrator to list a waste as hazardous if the waste exhibits any of the characteristics of hazardous waste. According to 40 CFR 261.11(a)(3), a waste shall be listed as hazardous if it "contains any of the toxic constituents listed in appendix VIII and, after considering the following factors, the Administrator concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed. \* \* \* The factors to be considered in making this determination include toxicity, fate and transport, mobility and persistence, and bioaccumulation potential of the constituents in the waste, as well as plausible mismanagement scenarios (40 CFR 261.11(a)(3)(vii)) and other federal and state regulatory actions with respect to the waste (40 CFR 261.11(a)(3)(x)).

In making a listing determination for used oil destined for disposal, EPA gave considerable attention to the current federal regulations governing used oils. EPA evaluated the technical criteria for listing in light of the current regulatory structure controlling the management of used oils and concluded that any plausible mismanagement of used oil that is destined for disposal is addressed by current requirements.

As implied in Option Three of 1991 Supplemental Notice, EPA preserved its ability to maintain the status quo if the Agency's analysis of existing regulations showed that actions have been taken to control the mismanagement of used oil. EPA finds that the current regulatory structure controlling the management of used oil destined for disposal provides adequate controls so that used oil will not pose a substantial threat to human health or the environment.

Current regulations governing the management of used oils destined for disposal include: Those of EPA and the U.S. Coast Guard for oil discharges into navigable waters; U.S. Department of Transportation requirements; EPA regulations for polychlorinated

biphenyls (PCBs) under the Toxic Substances Control Act, hazardous waste characteristics applying to used oil that is disposed under RCRA, underground storage tank requirements (UST) under RCRA; Underground Injection Control (UIC) permits under the Safe Drinking Water Act; Spill Prevention, Control and Countermeasures (SPCC) plans and National Pollutant Discharge Elimination System (NPDES) storm water regulations under the Clean Water Act; and the phase down of lead in gasoline under the Clean Air Act. In combination, application of these controls imposed by EPA and other federal agencies prevent the mismanagement of used oil to such an extent that used oil destined for disposal is unlikely to pose a substantial present or potential hazard to human health and the environment.

EPA also recognizes that several states regulate used oil as a hazardous waste, and some states regulate it as a special waste. Several states ban the disposal of used oil in municipal solid waste landfills (MSWLFs). A used oil handler must comply with all state requirements applicable to used oil in his/her state, in addition to any Federal requirements that apply.

##### B. No List Determination for Used Oil Destined for Disposal

In making the no list determination for used oil that is destined for disposal, EPA used the technical criteria discussed in Section IV.A.

##### 1. Toxicity of Used Oil

In the 1991 Supplemental Notice, EPA proposed to expand the basis for listing gasoline-powered engine crankcase used oil to reflect the presence of three toxic polynuclear aromatic hydrocarbons (PAHs): Benzo(a)pyrene, benzo(b)fluoranthene, and benzo(k)fluoranthene. EPA based this expansion on the analysis of two samples of automotive crankcase used oil analyzed for benzo(k)fluoranthene and four samples of automotive crankcase used oil analyzed for benzo(a)pyrene and benzo(b)fluoranthene. With respect to the presence of PAHs in used oil, EPA believes that the current regulatory structure can control the mismanagement of recycled used oil containing toxic PAHs.

Based on the 1989/90 sampling and analysis effort the Agency tentatively determined that a high proportion of used oils from gasoline-powered engine exhibited the TC for lead and benzene. Other categories of used oil did not exhibit the TC in such a high proportion

and, in fact, did not meet the criteria for listing since they did not contain constituents of concern (constituents of the TC) at levels that could pose a risk to human health and the environment. The phase down of lead in gasoline under the Clean Air Act has resulted in subsequent reduction in lead concentrations in used oil. In addition, in accordance with the Clean Air Amendments, additional phase downs are scheduled to occur, thus further reducing the lead concentration. The lowered lead concentrations in used oil reduce the potential for harm to human health and the environment from mismanagement.

##### 2. Regulations Governing the Plausible Mismanagement of Used Oil Destined for Disposal

Regulatory programs currently in place control used oil generators, transporters, collectors and recyclers. Since 1985, EPA has promulgated several regulatory programs that directly affect the management of used oil destined for disposal (e.g., the TC, the UST program, the MSWLF rule, the NPDES Storm Water program, and the Land Disposal Restrictions (LDRs)). Also, several other regulatory programs that were in place even prior to 1985 continue to control some used oil management practices (e.g., U.S. Department of Transportation (DOT) shipping and handling requirements). After assessing the extent and potential success of current regulatory programs and their effect on the disposal of used oil, the Agency believes that the existing network of regulations provides protection from plausible disposal mismanagement scenarios, as discussed below.

a. *Overview of RCRA subtitle C regulations applicable to used oil destined for disposal.* Used oils exhibiting one or more of the characteristics of hazardous waste and which are destined for disposal continue to be regulated as hazardous wastes in accordance with all applicable subtitle C regulations, except when stored in RCRA subtitle I underground storage tanks as discussed in subsection b. of this section. Mixtures of used oils and listed hazardous wastes are listed hazardous wastes, and used oil mixed with a characteristic hazardous waste must be managed as a hazardous waste if it still exhibits a characteristic.<sup>6</sup> Such

<sup>6</sup> It should be noted that mixing characteristic hazardous waste with another material to render the waste nonhazardous constitutes treatment of hazardous waste subject to applicable standards under 40 CFR parts 264-265 and 270, and the

Continued

mixtures must be managed in accordance with all applicable subtitle C regulations. Those generators identified in 40 CFR 262.34<sup>6</sup> and storers of hazardous used oil destined for disposal are subject to the tank system requirements at subpart J of parts 264 and 265. Used oils are also subject to the corrective action requirements of RCRA subtitle C, including sections 3004(u) and 3008(h), which apply to solid waste management units at RCRA treatment, storage, or disposal facilities.

Further, if used oil exhibits a characteristic of hazardous waste and is destined for disposal, facilities that store such used oil are subject to the tank system requirements at 40 CFR parts 264 and 265, subparts J. These requirements are designed to prevent ground water contamination and other releases to the environment and include requirements for daily inspection, tank integrity, and secondary containment. If used oil destined for disposal exhibiting a characteristic of hazardous waste is stored for greater than 90 days, the facility must be permitted under RCRA as a hazardous waste storage facility.

It is important to note that used oils exhibiting the characteristic of EP toxicity (prior to its revision) currently are prohibited from land disposal unless they meet the applicable treatment standards. Treatment standards for these wastes were promulgated with the Third Third rulemaking on June 1, 1990 (55 FR 22520). Used oils exhibiting the new TC, but not the characteristic of EP toxicity are not currently prohibited from land disposal, even if the constituent causing the waste to exhibit the TC is also controlled by the EP. LDR treatment standards for the newly identified TC wastes (including the 26 newly listed organic constituents) are scheduled to be promulgated by April 1993. Used oil which is mixed with a listed hazardous waste must meet the LDR standard for the listed waste.

*b. Applicability of RCRA subtitle I regulations to used oil destined for disposal.* For USTs located at permitted hazardous waste facilities subject to section 3004(u) of RCRA, the subtitle C corrective action statutory authorities supersede subtitle I corrective action requirements to avoid overlap in regulatory authority (see 40 CFR 280.60), or facilities without a final HSWA permit, subtitle I corrective action

standards will apply to releases from all petroleum and hazardous substance USTs. UST corrective actions underway at a facility having interim status under RCRA subtitle C may be subject to review by permit writers during the development of the final HSWA permit. These ongoing corrective action activities may be incorporated into the facility's final RCRA permit (53 FR 37176).

As discussed in the September 1991 supplemental proposal, EPA presumes that used oil stored in underground storage tanks is destined for recycling and currently exempt from subtitle C (40 CFR 261.6(a)(3)(iii)); thus such tanks are subject to subtitle I. The Agency continues to believe that the subtitle I standards are sufficient to protect human health and the environment from the potential releases of used oil from USTs. In conclusion, the Agency continues to view subtitle I as applicable to used oil, with the exceptions noted in the preceding paragraph where RCRA subtitle C authority is in place.

*c. Applicability of RCRA subtitle D regulations to used oil destined for disposal.* Nonhazardous used oil may be disposed of in an industrial solid waste landfill or a MSWLF. EPA recently promulgated final disposal criteria for MSWLFs (October 9, 1991, 56 FR 50978). The revised criteria were promulgated at 40 CFR part 258 and included location restrictions, facility design and operating criteria, ground-water monitoring requirements, corrective action requirements, financial assurance requirements, and closure and post-closure care requirements. In addition, many states have design and operating requirements governing industrial non-hazardous waste landfills.

*d. CERCLA reportable quantities (RQs) and used oil destined from disposal.* Any waste identified as a hazardous waste (either by listing or by characteristic) under RCRA generally becomes a hazardous substance under CERCLA. Such designation subjects the hazardous waste to the section 103 reporting requirements for releases equal to or exceeding the assigned reportable quantity (RQ) of that hazardous substance. In addition, constituents in the used oil that are not defined as hazardous waste under RCRA may be designated hazardous substances under CERCLA (see 40 CFR part 302). Therefore, in accordance with § 302.6(b) concerning mixtures or solutions, immediate notification is required when an RQ or more of any of the hazardous substances are released.

*e. Toxic Substances Control Act regulations and used oil destined for disposal.* Section 6(e) of the Toxic Substances Control Act (TSCA) mandates that EPA control the manufacture (including import), use, processing, distribution in commerce, and disposal of PCBs. Because of the potential hazards posed by the uncontrolled use and disposal of PCBs, EPA has established a comprehensive program to control PCBs from manufacture to disposal. A primary use of PCBs, a viscous oil, was as an insulating material for electrical equipment (dielectric). PCBs were almost always mixed with mineral oil, silicone, or other oily materials when used as insulating material. TSCA regulations prohibit the use of waste oils (including used oils) containing PCBs for dust suppression. Prohibited uses include, but are not limited to, use in road oiling, use in general dust control, use as a pesticide or herbicide carrier, and use as a rust preventative on pipes (40 CFR 761.20(d)). Used oil applied for dust suppression must meet the requirements of both RCRA and TSCA.<sup>7</sup>

Further, a release of 1 pound of PCBs into the environment must be reported immediately to the National Response Center in accordance with section 103(c) of CERCLA. Further, under the TSCA PCB Spill Cleanup Policy, any spill of material containing 50 ppm or greater PCBs into sewers, drinking water, surface water, grazing lands, or vegetable gardens must be reported immediately (40 CFR part 761, subpart G). If a used oil contains PCBs, the most stringent, applicable reporting requirement must be followed.

*f. Clean Water Act regulations and used oil destined for disposal.* In addition to the UST requirements discussed above, the storage of used oil at many petroleum-related storage facilities is subject to SPCC regulations.<sup>8</sup> Under section 311(j)(i)(c) of the Clean Water Act, EPA established the SPCC program (38 FR 34165, December 11, 1973) to protect surface waters and adjoining shorelines from petroleum and

<sup>7</sup> Congress banned the use of any hazardous waste as a dust suppressant under RCRA § 3004(1). Therefore, as noted above, any used oil that exhibits one or more of the characteristics (other than the characteristic of ignitability) of hazardous waste is banned from use as a dust suppressant.

<sup>8</sup> The SPCC regulations (40 CFR 112) currently apply to on-shore and off-shore non-transportation related facilities that have the potential to discharge oil into navigable waterways and have underground storage tank capacities greater than 42,000 gallons or aboveground storage tank capacities of more than 660 gallons in a single tank or an aggregate of greater than 1,320 gallons.

other oil contamination.<sup>9</sup> Facilities subject to the regulations each prepare and maintain an SPCC plan, which includes provisions for appropriate containment or diversionary structures to prevent discharged oil from reaching surface waters and adjoining shorelines. A major goal of the SPCC plan is to ensure that SPCC-regulated storage tanks and storage areas are designed to protect against releases of petroleum and other oils to navigable waters and adjoining shorelines. "Oil", when used in relation to Section 311 of the Federal Water Pollution Control Act, means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Concerning used oil, releases of oil to navigable waters that (1) cause a sheen to appear on the surface, (2) violate applicable water quality standards, or (3) cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines, are reportable under 40 CFR Part 110. EPA believes that a significant number of used oil storage facilities will store used oil in tanks or containers prior to disposal. The Agency also believes that the SPCC requirements are designed to provide a sufficient level of protection to human health and the environment from potential releases of used oil to navigable water and adjoining shorelines.

Used oil generators, storage, and disposal facilities may be subject to the storm water regulations (55 FR 47990, November 18, 1990) promulgated under the Clean Water Act. The NPDES storm water regulations at 40 CFR 122.26 provide an additional layer of environmental protection against used oil disposal by industrial facilities at locations where runoff due to storm events results in releases of used oil-contaminated runoff to waters of the United States. Under these regulations, facilities with point source discharges of storm water associated with industrial activity" to the waters of the United States, including discharges through municipal separate storm sewer systems that ultimately reach the waters of the United States, must apply for a National Pollution Discharge Elimination System (NPDES) permit. "Storm water discharge associated with industrial activity" is

<sup>9</sup> On October 22, 1991 (56 FR 54612), EPA proposed revisions to the 40 CFR part 112 requirements. The proposed rule addresses a number of issues, including the mandatory nature of most of the requirements, the required procedures for completion of SPCC Plans, and the addition of a facility notification provision. If adopted, these changes would improve the SPCC program's control of potential releases of used oil.

defined to include runoff, snowmelt runoff, and surface water runoff that is discharged and is directly related to manufacturing, processing, or raw materials storage at an industrial facility (40 CFR 122.26(b)(14)).

The storm water regulations specifically apply to active and inactive landfills, land application units, and open dumps that receive or have received any industrial wastes (i.e., waste from any of the categories of facilities identified under 40 CFR 122.26(b)(14) (i) to (xi)). The storm water regulations apply to those facilities that are subject to both subtitles C and D of RCRA. Commercial or retail outlets such as service stations or quick lube shops are currently excluded from CWA permit requirements unless EPA or a State designates a particular facility for permitting under section 402(p)(2)(E) of the Clean Water Act.

*g. Safe Drinking Water Act regulations and used oil destined for disposal.* The Underground Injection Control (UIC) regulations at 40 CFR parts 144 through 148 were promulgated pursuant to part C of the Safe Drinking Water Act and, to the extent that the regulations address hazardous waste, RCRA. The UIC program regulates the underground injection of all fluids through wells. Under 40 CFR 144.12, "No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any injection activity in a manner that allows the movement of any fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 142 or may otherwise adversely affect the health of persons."

While EPA believes it is unlikely, and not practical technically, for large volumes of used oil to be disposed into injection wells, there are cases where used oil may be mixed with other fluids (i.e., wastewaters or oil and gas exploration and production wastes) and injected into UIC wells. If the presence of used oil or any constituent causes the injected fluid to be hazardous, any well injecting below an underground source of drinking water (USDW) must be permitted for hazardous waste injection. Any other well injecting a hazardous waste into or above a USDW is banned, and must be properly plugged and abandoned.

Finally, as a further measure of protection, under 40 CFR part 148 the injection of hazardous wastes for which LDR treatment standards have been promulgated is prohibited unless the waste has been treated to meet the

applicable standards in 40 CFR part 268 or an exemption has been granted based on a petition submitted under 40 CFR part 148, subpart C.

*h. Coast Guard regulations and used oil destined for disposal.* Releases of used oil to navigable waters and shipboard management of used oil are governed by Coast Guard regulations promulgated pursuant to MARPOL 73/78.<sup>10</sup> Of primary importance to used oil is the regulation of bilge slop generated on-board ships. Bilge slop is a residual liquid that collects through leakage, seepage, or drainage in the holds of ships and consists primarily of water mixed with a small amount of oil. The regulations prohibit the unrestricted discharge of oil or oily mixtures into the sea and require that ships either retain bilge slop on board or separate the oil and water and retain the oil on board until the slop and oil can be discharged at a licensed shore side reception facility. Ships more than 12 nautical miles from land may only discharge oil or oily mixtures where the undiluted oil concentration is less than 100 ppm, provided the ship is not located in an ecologically sensitive area. Ships within 12 nautical miles of land may not discharge oil or oily mixtures unless the undiluted oil concentration is less than 15 ppm. The regulations also address the on shore management of bilge water at port reception facilities.

*i. Department of Transportation regulations and used oil destined for disposal.* The U.S. Department of Transportation (DOT) regulates the transportation of hazardous materials in commerce under the authority of the Hazardous Materials Transportation Act (HMTA) (49 CFR parts 171 to 179). Used oil is classified as a hazardous material if it meets the definition of combustible liquid (flash point below 200 °F, but equal to or greater than 100 °F) or flammable liquid (flash point below 100 °F). Used oil generators (shippers) and transporters of DOT hazardous materials have to comply with any and all applicable DOT regulations for identification and classification, packaging, marking,

<sup>10</sup> In 1973, the International Conference on Marine Pollution adopted the International Convention for the Prevention of Pollution by Ships, 1973. This Convention was subsequently modified by the Protocol of 1978, adopted by the International Conference on Tanker Safety and Pollution Prevention. The 1973 Convention, as modified by the 1978 protocol, is known as MARPOL 73/78. MARPOL 73/78 is an international agreement designed to address the problem of marine pollution from ships on a global scale. It contains five Annexes, each of which addresses a different type of marine pollution. Annex I addresses oil pollution and is currently in effect internationally.



labeling, and shipping papers. In addition, used oil transporters (carriers) have to comply with any and all applicable DOT regulations for placarding, use of shipping papers, recordkeeping, reporting, and incident response. Used oil that is a hazardous waste and is destined for disposal is subject to those DOT regulations referenced at 40 CFR part 262, subpart C.

*j. Summary of no list decision for used oil destined for disposal.* For the reasons discussed above, EPA believes that the potential scenarios under which used oil may be released to the environment are adequately controlled under existing regulations. According to current estimates, a relatively small portion of the used oil generated is disposed (80 million gallons compared to over 800 million gallons being recycled by burning for energy recovery and re-refining per year). Based on the existing regulations, EPA determined that it was not necessary to categorically list used oil destined for disposal, but instead will rely on the comprehensive set of existing regulatory controls, particularly the hazardous waste characteristics.

Although the Agency proposed to list certain used oils in the September 1991 supplemental proposal, most gasoline-powered engine oils already exhibit the TC, and listing these used oils would not affect the way these used oils must be managed. In other words, the existing characteristics will adequately capture hazardous used oils under Subtitle C without a hazardous waste listing. In addition, EPA believes that the current regulatory framework can control the mismanagement of used oil containing toxic PAHs destined for disposal. Therefore, EPA has determined that used oil from gasoline-powered engine crankcases need not be listed as a hazardous waste to ensure its proper management. As for other used oils, the data collected in support of the 1991 supplemental notice continues to support the conclusion that such oils are not typically and frequently hazardous. Those oils which may pose a threat on disposal are addressed by the current regulatory framework, including the hazardous waste characteristics.

#### C. Response to Major Comments

Most commenters supported a no list decision for used oil destined for disposal, as existing regulations, especially the TC rule, are adequately protective. These comments were summarized in section III.A., and responses were incorporated in the preceding preamble section. A small number of commenters favored listing all or some used oil destined for

disposal as hazardous waste. These commenters cited past mismanagement of used oil as a primary reason for the necessity of a listing action. EPA believes, however, that the mismanagement incidents cited by EPA in the September 1991 notice occurred before implementation of major rulemakings governing storage of used oil. EPA believes, upon reevaluation, that the protective nature of these regulations is sufficient to guard against mismanagement of used oil until the Agency issues a hazardous waste listing determination for recycled used oil or promulgates additional management standards under RCRA section 3014.

In light of the public comments received regarding listing of gasoline-powered engine crankcase oils as proposed in Option 2, EPA believes that existing regulations prevent mismanagement of these and other used oils destined for disposal.

#### V. Used Oil Filter Exemption

##### A. Agency Decision

EPA is today finalizing the proposed exemption for used oil filters at 40 CFR 261.4(b)(13) which identifies solid wastes that are not hazardous wastes. Today's rule reduces the burden on generators to make a hazardous waste determination in a case where EPA has sufficient data to provide a categorical exemption. This exemption is limited to non-terne-plated<sup>11</sup> used oil filters which have been drained to remove used oil. Terne-plated used oil filters are not included in the exemption because the terne plating makes the filter exhibit the characteristic of toxicity for lead. As a practical matter, if an oil filter is picked up by hand or lifted by machinery and used oil immediately drips or runs from the filter, the filter should not be considered to be drained.

Under current RCRA subtitle C regulations, if a generator is intending to dispose of a used oil filter, the generator is required to determine whether the used oil filter exhibits any of the characteristics of hazardous waste. This determination can be made either by testing or by applying the generator's knowledge of the waste or process that generated the waste. EPA issued guidance on this issue through a memo<sup>12</sup> which states that the TCLP can

<sup>11</sup> Terne is an alloy of tin and lead.

<sup>12</sup> The memorandum, dated October 30, 1990, is from Sylvia Lowrance, Director of the Office of Solid Waste, to Robert L. Duprey, Director of the Office of Hazardous Waste Management Division in EPA Region VIII, and addresses regulatory determinations on used oil filters.

be performed on oil filters by crushing, grinding, or cutting the filter and its contents until the pieces are smaller than one centimeter and will pass through a 9.5 mm standard sieve. If the filter exhibits any of the characteristics of hazardous waste, the generator must manage it in accordance with subtitle C requirements.

Oil filters are used in two categories of vehicles, light duty and heavy duty. Light duty vehicles include automobiles, passenger vans, and light duty trucks, such as small pickup trucks. Heavy duty oil vehicles include buses and commercial trucks, such as dump trucks, tractor-trailers, mining, or construction vehicles. Oil filters may be classified into two broad categories of cartridge or spin-on types.<sup>13</sup> The Filter Manufacturers Council (FMC) conducted toxicity characteristics testing on 35 light duty and 11 heavy duty spin-on oil filters. Prior to the study being undertaken, EPA reviewed FMC's sampling and analysis methodology.

In the FMC study, the spin-on filters were removed from engines at operating temperatures and either the anti-drain back valves or the filter dome end was punctured. Then, the filters were allowed to gravity drain for a 12-hour period. According to FMC, hot-draining used oil filters for 12 hours is standard industry practice. For spin-on oil filters from light-duty vehicles, the study found that none of the 35 filters exhibited the TC, although lead, chromium, cadmium, and benzene were detected. For spin-on oil filters from heavy-duty vehicles, the study determined that 5 of the 11 filters exhibited the TC for lead. These were also the five filters that were terne-plated. Terne, an alloy of lead and tin, would account for the high concentrations of lead found, 12.0-74.5 mg/l in the waste extract. A blank (unused) terne-plated oil filter had a TCLP lead concentration of 30. mg/l. The remaining six oil filters from heavy duty vehicles did not exhibit the TC. FMC later clarified their comments by writing that it is not possible to identify any categories of filters or of end uses of filters (e.g., by engine type, engine class, end use application, filter size, visual inspection of filters, etc.) which comprise exclusively terne-coated filters.

A 1990 study conducted by the Iowa Waste Reduction Center at the

<sup>13</sup> Cartridge filters are typically a replaceable pleated paper filter media formed in a cylinder around a perforated metal center tube. Metal end caps and nitrile rubber grommets are used to prevent flow around the filter media. Spin-on filters are essentially cartridge filters that are assembled into a filter can or body.

University of Northern Iowa showed that 44 percent to 55 percent of the used oil could be removed through draining and about 88 percent could be removed through compaction. One commenter demonstrated, through TCLP analysis, that light-duty used automotive oil filters from which used oil is removed by pressurized air are nonhazardous. As much as 8 ounces of used oil can be removed in seconds by using this method, according to this commenter.

Based on the data submitted, non-terne-plated, hot-drained<sup>14</sup> used oil filters do not typically and frequently exhibit the TC. The source of the hazard exhibited by the non-terne-plated used oil filters is the used oil they contain prior to being drained; thus, as much of the oil as possible should be removed. EPA has determined that non-terne-plated used oil filters that have been hot-drained of used oil for a minimum of 12 hours after puncturing either the anti-drain back valve or the dome end do not appear to exhibit the TC. EPA is thus recommending a minimum 12-hour hot-drain time for punctured or pierced used oil filters, but is not adopting a regulatory standard in order to allow for the development of alternate used oil removal techniques. Similarly, hot-drained and crushed filters, or dismantled and drained filters do not appear to exhibit the TC. In addition, light-duty automotive used oil filters that have been subjected to air pressure for oil removal do not appear to exhibit the TC.

Terne-plated oil filters are not included in the exemption; therefore, a hazardous waste determination must be made prior to disposal in a landfill. EPA received inadequate data to make a determination on other types of filters, such as fuel filters, transmission oil filters, or specialty filters (such as cloth railroad oil filters). Since there is a lack of quantitative data on these types of filters, they are not included in the scope of the exemption being finalized today.

The Agency is recommending that the recyclable used oil and other recyclable elements of the oil filter, such as the canister, gasket, and filter paper, be separated and recycled. EPA is therefore requiring that filters qualifying for the exemption first have the used oil removed using one of the following gravity hot-draining methods:

- (1) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;
- (2) Hot-draining and crushing;
- (3) Dismantling and hot-draining; or

(4) Any other equivalent hot-draining method which will remove used oil. Then, once the used oil is removed, it can be recycled (as can the scrap metal).

Finally, EPA encourages manufacturers of terne-plated filters to pursue source reduction alternatives to terne plating. EPA encourages generators to recycle used oil and used oil filters. In choosing the used oil removal technique, it is important to ensure that the operation is compatible with the ultimate recycling procedure. For example, if the filters are destined for a smelter, hot-draining and crushing may be appropriate. However, if the filters will be separated into their component parts (e.g., used oil, metal, and filtration media) and recycled separately, puncturing and gravity hot-draining may be more appropriate since crushing may hinder the separation of the metal from the filtration media. EPA also encourages steel mills and scrap metal recyclers to accept used oil filters, from which oil has been removed, as a solid waste for scrap feed in steel production.

#### *B. Response to Major Comments*

As discussed above, EPA received data that indicate that most oil filters from which used oil is removed do not exhibit a characteristic of hazardous waste, including toxicity. The Agency is not concerned about the volume of used oil remaining in the filters subsequent to draining because, according to commenter-submitted data, the filters hot-drained for at least 12 hours do not appear to be hazardous. EPA has responded to commenters advocating various methods of oil removal by promulgating an exemption for filters from which used oil has been removed through gravity hot-draining after puncturing the filter, hot-draining and crushing, or dismantling and draining. Examples of oil removal methods include flushing of oil filters with pressurized air to drain used oil from oil filters, and spinning of the oil-soaked filter paper media removed from oil filters to remove residual oil. Based on the limited data available, it appears that both of these methods adequately remove used oil in order to make oil filters nonhazardous. No technical specifications or performance standards for crushing oil filters have been developed, although such specifications were requested, because inadequate TCLP data were received to support development of a standard for crushed filters. No correlation between crushing force or crushed filter height and TCLP results could be made from the available data. Moreover, crushing specifications could restrict the development of

alternative crusher designs and other oil removal techniques. Supporters of the proposed exemption contended that due to analytical data used, filters that have been drained for 12 or 24 hours of free oil will not pose any significant hazards when disposed of as nonhazardous waste. Although the comments supplied by the one commenter indicated that draining for as little as four hours may produce a nonhazardous truck filter, EPA had inadequate data to conclude that a four-hour hot-drain would be adequate for all used oil filters.

#### **VI. Used Oil Re-Refining and Reprocessing Residuals**

In the September 23, 1991, Supplemental Notice of Proposed Rulemaking (56 FR 48027), EPA proposed to list as hazardous waste four residuals from the reprocessing and re-refining of used oil. EPA's consideration of separate listings stemmed from the November 1985 proposal to list all used oil as hazardous waste and the collection of additional data on residuals between 1986 and 1988.

The specific wastes resulting from the reprocessing and re-refining of used oil that were proposed for listing as hazardous in the September 1991 notice are:

**K152**—Process residuals from the gravitational or mechanical separation of solids, water, and oil for the reprocessing or re-refining of used oil, including filter residues, tank bottoms, pretreatment sludges, and centrifuge sludges

**K153**—Spent polishing media from the finishing of used oil in the reprocessing or re-refining process, including spent clay compounds and spent catalysts

**K154**—Distillation bottoms from the reprocessing or re-refining of used oil

**K155**—Treatment residues from oil/water/solids separation in the primary treatment of wastewaters from the reprocessing and re-refining of used oil

EPA received a number of comments on these proposed listings. Based on data and comment received in response to the proposal, EPA has determined that further study is required to adequately characterize residuals from reprocessing and re-refining of used oil and is today deferring a decision on its 1991 proposal to list these wastes.

EPA's proposed listing was based on data gathered from recycling facilities in 1985 and 1986. Commenters stated that recycling practices and processes had changed significantly in the intervening five to six years. These commenters

<sup>14</sup> "Hot-drained" means that the oil filter is drained near engine operating temperature and above room temperature (i.e., 60 °F).

cited that discontinued use of the acid-clay treatment process and the reduction of toxic constituents in the residuals.

EPA will continue to evaluate data for residuals from the reprocessing and re-refining of used oil. EPA will evaluate the management practices employed at facilities that generate these residuals to determine whether such practices pose a threat to human health and the environment.

## VII. State Authorization

### A. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 30013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Prior to HSWA, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. However, any authorized State requirement that is more stringent than a HSWA requirement that is less stringent than the Federal program for which the State was authorized remains authorized and in effect under State law.

Today's rule is promulgated pursuant to section 3001(g) of RCRA, a provision added by HSWA, and pursuant to section 3001(b)(1) of RCRA, a non-HSWA provision. This rule revises and narrows the scope of definition of hazardous waste to exclude non-terrestrial used oil filters that have been

gravity hot-drained of used oil through puncturing the filter anti-drain back valve or the filter dome end and hot-draining, hot-draining and crushing, dismantling and hot-draining, or any other equivalent hot-draining method which will remove used oil. The exemption from the definition of hazardous waste being finalized today for used oil filters narrows the scope of the TC rule promulgated pursuant to HSWA authority as well as the characteristic of EP toxicity regulation promulgated under non-HSWA authority. To avoid any confusion regarding the status of used oil filters, EPA considers the exemption to be a HSWA rule, since it, in part, exempts wastes from a HSWA-promulgated rule.

### B. Effect on State Authorizations

Authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See 40 CFR 271.1(k). The standard promulgated today is less stringent than or reduces the scope of the existing Federal requirements. This provision appears in 40 CFR 261.4(b)(13). Therefore, authorized States would not be required to modify their programs to adopt requirements equivalent to or substantially equivalent to the provision listed above.

Because the rule is promulgated pursuant to HSWA, a State which chooses to submit a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 1993. (See 40 CFR 271.24(c).)

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the

State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In authorized States with more stringent regulations, EPA will continue to enforce the State's more stringent regulations. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization package.

## VIII. Regulatory Impact Analysis

Today's decision not to list used oil managed for disposal as a hazardous waste does not impose any new regulatory compliance requirements or costs on used oil generators or handlers. Although a regulatory impact analysis under Executive Order 12291 is therefore not required to support this decision, this section of today's preamble briefly summarizes the Agency's cost and general impact analysis for the previously proposed listing option being considered prior to today's rulemaking.

Costs of listing disposed used oil were evaluated in the Economic Impact Screening Analysis Section of the September 1991 Supplemental Notice preamble under the two headings of "ban on land disposal," and "ban on road oiling," with annual cost estimates of \$16.3 and \$7.4 million, respectively (56 FR 48068-69).

Costs of the land disposal ban (listing of disposed oil) are relatively low for two reasons. First, relatively little used oil is formally "land managed" in recognized landfills, and it was assumed in estimating costs that both household DIY oil and non-household oil illegally dumped by either small or large quantity generators would not be controlled under the subtitle C management requirement. In addition, in the September 1991 cost analysis, it was

assumed as a best estimate that 75 percent of the land-disposed oil subject to the listing would be diverted to recycling at relatively low cost, with only the remaining 25 percent being managed at higher cost in a cement kiln or equivalent Subtitle C technology.

For road oiling, it was similarly assumed that the oil could be readily diverted to other recycling at virtually no additional cost (the cost of the ban being attributable to the higher cost of substitute dust suppression agents such as calcium chloride).

Recycling would have been promoted somewhat by the listing of used oil destined for disposal because disposal would be much more costly than recycling options. On the other hand, there would also be a perverse incentive towards illegal dumping and other improper land disposal outlets as land disposal became more costly.

#### IX. Regulatory Flexibility Act

The agency certifies that, within the scope of the Regulatory Flexibility Act,

today's decision will not have a significant impact on a substantial number of small entities. The regulation imposes no new regulatory or economic requirements on small business.

#### X. Paperwork Reduction Act

This notice contains no information collection requirements, and therefore imposes no new paperwork burden.

#### List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: May 1, 1992.

F. Henry Habicht, II,  
*Deputy Administrator.*

For the reasons set forth in the preamble, title 40 part 261 of the Code of Federal Regulations is amended as follows:

#### PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 and 6922.

3. Section 261.4 is amended by adding paragraph (b)(15) to read as follows:

#### § 261.4 Exclusions

\* \* \* \* \*

(b) \* \* \*

(15) Non-terne plated used oil filters that are not mixed with waste listed in subpart C of this part if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method which will remove used oil.

\* \* \* \* \*

[FR Doc. 92-11385 Filed 5-19-92; 8:45 am]

BILLING CODE 6560-50-M

# federal register

---

Wednesday  
May 20, 1992

---

## Part IV

### Department of Commerce

---

Patent and Trademark Office

---

37 CFR Parts 1 and 2  
Revision of Patent and Trademark Fees;  
Proposed Rule

## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## 37 CFR Parts 1 and 2

[Docket No. 920401-2101]

RIN 0651-AA54

## Revision of Patent and Trademark Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Patent and Trademark Office (PTO) proposes to amend the rules of practice in patent and trademark cases, parts 1 and 2 of title 37, Code of Federal Regulations, and to adjust certain patent and trademark fee amounts to reflect fluctuations in the Consumer Price Index (CPI) and to recover costs of operations. The PTO also proposes to establish fees for a Patent and Trademark Depository Library (PTDL) to access APS-Text, and for dividing a trademark application.

**DATES:** Written comments must be submitted on or before June 24, 1992; a public hearing will be held on June 24, 1992, at 9 a.m. Requests to present oral testimony should be received on or before June 23, 1992.

**ADDRESSES:** Address written comments and requests to present oral testimony to the Commissioner of Patents and Trademarks, Washington, D.C. 20231. Attention: Frances Michalkewicz, suite 507, Crystal Park 1, or by FAX to (703) 305-8438. A hearing will be held in suite 912 on the 9th floor of Crystal Park 2, located at 2121 Crystal Drive, Arlington, Virginia. Written comments and a transcript of the hearing will be available for public inspection in suite 507 of Crystal Park 1, at 2011 Crystal Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Frances Michalkewicz by telephone at (703) 305-8510 or by mail marked to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** The proposed changes to the rules are designed to adjust the Patent and Trademark Office fees in accordance with the applicable provisions of title 35, United States Code, section 31 of the Trademark (Lanham) Act of 1946 (15 U.S.C. 1113), and section 10101 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), all as amended by the Patent and Trademark Office Authorization Act of 1991 (Pub. L. 102-204).

## Background

## Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41 and 35 U.S.C. 376. A 50 percent reduction in the fees paid under 35 U.S.C. 41(a) and 41(b) by independent inventors, small business concerns, and nonprofit organizations who meet prescribed definitions is authorized by 35 U.S.C. 41(h).

Subsection 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41 (a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the Consumer Price Index (CPI) over the previous 12 months.

Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) provides that there shall be a surcharge on all fees established under 35 U.S.C. 41(a) and 41(b) to collect \$99,000,000 in fiscal year 1993.

Subsection 41(d) of title 35, United States Code, authorizes the Commissioner to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, and for each black and white copy of a patent.

Section 376 of title 35, United States Code, authorizes the Commissioner to set fees for patent applications filed under the Patent Cooperation Treaty.

Subsection 41(g) of title 35, United States Code, provides that new fee amounts established by the Commissioner under section 41 may take effect thirty days after notice in the *Federal Register* and the *Official Gazette of the Patent and Trademark Office*.

Subsection 41(i)(3) of title 35, United States Code, authorizes the Commissioner to establish reasonable fees for access to automated search systems of the Patent and Trademark Office.

Section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), authorizes the Commissioner to establish fees for the filing and processing of an application for the registration of a trademark or other mark, and for all other services and materials relating to trademarks and other marks.

Section 31(a) of the Trademark (Lanham) Act of 1946 (15 U.S.C. 1113(a)), as amended, allows trademark fees to be adjusted once each year to reflect, in the aggregate, any fluctuations during the preceding 12 months in the CPI.

Section 31 also allows new fee amounts to take effect thirty days after

notice in the *Federal Register* and the *Official Gazette of the Patent and Trademark Office*.

## Recovery Level Determinations

The proposed fees would recover \$486,000,000 in fiscal year 1993, as proposed in the Administration's budget request to the Congress.

Fees established by 35 U.S.C. 41(a) and 41(b) ("patent statutory fees") may be adjusted on October 1, 1992, to reflect any fluctuations occurring during the previous 12 months in the CPI. The Office of Management and Budget (OMB) has determined that the PTO should use Consumer Price Index-U to adjust patent statutory fees. The Department of Labor's Consumer Price Index is made public approximately 21 days after the end of the month being calculated. The patent statutory fees are expected to be adjusted by 3.3 percent, which reflects the Administration's projected Consumer Price Index-U for the 12-month period beginning October 1, 1991.

The patent statutory fees established by rule (56 FR 65142) on December 13, 1991, are proposed to be adjusted by the projected changes in the CPI of 3.3 percent. Amounts were rounded by applying standard arithmetic rules so that the amounts rounded would be convenient to the user. Fees of \$100 or more were rounded to the nearest \$10. Fees between \$2 and \$99 were rounded to the nearest even number so that the comparable small entity fee would be a whole number.

Patent statutory fees are also subject to the provisions of the Omnibus Budget Reconciliation Act of 1990, as amended by Public Law 102-204. These provisions require that \$99,000,000 be collected in fiscal year 1993 for deficit reduction purposes in lieu of seeking general taxpayer funds from the U.S. Treasury. The \$99,000,000 is deposited in a special account in the U.S. Treasury, and is reserved exclusively for use by the PTO, and is made available to the PTO through the appropriation process.

In establishing the proposed 1993 patent statutory fees, the PTO applied the projected Consumer Price Index-U rate of 3.3 percent to the 1992 fees. The proposed 1993 fees were rounded as explained above.

Of the total amount of section 41 (a) and (b) income expected to be collected in 1993, \$99 million must be deposited to the Fee Surcharge Fund.

Non-statutory patent service fees established under section 41(d) of title 35, United States Code, as amended, and PCT processing fees would be adjusted to recover planned costs in 1993, except

in the case of three patent service fees set by statute. The three fees are assignment recording fees, printed patent copy fees and photocopy charge fees.

Trademark fees may be adjusted in fiscal year 1993, in the aggregate, to reflect changes over the prior 12 months in the CPI. The OMB has determined that the PTO should use Consumer Price Index-U to adjust trademark fees, which is made public by the Department of Labor approximately 21 days after the end of the month being calculated. The trademark fees are expected to be adjusted, in the aggregate, by 3.3 percent, which reflects the Administration's projected Consumer Price Index-U for the 12-month period beginning October 1, 1991.

The PTO proposes to adjust only two trademark fees in 1993: For filing an application (§ 2.6(a)(1)) and for assignment records, abstract of title and certification (§ 2.6(b)(7)). One new fee is proposed for dividing an application (§ 2.6(a)(19)). No other fees are proposed for change in 1993. The net effect of the proposed changes is to increase trademark fees, in the aggregate, by 3.3 percent, the expected Consumer price Index-U rate for the prior 12-month period.

#### *Workload Projections*

Determination of workloads varies by fee. Principal workload projection techniques are as follows:

Patent and trademark application workloads are projected from statistical regression models using recent application trends. Patent issues are projected from an in-house patent production model and reflect examiner production achievements and goals. Patent maintenance fee workloads utilize patents issued 3.5, 7.5 and 11.5 years prior to payment and assume payment rates of 75 percent, 50 percent and 25 percent, respectively. Trademark affidavit projections are based on filing trends for marks registered five to six years prior to 1933. Trademark renewal projections are based on marks registered 10 years prior to 1993. Service fee workloads follow linear trends from prior years activities.

#### *Public Access to Automated Systems*

The fiscal year 1993 budget for the PTO does not include any general taxpayer funds, but requires that all of the expenses of the PTO be recovered through user fees. The expenses include the cost of providing APS-Text service to the Patent and Trademark Depository Libraries (PTDLs). Since September 1, 1991, the PTO has provided, without charge, access to APS-Text to 14 PTDLs

as a pilot test program. Continuation of this service to the PTDLs, without direct charge to the PTDLs, would require support from all customers who pay for products and services from the PTO.

Therefore, the PTO is proposing the establishment of a fee to recover the cost of providing APS-Text service to the PTDLs. The fee for accessing APS-Text at the PTDLs is calculated using the same marginal cost methodology used in December 1989 to determine the fee for access to similar APS-Text services available in the Patent Search Room.

**General Procedures:** Any fee amount that is paid on or after October 1, 1992, would be subject to the new fees then in effect. For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing, where authorized under 37 CFR 1.8, will be considered to be the date of receipt in the PTO. A "Certificate of Mailing under Section 1.8" is not "proper" for items which are specifically excluded from the provisions of § 1.8. Section 1.8 should be consulted for those items for which a Certificate of Mailing is not "proper." Such items include, inter alia, the filing of national and international applications for patents and the filing of trademark applications. However, the provisions of 37 CFR 1.10 relating to filing papers and fees with an "Express Mail" certificate do apply to any paper or fee (including patent and trademark applications) to be filed in the PTO. If an application or fee is filed by "Express Mail" with a proper certificate dated on or after the effective date of the rules, as amended, the amount of the fee to be paid would be the fee established by the amended rules.

A comparison of existing and proposed fee amounts is included as an appendix to this proposed notice.

In order to ensure clarity in the implementation of the fee proposals, a discussion of specific sections is set forth below.

#### **Discussion of Specific Rules**

##### *37 CFR 1.16 National application filing fees.*

Section 1.16, paragraphs (a)-(d) and (f)-(j), if revised as proposed, would adjust patent application filing fees to reflect fluctuations in the CPI.

##### *37 CFR 1.17 Patent application processing fees.*

Section 1.17, paragraphs (a)-(g), and (m), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

Section 1.17, paragraphs (j), (n) and (o), if revised as proposed, would adjust fees established therein to recover costs.

##### *37 CFR 1.18 Patent issue fees.*

Section 1.18, paragraphs (a)-(c), if revised as proposed, would adjust the issue fee for each original or reissue patent to reflect fluctuations in the CPI.

##### *37 CFR 1.19 Document supply fees.*

Section 1.19, subparagraph (b)(4) and paragraphs (f) and (h), if revised as proposed, would adjust fees established therein to recover costs.

##### *37 CFR 1.20 Post-issuance fees.*

Section 1.20, paragraphs (a), (c), and (i), if revised as proposed, would adjust fees established therein to recover costs.

Section 1.20, paragraphs (e)-(g), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

##### *37 CFR 1.21 Miscellaneous fees and charges.*

Section 1.21, subparagraphs (a)(1), (a)(5), (a)(6), (b)(2), (b)(3), and paragraphs (e) and (i), if revised as proposed, would adjust fees established therein to recover costs.

Section 1.21, paragraphs (p), if added as proposed, would establish the fee for providing to a Patent and Trademark Depository Library access to the Automated Patent System full-text search capability. The proposed \$40.00 fee would recover the PTO's estimated marginal cost of providing the service to the libraries. The PTO is currently exploring the option of using a contract service bureau to provide access. At this time, the proposed fee for that option, based on preliminary analysis, is approximately \$70.00. A final decision on which option the PTO will implement will be announced in the final rule.

##### *37 CFR 1.26 Refunds*

Section 1.26, paragraph (a), if revised as proposed, would increase the minimum amount of a refund, without a request, from one dollar to twenty-five dollars in accordance with the Treasury Fiscal Manual, Volume One, Part Six, Chapter 3000.

Section 1.26, paragraph (c), if revised as proposed, would provide for a refund of \$1,690 if the Commissioner decides not to institute reexamination proceedings. The \$1,690 refund would apply to those instances where the proposed reexamination fee of \$2,250 under 37 CFR 1.20(c) was paid. The current \$1,635 refund would be made in those cases where the current \$2,180 reexamination fee was paid.

**37 CFR 1.445 International application filing, processing, and search fees.**

Section 1.445, if revised as proposed, would adjust the fees authorized by 35 U.S.C. 376 to recover costs.

**37 CFR 1.482 International preliminary examination fees.**

Section 1.482, subparagraphs (a)(1), and (a)(2)(ii), if revised as proposed, would adjust the fees authorized by 35 U.S.C. 376 to recover costs.

**37 CFR 1.492 National stage fees.**

Section 1.492, subparagraphs (a)(1)-(a)(3), and paragraph (b)-(d), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

Section 1.492, subparagraph (a)(5), if revised as proposed, would adjust the fee authorized by 35 U.S.C. 376 to recover costs.

**37 CFR 2.6 Trademark fees.**

Section 2.6, subparagraphs (a)(1) and (b)(7), if revised as proposed, would adjust the fees authorized by the Trademark (Lanham) Act of 1946 to reflect fluctuations in the CPI.

New section 2.6(a)(19), if added as proposed, would establish a fee for dividing a trademark application in accordance with 37 CFR 2.87.

**37 CFR 2.87**

Section 2.87, if revised as proposed, would establish a fee for dividing an application into two or more applications. Currently, no fee is charged for the physical act of dividing an application. Experience to date reveals that the creation of so-called "divisional" applications is labor intensive. For that reason, and because the creation of a divisional application is a significant benefit to an applicant, the PTO proposes to charge a fee for dividing an application. The fee would be due for each new file wrapper created.

Section 2.87, if revised as proposed, will also divide paragraph (a) into paragraphs (a) and (b), and renumber paragraphs (b) and (c) as (c) and (d).

**Other Considerations**

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354); Executive Orders 12291 and 12612; and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. There are no information collection requirements relating to patent and trademark fee rules.

The PTO has determined that this proposed notice has no Federalism implications affecting the relationship

between the National Government and the States as outlined in Executive Order 12612.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule change would not have a significant adverse impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354). The proposed rule change increases fees by changes in the CPI as authorized by 35 U.S.C. 41(f). Further, the principal impact of the major patent fees has already been taken into account in 35 U.S.C. 41(h), which provides small entities with a 50-percent reduction in the major patent fees.

The PTO has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy would be less than \$100 million. There would be no major increase in costs or prices for consumers; individual industries; Federal, state, or local government agencies; or geographic regions. There would be no significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**List of Subjects****37 CFR Part 1**

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

**37 CFR Part 2**

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble, the PTO is amending title 37 of the Code of Federal Regulations, Chapter I, as set forth below.

**PART 1—RULES OF PRACTICE IN PATENT CASES**

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.16 is proposed to be amended by revising paragraphs (a)-(d), the parenthetical following paragraph (d), paragraphs (f)-(j) and the note at the end of the section to read as follows:

**§ 1.16 National application filing fees.**

(a) Basic fee for filing each application for an original patent, except design or plant cases:

By a small entity (§ 1.9(f))..... \$355.00  
By other than a small entity.....\$710.00

(b) In addition to the basic filing fee in an original application, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.9(f))..... \$37.00  
By other than a small entity.....\$74.00

(c) In addition to the basic filing fee in an original application for filing or later presentation of each claim (whether independent or dependent) in excess of 20.

(Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity § 1.9(f).....\$11.00  
By other than a small entity.....\$22.00

(d) In addition to the basic filing fee in an original application, if the application contains, or is amended to contain, a multiple dependent claim(s) per application:

By a small entity (§ 1.9(f))..... \$115.00  
By other than a small entity.....\$230.00

(If the additional fees required by paragraphs (b), (c), and (d) of this section are not paid on filing or on later presentation of the claims for which the additional fees are due, they must be paid or the claims canceled by amendment prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

(f) For filing each design application:

By a small entity (§ 1.9(f))..... \$145.00  
By other than a small entity.....\$290.00

(g) Basic fee for filing each plant application:

By a small entity (§ 1.9(f))..... \$240.00  
By other than a small entity.....\$480.00

(h) Basic Fee for filing each reissue application:

By a small entity (§ 1.9(f))..... \$355.00  
By other than a small entity.....\$710.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:

By a small entity (§ 1.9(f))..... \$37.00  
By other than a small entity.....\$74.00

(j) In addition to the basic filing fee in a reissue application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 and also in excess of the number of claims in the original patent.

(Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity (§ 1.9(f))..... \$11.00  
By other than a small entity.....\$22.00

(Note: See § 1.445, 1.482 and 1.492 for international application filing and processing fees.)

3. Section 1.17 is proposed to be amended by revising paragraphs (a)-(g), (j), (m)-(o) to read as follows:



**§ 1.17 Patent application processing fees.**

- (a) Extension fee for response within first month pursuant to § 1.136(a):  
By a small entity (§ 1.9(f))..... \$55.00  
By other than a small entity..... \$110.00
- (b) Extension fee for response within second month pursuant to § 1.136(a):  
By a small entity (§ 1.9(f))..... \$180.00  
By other than a small entity..... \$360.00
- (c) Extension fee for response within third month pursuant to § 1.136(a):  
By a small entity (§ 1.9(f))..... \$420.00  
By other than a small entity..... \$840.00
- (d) Extension fee for response within fourth month pursuant to § 1.136(a):  
By a small entity (§ 1.9(f))..... \$660.00  
By other than a small entity..... \$1,320.00
- (e) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:  
By a small entity (§ 1.9(f))..... \$135.00  
By other than a small entity..... \$270.00
- (f) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:  
By a small entity (§ 1.9(f))..... \$135.00  
By other than a small entity..... \$270.00
- (g) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in appeal under 35 U.S.C. 134:  
By a small entity (§ 1.9(f))..... \$115.00  
By other than a small entity..... \$230.00

- (j) For filing a petition to institute a public use proceeding under § 1.292..... \$1,350.00

**(m) For filing a petition:**

- (1) For revival of an unintentionally abandoned application, or
- (2) For the unintentionally delayed payment of the fee for issuing a patent:  
By a small entity (§ 1.9(f))..... \$585.00  
By other than a small entity..... \$1,170.00
- (n) For requesting publication of a statutory invention registration prior to the mailing of the first examiner's action pursuant to § 1.104—\$820.00 reduced by the amount of the application basic filing fee paid
- (o) For requesting publication of a statutory invention registration after the mailing of the first examiner's action pursuant to § 1.104—\$1,640.00 reduced by the amount of the application basic filing fee paid

4. Section 1.18 is proposed to be amended by revising paragraphs (a)–(c) to read as follows:

**§ 1.18 Patent issue fees.**

- (a) Issue fee for issuing each original or reissue patent, except a design or plant patent:  
By a small entity (§ 1.9(f))..... \$585.00  
By other than a small entity..... \$1,170.00
- (b) Issue fee for issuing a design patent:  
By a small entity (§ 1.9(f))..... \$205.00  
By other than a small entity..... \$410.00
- (c) Issue fee for issuing a plant patent:  
By a small entity (§ 1.9(f))..... \$295.00  
By other than a small entity..... \$590.00

5. Section 1.19 is proposed to be amended by revising paragraph (b)(4)

and paragraphs (f) and (h) to read as follows:

**§ 1.19 Document supply fees.**

- (b) \* \* \*
- (4) For assignment records, abstract of title and certification, per patent..... \$25.00
- (f) Uncertified copy of a non-United States patent document, per document..... \$25.00
- (h) Additional filing receipts; duplicate; or corrected due to applicant error..... \$25.00

6. Section 1.20 is proposed to be amended by revising paragraphs (a), (c), (e)–(g) and (i) to read as follows:

**§ 1.20 Post issuance fees.**

- (a) For providing a certificate of correction for applicant's mistake (§ 1.323)..... \$100.00
- (c) For filing a request for reexamination (§ 1.510(a))..... \$2,250.00
- (e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant  
By a small entity (§ 1.9(f))..... \$465.00  
By other than a small entity..... \$930.00
- (f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant  
By a small entity (§ 1.9(f))..... \$935.00  
By other than a small entity..... \$1,870.00
- (g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant  
By a small entity (§ 1.9(f))..... \$1,410.00  
By other than a small entity..... \$2,820.00
- (i) Surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee where the delay in payment is shown to the satisfaction of the Commissioner to have been unavoidable..... \$620.00

7. Section 1.21 is proposed to be amended by revising paragraphs (a)(1), (a)(5), (a)(6), (b)(2), (b)(3), (e), and (i) and adding paragraph (p) to read as follows:

**§ 1.21 Miscellaneous fees and charges.**

- (a) \* \* \*
- (1) For admission to examination for registration to practice, fee payable

upon application..... \$300.00

- (5) For review of a decision of the Director of Enrollment and Discipline under § 10.2(c)..... \$130.00
- (6) For requesting regrading of an examination under § 10.7(c)..... \$130.00

- (b) \* \* \*
- (2) Service charge for each month when the balance at the end of the month is below \$1,000..... \$25.00.
- (3) Service charge for each month when the balance at the end of the month is below \$300 for restricted subscription deposit accounts used exclusively for subscription order of patent copies as issued..... \$25.00

- (e) International type search reports: For preparing an international type search report of an international type search made at the time of the first action on the merits in a national patent application..... \$40.00

- (f) Publication in Official Gazette: For publication in the Official Gazette of a notice of the availability of an application or a patent for licensing or sale, each application or patent..... \$25.00

- (p) Library service: marginal cost for providing to a Patent and Trademark Depository Library access to Automated Patent System (APS) full-text search capability, per hour of terminal session time, including print time... \$40.00–\$70.00

8. Section 1.26 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

**§ 1.26 Refunds.**

- (a) Money paid in excess will be refunded, but a mere change of purpose after the payment of money, as when a party desires to withdraw an application, an appeal, or a request for oral hearing, will not entitle a party to demand such a return. Amounts of twenty-five dollars or less will not be returned unless specifically requested within a reasonable time, nor will the payer be notified of such amount; amounts over twenty-five dollars may be returned by check, or if requested, by credit to a deposit account.

- (c) If the Commissioner decides not to institute a reexamination proceeding, a refund of \$1,690 will be made to the requester of the proceeding. Reexamination requesters should indicate whether any refund should be made by check or by credit to a deposit account.

9. Section 1.445 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 1.445 International application filing, processing and search fees.**

- (a) The following fees and charges for international applications are established by the Commissioner under the authority of 35 U.S.C. 376:
  - (1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14).....\$200.00
  - (2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16) where:
    - (i) No corresponding prior United States national application with basic filing fee has been filed.....\$620.00
    - (ii) A corresponding prior United States national application with basic filing fee has been filed.....\$410.00
  - (3) A supplemental search fee when required, per additional invention  
\$170.00

10. Section 1.482 is proposed to be amended by revising paragraphs (a) introductory test, (a)(i), and (a)(2)(ii) to read as follows:

**§ 1.482 International preliminary examination fees.**

- (a) The following fees and charges for international preliminary examination are established by the Commissioner under the authority of 35 U.S.C. 376:
  - (1) A preliminary examination fee is due on filing the Demand:
    - (i) Where an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority, a preliminary examination fee of.....\$450.00
    - (ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office, a preliminary examination fee of.....\$670.00
  - (2) \* \* \*
  - (ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office.....\$230.00

11. Section 1.492 is proposed to be amended by revising paragraphs (a)(1)-(a)(3), (a)(5), paragraphs (b)-(d), and the parenthetical following paragraph (d) to read as follows:

**§ 1.492 National stage fees.**

- (a) \* \* \*
- (1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

- By a small entity (§ 1.9(f)).....\$320.00
- By other than a small entity.....\$640.00
- (2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:
  - By a small entity (§ 1.9(f)).....\$355.00
  - By other than a small entity.....\$710.00
- (3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:
  - By a small entity (§ 1.9(f)).....\$475.00
  - By other than a small entity.....\$950.00

- (5) Where a search report on the international application has been prepared by the European Patent Office or the Japanese Patent Office:
    - By a small entity (§ 1.9(f)).....\$415.00
    - By other than a small entity.....\$830.00
  - (b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:
    - By a small entity (§ 1.9(f)).....\$37.00
    - By other than a small entity.....\$74.00
  - (c) In addition to the basic national fee, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.):
    - By a small entity (§ 1.9(f)).....\$11.00
    - By other than a small entity.....\$22.00
  - (d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple for dependent claim(s), per application:
    - By a small entity (§ 1.9(f)).....\$115.00
    - By other than a small entity.....\$230.00
- (If the additional fees required by paragraphs (b), (c), and (d) are not paid on presentation of the claims for which the additional fees are due, they must be paid or the claims cancelled by amendment prior to the expiration of the time period set for response by the Office in any notice of any of fee deficiency)

**Part 2—Rules of Practice in Trademark Cases**

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.6 is proposed to be amended by revising paragraphs (a)(1) and (b)(7) and adding paragraph (a)(19) to read as follows:

**§ 2.6 Trademark fees.**

- (a) Trademark process fees.
  - (1) For filing an application, per class.....\$210.00

- \* \* \* \* \*
- (19) Dividing an application, per new application created.....\$100.00
- (b) Trademark services fees.
  - \* \* \* \* \*
  - (7) For assignment records, abstract of title and certification, per registration.....\$25.00
- \* \* \* \* \*

3. Section 2.87 is proposed to be revised to read as follows:

**§ 2.87 Dividing an application.**

(a) An application may be physically divided into two or more separate applications upon the payment of a fee for each new application created and submission by the applicant of a request in accordance with paragraph (d) of this section.

(b) In the case of a request to divide out one or more entire classes from an application, only the fee under paragraph (a) of this section will be required. However, in the case of a request to divide out some, but not all, of the goods or services in a class, an application filing fee for each new separate application to be created by the division must be submitted, together with the fee under paragraph (a) of this section. Any outstanding time period for action by the applicant in the original application at the time of the division will be applicable to each new separate application created by the division.

(c) A request to divide an application may be filed at any time between the filing of the application and the date the Trademark Examining Attorney approves the mark for publication or the date of expiration of the six-month response period after issuance of a final action; or during an opposition, upon motion granted by the Trademark Trial and Appeal Board. Additionally, a request to divide an application under section 1(b) of the Act may be filed with a statement of use under § 2.88 or at any time between the filing of a statement of use and the date the Trademark Examining Attorney approves the mark for registration or the date of expiration of the six-month response period after issuance of a final action.

(d) A request to divide an application should be made in a separate paper from any other amendment or response in the application. The title "Request to divide application." should appear at the top of the first page of the paper.

Dated: May 14, 1992.

Douglas B. Comer,  
Acting Assistant Secretary and Acting  
Commissioner of Patents and Trademarks.

US EPA ARCHIVE DOCUMENT

Note.—The following appendix will not appear in the Code of Federal Regulations.

## APPENDIX A—COMPARISON OF EXISTING AND PROPOSED FEE AMOUNTS

37 CFR section, final	Description	Dec 1991	Oct 1992
1.16(a)	Basic filing fee	\$680	\$710
1.16(a)	Basic filing fee (small entity)	345	355
1.16(b)	Independent claims	72	74
1.16(b)	Independent claims (small entity)	36	37
1.16(c)	Claims in excess of 20	20	22
1.16(c)	Claims in excess of 20 (small entity)	10	11
1.16(d)	Multiple dependent claims	220	230
1.16(d)	Multiple dependent claims (small entity)	110	115
1.16(e)	Surcharge—Late filing fee	130	130
1.16(e)	Surcharge—Late filing fee (small entity)	65	65
1.16(f)	Design filing fee	260	290
1.16(f)	Design filing fee (small entity)	140	145
1.16(g)	Plant filing fee	460	460
1.16(g)	Plant filing fee (small entity)	230	240
1.16(h)	Reissue filing fee	690	710
1.16(h)	Reissue filing fee (small entity)	345	355
1.16(i)	Reissue independent claims	72	74
1.16(i)	Reissue independent claims (small entity)	36	37
1.16(j)	Reissue claims in excess of 20	20	22
1.16(j)	Reissue claims in excess of 20 (small entity)	10	11
1.17(a)	Extension—first month	110	110
1.17(a)	Extension—first month (small entity)	55	55
1.17(b)	Extension—second month	350	360
1.17(b)	Extension—second month (small entity)	175	180
1.17(c)	Extension—third month	810	840
1.17(c)	Extension—third month (small entity)	405	420
1.17(d)	Extension—fourth month	1,280	1,320
1.17(d)	Extension—fourth month (small entity)	640	660
1.17(e)	Notice of appeal	250	270
1.17(e)	Notice of appeal (small entity)	130	135
1.17(f)	Filing a brief	250	270
1.17(f)	Filing a brief (small entity)	130	135
1.17(g)	Request for oral hearing	220	230
1.17(g)	Request for oral hearing (small entity)	110	115
1.17(h)	Petition—not all inventors	130	130
1.17(h)	Petition—correction of inventorship	130	130
1.17(h)	Petition—decision on questions	130	130
1.17(h)	Petition—suspend rules	130	130
1.17(h)	Petition—expedited license	130	130
1.17(h)	Petition—scope of license	130	130
1.17(h)	Petition—retroactive license	130	130
1.17(h)	Petition—refusing maintenance fee	130	130
1.17(h)	Petition—refusing maintenance fee—expired patent	130	130
1.17(h)	Petition—interference	130	130
1.17(h)	Petition—reconsider interference	130	130
1.17(h)	Petition—late filing of interference	130	130
1.20(b)	Petition—correction of inventorship	130	130
1.17(h)	Petition—refusal to publish SIR	130	130
1.17(i)(1)	Petition—for assignment	130	130
1.17(i)(1)	Petition—for application	130	130
1.17(i)(1)	Petition—late priority papers	130	130
1.17(i)(1)	Petition—suspend action	130	130
1.17(i)(1)	Petition—divisional reissues to issue separately	130	130
1.17(i)(1)	Petition—for interference agreement	130	130
1.17(i)(1)	Petition—amendment after issue	130	130
1.17(i)(1)	Petition—withdrawal after issue	130	130
1.17(i)(1)	Petition—defer issue	130	130
1.17(i)(1)	Petition—issue to assignee	130	130
1.17(i)(1)	Petition—accord a filing date under § 1.53	130	130
1.17(i)(1)	Petition—accord a filing date under § 1.60	130	130
1.17(i)(1)	Petition—accord a filing date under § 1.62	130	130
1.17(i)(2)	Petition—make application special	130	130
1.17(j)	Petition—public use proceeding	1,310	1,350
1.17(k)	Non-english specification	130	130
1.17(l)	Petition—revive abandoned appl	110	110
1.17(l)	Petition—revive abandoned appl (small entity)	55	55
1.17(m)	Petition—revive unintentionally abandoned appl	1,130	1,170
1.17(m)	Petition—revive unintentionally abandoned appl (small entity)	565	585
1.17(n)	SIR—prior to examiner's action	790	820
1.17(o)	SIR—after examiner's action	1,580	1,640

## APPENDIX A—COMPARISON OF EXISTING AND PROPOSED FEE AMOUNTS—Continued

37 CFR section, final	Description	Dec 1991	Oct 1992
1.17(p)	For submission of an information disclosure statement 1.97		200
1.18(a)	Issue fee	1,130	1,170
1.18(a)	Issue fee (small entity)	565	585
1.18(b)	Design issue fee	400	410
1.18(b)	Design issue fee (small entity)	200	205
1.18(c)	Plant issue fee	570	590
1.18(c)	Plant issue fee (small entity)	285	295
1.19(a)(1)(i)	Copy of patent	3	3
1.19(a)(1)(ii)	Patent copy—expedited local service	6	6
1.19(a)(1)(iii)	Patent copy ordered via EOS—expedited service	25	25
1.19(a)(2)	Plant patent copy	12	12
1.19(a)(3)(i)	Copy of utility patent or SIR in color	24	24
1.19(b)(1)(i)	Certified copy of patent application as filed	12	12
1.19(b)(1)(i)	Certified copy of patent application as filed, expedited	24	24
1.19(b)(2)	Cert or uncert copy of patent-related file wrapper/contents	150	150
1.19(b)(3)	Cert or uncert. copies of office records, per document	25	25
1.19(b)(4)	For assignment records, abstract of title and certification	20	25
1.19(c)	Library service	50	50
1.19(d)	List of patents in subclass	3	3
1.19(e)	Uncertified statement—status of maintenance fee payment	10	10
1.19(f)	Copy of Non-U.S. patent document	12	25
1.19(g)	Comparing and certifying copies, per document, per copy	25	25
1.19(h)	Duplicate or corrected filing receipt	20	25
1.20(a)	Certificate of correction	70	100
1.20(c)	Reexamination	2,180	2,250
1.20(d)	Statutory disclaimer	110	110
1.20(d)	Statutory disclaimer (small entity)	55	55
1.20(e)	Maintenance fee—3.5 years	900	930
1.20(e)	Maintenance fee—3.5 years (small entity)	450	465
1.20(f)	Maintenance fee—7.5 years	1,810	1,870
1.20(f)	Maintenance fee—7.5 years (small entity)	905	935
1.20(g)	Maintenance fee—11.5 years	2,730	2,820
1.20(g)	Maintenance fee—11.5 years (small entity)	1,365	1,410
1.20(h)	Surcharge—maintenance fee—6 months	130	130
1.20(h)	Surcharge—maintenance fee—6 months (small entity)	65	65
1.20(i)	Surcharge—maintenance after expiration	600	620
1.20(j)	Extension of term of patent	1,000	1,000
1.21(a)(1)	Admission to Examination	290	300
1.21(a)(2)	Registration to practice	100	100
1.21(a)(3)	Reinstatement to practice	15	15
1.21(a)(4)	Certificate of good standing	10	10
1.21(a)(4)	Certificate of good standing, suitable framing	20	20
1.21(a)(5)	Review of decision of director, OED	120	130
1.21(a)(6)	Regrading of examination	120	130
1.21(b)(1)	Establish deposit account	10	10
1.21(b)(2)	Service charge below minimum balance	20	25
1.21(b)(3)	Service charge below minimum balance	20	25
1.21(c)	Filing a disclosure document	10	10
1.21(d)	Box rental	50	50
1.21(e)	International type search report	35	40
1.21(g)	Self-service copy charge	25	25
1.21(h)	Recording patent property	40	40
1.21(i)	Publication in the OG	20	25
1.21(j)	Labor charges for services	30	30
1.21(k)	Unspecified other services	1	1
1.21(l)	Retaining abandoned application	130	130
1.21(m)	Processing returned checks	50	50
1.21(n)	Handling fee—incomplete application	130	130
1.21(o)	Terminal use APS-text	40	40
1.21(p)	Terminal use APS-text by the PTDL's		
1.24	Coupons for patent copies	3	3
1.296	Handling fee—withdrawal SIR	130	130
1.445(a)(1)	Transmittal fee	190	200
1.445(a)(2)(i)	PCT search fee—no U.S. application	600	620
1.445(a)(2)(ii)	PCT search fee—prior U.S. application	400	410
1.445(a)(3)	Supplemental search	160	170
1.482(a)(1)(i)	Preliminary exam fee	440	450
1.482(a)(1)(ii)	Preliminary exam fee	650	670
1.482(a)(2)(i)	Additional invention	140	140
1.482(a)(2)(ii)	Additional invention	220	230
1.492(a)(1)	Preliminary examining authority	620	640
1.492(a)(1)	Preliminary examining authority (small entity)	310	320
1.492(a)(2)	Searching authority	690	710
1.492(a)(2)	Searching authority (small entity)	345	355
1.492(a)(3)	PTO not ISA nor IPEA	920	950
1.492(a)(3)	PTO not ISA nor IPEA (small entity)	460	475
1.492(a)(4)	Claims—IPEA	90	90
1.492(a)(4)	Claims—IPEA (small entity)	45	45
1.492(a)(5)	Filing with EPO/JPO search report	800	830

## APPENDIX A—COMPARISON OF EXISTING AND PROPOSED FEE AMOUNTS—Continued

37 CFR section, final	Description	Dec 1991	Oct 1992
1.492(a)(5)	Filing with EPO/JPO search report (small entity)	400	415
1.492(b)	Claims—extra individual (over 3)	72	74
1.492(b)	Claims—extra individual (over 3) (small entity)	36	37
1.492(c)	Claims—extra total (over 20)	20	22
1.492(c)	Claims—extra total (over 20) (small entity)	10	11
1.492(d)	Claims—multiple dependents	220	230
1.492(d)	Claims—multiple dependents (small entity)	110	115
1.492(e)	Surcharge	130	130
1.492(e)	Surcharge (small entity)	65	65
1.492(f)	English translation—after 20 months	130	130
2.6(a)(1)	Application for registration, per class	200	210
2.6(a)(2)	Amendment to allege use, per class	100	100
2.6(a)(3)	Statement of use, per class	100	100
2.6(a)(4)	Extension for filing statement of use, per class	100	100
2.6(a)(5)	Application for renewal, per class	300	300
2.6(a)(6)	Surcharge for late renewal, per class	100	100
2.6(a)(7)	Publication of mark under § 12(c), per class	100	100
2.6(a)(8)	Issuing new certificate of registration	100	100
2.6(a)(9)	Certificate of correction of registrant's error	100	100
2.6(a)(10)	Filing disclaimer to registration	100	100
2.6(a)(11)	Filing amendment to registration	100	100
2.6(a)(12)	Filing affidavit under section 8, per class	100	100
2.6(a)(13)	Filing affidavit under section 15, per class	100	100
2.6(a)(14)	Filing affidavit under sections 8 and 15, per class	200	200
2.6(a)(15)	Petitions to the commissioner	100	100
2.6(a)(16)	Petition to cancel, per class	200	200
2.6(a)(17)	Notice of opposition, per class	200	200
2.6(a)(18)	Ex parte appeal to the TTAB, per class	100	100
2.6(a)(19)	Dividing an application, per new application created		100
2.6(b)(1)(i)	Copy of registered mark	3	3
2.6(b)(1)(ii)	Copy of registered mark, expedited	8	6
2.6(b)(1)(iii)	Copy of registered mark ordered Via EOS, expedited svc	25	25
2.6(b)(2)(i)	Certified copy of TM application as filed	12	12
2.6(b)(2)(ii)	Certified copy of TM application as filed, expedited	24	24
2.6(b)(3)	Cert. or uncert. copy of TM-related file wrapper/contents	50	50
2.6(b)(4)(i)	Cert. copy of registered mark, title or status	10	10
2.6(b)(4)(ii)	Cert. copy of registered mark, title or status—expedited	20	20
2.6(b)(5)	Cert. or uncertified copy of TM records	25	25
2.6(b)(6)	Recording trademark property, per mark, per document	40	40
2.6(b)(6)	For second and subsequent marks in same document	25	25
2.6(b)(7)	For assignment records, abstracts of title and certification	20	25
2.6(b)(8)	Terminal use T-SEARCH	40	40
2.6(b)(9)	Self-service copy charge	.25	.25
2.6(b)(10)	Labor charges for services	30	30
2.6(b)(11)	Unspecified other services	1	1
1.19(g)	Comparing and certifying copies, per document, per copy	25	25
1.24	Trademark coupons	3	3

<sup>1</sup> Actual Cost.

[FR Doc. 92-11779 Filed 5-19-92; 8:45 am]

BILLING CODE 3510-16-M

US EPA ARCHIVE DOCUMENT



# federal register

---

Wednesday  
May 20, 1992

---

**Part V**

**Department of  
Transportation**

---

**Coast Guard**

---

**46 CFR Part 67**

**Documentation of Vessels; Recording of  
Instruments; Fees; Proposed Rule**

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 46 CFR Part 67

(CGD 89-007a)

RIN 2115-AD29

## Documentation of Vessels; Recording of Instruments; Fees

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Omnibus Budget Reconciliation Act of 1990 requires the Coast Guard to establish user fees for services related to the documentation of vessels. The Coast Guard, therefore, proposes to establish user fees for commercial vessel documentation activities and to revise existing user fees for documentation of recreational vessels and other services to reflect the actual cost of services provided.

**DATES:** Comments must be received on or before July 20, 1992.

**ADDRESSES:** Comments must be in writing and may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 89-007a), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments, the telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander John J. Kelly, Chief, Plans and Analysis Branch, Planning Staff, Office of Marine Safety, Security and Environmental Protection, (202) 267-8923.

Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 89-007a) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of their

comment should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments. Direct responses to individual questions concerning the rulemaking will not be made. All significant comments will be addressed in supplemental rulemakings, if necessary, or in the final rule.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

**Drafting Information**

The principal persons involved in drafting this document are Commander Bruce Russell, Project Manager and C.G. Green, Project Counsel, Office of Chief Counsel.

**Background and Purpose**

On November 23, 1988, Congress enacted Public Law 100-710 (the "Codification Act") which amended and codified the Ship Mortgage Act of 1920 into 46 U.S.C. chapter 313; amended section 9 of the Shipping Act of 1916 (46 U.S.C. app. 808); and eliminated the prohibition against collecting fees for commercial vessel documentation services by amending 46 U.S.C. 2110. The Codification Act was the subject of technical corrections ("Corrections") when Congress enacted Public Law 101-225. Both the Codification Act and the Corrections introduced significant changes which are at variance with the former law and with existing Coast Guard regulations.

Most of the provisions of the Codification Act which require changes to the Coast Guard's regulations became effective on January 1, 1989. Certain of the changes were unequivocal and were implemented by an interim final rule published October 12, 1989 (54 FR 41835). The interim final rule was adopted as final in a rulemaking published January 10, 1991 (56 FR 960).

Other statutory revisions, some of which became effective on January 1, 1989, and others which became effective on January 1, 1990, required a more considered approach, including the opportunity for public comment. Because the intent of the Codification Act and the Corrections was to simplify and streamline the documentation process, the Coast Guard proposed on March 20, 1992 (57 FR 10544), to revise

all of its existing vessel documentation regulations. The purpose of the proposed revision was to clarify and simplify the rules and present them in a more orderly fashion.

In addition to the foregoing, the Omnibus Budget Reconciliation Act of 1990 ("Reconciliation Act") (Public Law 101-508) requires the Coast Guard to establish user fees for, among other things, Coast Guard services related to vessel documentation. The fees in this proposal are based on the revisions to part 67 proposed in the notice of proposed rulemaking described above. Accordingly, the sections referenced in this proposal correlate to the proposed reorganization of part 67 (57 FR 10544), and not to the current regulations.

Prior to the Codification Act, the only vessel documentation fees prescribed by the Coast Guard were fees for services related to recreational licenses (documentation fees for yachts or pleasure vessels eligible for documentation), and several fees prescribed by statute for documentation-related activities. Since 1981, annual Transportation Appropriation Acts have specifically prohibited the Coast Guard from conducting recreational vessel documentation activities, except to the extent that user fees are collected. Recreational vessel documentation fees were specifically authorized in 46 U.S.C. 12109(c). However, in repealing the general prohibition against user fees, the Codification Act eliminated the need for specific authority for yacht documentation fees and for statutes prescribing specific fees for filing and recording activities. Fees for filing and recording may now be prescribed under the Coast Guard's general user fee authority using the criteria in 31 U.S.C. 8701 to reflect current costs associated with filing and recording activities under 46 U.S.C. chapter 313. Further, the Reconciliation Act requires the establishment of fees for documentation of both commercial and recreational vessels using those same criteria.

The Coast Guard proposes to recover, to the extent of existing authority, current operating and overhead costs associated with vessel documentation and filing and recording activities under 46 U.S.C. chapters 121 and 313 by:

- (1) Revising existing user fees in 46 CFR subpart 67.43 to reflect current costs of providing services; and
- (2) Establishing commercial vessel documentation user fees which were previously prohibited.

The documentation of recreational vessels is done solely at the discretion of the owner and has been viewed by Congress and others as providing a



US EPA ARCHIVE DOCUMENT

privilege to the owner; specifically the qualification to be subject to a preferred mortgage. The existing recreational vessel documentation fees, previously authorized under 46 U.S.C. 12109, have not been revised since 1982. The Coast Guard proposes to update these fees to reflect current activity costs of providing vessel documentation services for these vessels. Although a fee will be charged for late renewals, for renewals at a port other than the vessel's port of record, or for renewals requiring mailing of the decal to a place other than the vessel owner's address of record, no fee will be charged for change of address of managing owner or for renewals at the vessel's port of record. The annual program costs of these latter activities, with the noted exceptions, have been subsumed as part of the overhead costs of the vessel documentation program to minimize administrative costs to the Coast Guard and to vessel owners.

The fees for certified copies of a recorded or filed instrument and copies of any other document are to be calculated in accordance with 49 CFR part 7—Public Availability of Information.

Adjustments of fees to accommodate changes in the cost of providing the services is provided for in 46 U.S.C. 2110. The Coast Guard intends to review the fees annually to determine if adjustments or changes to the fees are necessary. The Coast Guard will revise these proposed fees when costs change because of inflation, deflation, or changes in the way the services are provided. New statutes may require the Coast Guard to establish new regulations or make substantive amendments to existing regulations. When this occurs, the Coast Guard will propose appropriate user fees in each rulemaking.

Authority to recover "appropriate collection and enforcement costs associated with delinquent payments of the fees" is provided in 46 U.S.C. 2110. The Coast Guard may employ any government agency (Federal, State, or local) or private enterprise (e.g.,

collection agency) to recover delinquent fees or civil penalty charges. Since the Coast Guard proposes to collect fees prior to the services being provided, delinquent payments should not occur in most cases.

**Discussion of the Proposed Rules**

Proposed §§ 67.89 and 67.101 respectively, provide for a fee for application for a waiver of evidence of build and application for a waiver of production of passage of title in the form of a recordable bill of sale. Fees have been charged for recording bills of sale since at least 1920. The process required to study the relevant submissions and determine the propriety of granting a waiver is more time consuming and requires more discretion than reviewing and recording a bill of sale. It is therefore illogical to charge for filing bills of sale, but not for reviewing waivers.

Neither proposed § 67.117, which provides that a fee must be paid to apply for a change in vessel name, nor proposed § 67.133, which provides that a fee must be paid to apply for a wrecked vessel determination reflects a change from present practice.

Proposed § 67.141 provides that a fee must be paid for application for documentation, exchange or replacement of a Certificate of Documentation, or return of a vessel to documentation. Such fees are presently charged only for recreational vessels. The amount of the fee will vary depending on the endorsement sought.

Proposed § 67.183 includes a provision that an endorsement may be renewed at any port instead of only at the vessel's port of record. However, because the Coast Guard will incur additional costs for renewal at other than the port of record, the fee specified in subpart Y will be applicable when renewal is accomplished at a port other than the vessel's port of record or when the renewal decal is mailed to a place other than the managing owner's address of record. In addition, a new paragraph provides for a late renewal fee which is

applicable sixty days after the endorsement expires, provided the vessel has not been administratively removed from the list of actively documented vessels. Once the vessel has been removed from the list of active vessels, application must be made to return the vessel to documentation, and any fees which would normally apply to that transaction will apply.

Proposed § 67.171 does not require payment of a fee in order to have a vessel deleted from documentation, but does provide that a fee must be paid in order to obtain a certificate evidencing deletion from documentation.

Proposed § 67.175 provides that a fee must be paid to apply for a new vessel determination. This fee will apply whether a determination is sought that the vessel is new, or that the vessel is not new. At the present time a fee is charged only when the applicant seeks a determination that the vessel is new.

Proposed § 67.177 provides for a fee for application for a rebuild determination. Although there is no fee at the present time, such determinations are very time consuming, requiring a great deal of professional expertise. For that reason, rebuild determinations represent a significant cost to the government. The fee will be assessed each time the owner or the owner's representative makes a written request for a determination.

Proposed § 67.203 provides that an instrument will not be accepted for filing and recording if it is not accompanied by the applicable fee.

Proposed § 67.303 provides for a fee to obtain a copy of a vessel's Abstract of Title. The Coast Guard proposes to eliminate the fee presently charged for forwarding the Abstract of Title to another port upon application for change in home port (proposed to be called "port of record").

Proposed subpart Y contains the fees which would be charged for various vessel documentation transactions. Table 1 summarizes the fees and compares the proposed fees with the existing fees.

TABLE 1.—FEE SUMMARY AND COMPARISON

	Existing fee	Proposed fee all vessels
Application for initial basic documentation (includes all required initial submissions in support of application under 46 CFR 67.17-3, 67.17-5, 67.17-9, and 67.17-11).	\$100 (yachts) No fee (comm'l).....	\$133 plus endorsement fees.
Endorsements:		
Recreational.....	No fee.....	No fee.
Registry.....	No fee.....	No fee.
Fishery.....	No fee.....	\$12.
Great Lakes.....	No fee.....	\$29.
Coastwise.....	No fee.....	\$29.

TABLE 1.—FEE SUMMARY AND COMPARISON—Continued

	Existing fee	Proposed fee all vessels
NOTE: Where multiple endorsements are requested on the same application, only the highest single endorsement fee will be charged		
Renewal of the endorsement upon the Certificate of Documentation.	No fee	No fee.
NOTE: No fee will be prescribed for the annual endorsement renewal required by proposed § 67.163, provided the renewal is accomplished at the vessel's port of record, and the renewal decal is mailed to the managing owner's address of record. The program costs of renewals have been subsumed as part of the overhead and are, therefore, spread among all other fees. The decision to do this was based on an attempt to minimize administrative costs to the Coast Guard and vessel owners		
Renewal of the endorsement at other than the home port	No fee	\$5.
Mailing renewal decal to place other than managing owner's address of record.	No fee	\$5.
Late renewal of endorsement upon the certificate of documentation.	No fee	\$5.
Application for exchange of certificate of documentation (includes all changes at time of exchange in accordance with 46 CFR 67.23-3(a); (fee will be applied only once at time of exchange).	\$50 (yachts) change of vessel name \$100—all vessels.	\$84 plus fishery, coastwise, or Great Lakes endorsement fees.
Notification of address change of managing owner. (This notification is beneficial to the program and charging for it might lead to lessened compliance with the requirement for notification).	No fee	No fee.
Application for replacement of lost or mutilated documents. 46 CFR 67.23-7(a).	\$50 (yachts)	\$50.
Application for replacement of wrongfully withheld document. 46 CFR 67.23-7(a), 67.25-11(a).	No fee	No fee.
Application for approval of exchange of document covered by mortgage (includes all processing required by 46 CFR 67.25-9).	No fee	\$24.
Printing and recording:		
Bills of sale	\$20/100 wds	\$8/pg.
Mortgages	\$20/100 wds	\$4/pg.
Notice of claim of lien	No fee	\$8/pg.
Transfer of original build evidence or chain of title in recordable form.	No fee	\$15 each.
Certificates of deletion from documentation	No fee	\$15.
General Index (46 CFR 67.41-1)	\$20/100 wds	No fee.
Abstract of title not for record	\$20/100 wds	\$41.
Certificate of Ownership	\$1	To be deleted.
Notified copy of filed or recorded instrument	\$20/100 wds	IAW section 7.95 of title 49 CFR.
Copies of any other document	IAW section 7.95 of title 49 CFR	IAW section 7.95 of title 49 CFR.
Application for new vessel determination	\$200	\$166.
Application for rebuilt determination	No fee	\$450.
Application for wrecked vessel determination	\$200	\$555.
Application for certificate of compliance in accordance with 46 CFR part 68 (Bowaters).	No fee	\$55.
Stowage/tunnel mark	\$100	To be deleted.

US EPA ARCHIVE DOCUMENT

**Regulatory Evaluation**

This proposal is not major under Executive Order 12291, but because it concerns matters on which there is substantial public interest, it is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The following constitutes the draft regulatory evaluation for the rulemaking.

The Omnibus Reconciliation Act of 1990 requires the Coast Guard to collect user fees for services provided under subtitle II of title 46. These services include: Vessel documentation, vessel inspection, marine licensing, plan view and equipment approval, and reign vessel examinations. The bulk of this analysis will describe the vessel documentation fee structure and its cost impacts on industry and the public. Because the services performed under these regulations may impact the same

individuals or companies, it is necessary to briefly examine the cost of these regulations combined. Although precise final cost impacts await further study, the total amount to be collected for services provided under Subtitle II of title 46 U.S.C. is estimated to be less than \$45 million on an annual basis. This is well below the \$100 million threshold that would make this regulation a major regulation. The Coast Guard also finds that these regulations will not have a significant impact on inflation, any one industry, geographical region, or international trade.

Estimated annual costs of the user fees associated with this regulation are \$4,779,000 to the recreational boating community, and \$4,156,000 to the commercial vessel industry, totaling \$8,935,000. User fees are already in place for 60 percent of vessel documentation activities, including documentation of recreational vessels, new vessel determinations, wrecked vessel

determinations, and recording of bills of sale and mortgages.

Information on the number and type of discrete vessel documentation activities and the number of transactions per activity was provided by the program manager, vessel documentation officers, and Marine Safety Information System ("MSIS") data. The amount of time required to complete each transaction was estimated by vessel documentation officers and the program manager, based on the streamlined procedures set forth in a notice of proposed rulemaking on March 26, 1992 (57 FR 10544).

Program costs were computed using COMDTINST 7310.10, the Standard Rate Instruction. An average billable hourly rate was determined to be \$49.75 per hour, which includes costs attributable to the MSIS computer, which supports the vessel documentation program. The Coast Guard estimates MSIS costs to be

US EPA ARCHIVE DOCUMENT

\$1,578,000 per year. Total program costs are estimated to be \$8,935,000. User fee receipts for commercial vessel documentation will be based on that fraction of vessel documentation activities that are for commercial vessels. For a vessel that is primarily used for recreational purposes (greater than 50 percent), the bulk of the fee collections would be identified as for the documentation of a "yacht."

The cost of these regulations to a typical owner of a new commercial vessel will be approximately \$157-\$210. (See Table 5.) These fees are relatively insignificant costs when compared to overall commercial vessel costs. Moreover, when one considers the fact that the Coast Guard proposes no fee for the annual renewal of the endorsement, the proposed fees are much lower than the cost of registering and renewing license plates for commercial vehicles. A survey of several states shows that the license fee for a commercial vehicle ranges for a low of \$20.00 per year for a pick up truck in one state to several hundred dollars for a tractor trailer. When revenues are compared to vessel documentation costs, it should be noted that daily rental fees for commercial vessels range from several hundred to several thousand dollars.

Yacht owners who have vessels worth from tens of thousands to millions of dollars should be negligibly impacted by these increased fees. As in the case of the proposed commercial vessel fees, the proposed recreational vessel fees are in many cases significantly lower than the costs of state registration for personal automobiles and motor homes.

Table 1 compares the present fees and the proposed fees. Table 2 compares typical vessel documentation transactions in order to demonstrate the impact the proposed fees would have on the average vessel documentation transaction.

TABLE 2.—TYPICAL DOCUMENTATION COSTS

Recreational vessel	Existing fee	Proposed fee
<b>Initial Documentation</b>		
Basic document.....	\$100	\$133
Recreational endorsement.....		8
Bill of sale recording (1 pg).....	1	8
Mortgage recording (4 pg).....	16	16
Total.....	117	157
Basic document.....		133
Fishery endorsement.....		12
Recording 1 pg bill of sale.....	1	8
Recording 5 pg mortgage.....	24	20
Total.....	25	173

TABLE 2.—TYPICAL DOCUMENTATION COSTS—Continued

Recreational vessel	Existing fee	Proposed fee
Commercial document (coastwise/Great Lakes)		
Basic document.....		133
Coastwise or Great Lakes endorsement.....		29
Recording 1 pg bill of sale.....	1	8
Recording 10 pg mortgage.....	125	40
Total.....	126	210
<b>Exchange of Document</b>		
Recreational vessel—ownership and name change:		
Basic document.....	100	84
Recreational endorsement.....		( <sup>1</sup> )
Recording 1 pg bill of sale.....	1	8
Recording 4 pg mortgage.....	16	16
Total.....	117	108
Commercial vessel—Ownership and trade change:		
Basic document.....		84
Coastwise endorsement.....		29
Recording 1 pg bill of sale.....	1	8
Recording 10 pg mortgage.....	125	40
Total.....	126	161

<sup>1</sup> No fee.

The only new fees (Rebuilt and Wrecked Vessel Determination fees) which are more costly than the initial documentation fees apply to the commercial vessel industry and are relatively uncommon. Of the 215,000 vessels currently documented, an average of only 15 vessels annually will be required to pay the \$450 fee for a rebuilding determination. Rebuilding a vessel is often a major financial undertaking, costing tens of thousands to millions of dollars. The financial impact of the Rebuilt Vessel Determination fee on vessel owners will be minimal. A very small number of vessel owners, generally fewer than four per year, will have to pay the \$555 fee for a Wrecked Vessel Determination. The financial impact of this fee compared to the overall undertaking will be minimal.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C 632).

The proposed user fee regulations will apply to the following small entities: small businesses, individuals, nonprofit

organizations, and municipal governments currently owning documented vessels or seeking to document vessels in the future; brokers, attorneys, and law offices providing vessel documentation services; small shipbuilders building vessels which are subsequently documented; boat dealers selling vessels of at least 5 net tons in size; and lending institutions engaging in preferred mortgage financing.

The new user fees and changes in existing fees being proposed in this rulemaking reflect the cost to the Coast Guard of providing the related documentation services and, when compared to the cost or value of the vessel, are minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see "ADDRESSES") explaining why you think your business qualifies and in what way and to what degree this proposal will economically effect your business.

**Collection of Information**

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule which contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements.

This proposal contains no collection of information requirements.

**Federalism**

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposal has also been reviewed under the criteria of Executive Order 12778 and there is no preemptive effect to be given to these regulations.

**Environment**

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental

documentation. This proposal deals solely with user fees required in order to obtain privileges as vessels of the United States and to record title and encumbrance instruments. These regulations are administrative in nature and clearly have no environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

#### List of Subjects in 46 CFR Part 67

Fees, Incorporation by reference, Vessels.

For the reasons set out in the preamble, the Coast Guard proposes to amend proposed 46 CFR part 67 which was published on March 26, 1992 (57 FR 10550), as follows:

#### PART 67—DOCUMENTATION OF VESSELS

1. The authority citation for part 67 continues to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110; 46 U.S.C. App. 802, 809, 841a, 876, 883; 49 U.S.C. 222; 49 CFR 1.46.

2. New Subpart Y is added, to read as follows:

##### Subpart Y—Fees

- Sec.
- 67.500 Applicability.
- 67.501 Application for Certificate of Documentation.
- 67.503 Application for exchange or replacement of a Certificate of Documentation.
- 67.505 Application for return of vessel to documentation.
- 67.507 Application for replacement of lost or mutilated Certificate of Documentation.
- 67.509 Application for approval of exchange of Certificate of Documentation requiring mortgagee consent.
- 67.511 Application for trade endorsement(s).
- 67.513 Application for evidence of deletion from documentation.
- 67.515 Application for renewal at port other than port of record.
- 67.517 Application for late renewal.
- 67.519 Application for waivers.
- 67.521 Application for new vessel determination.
- 67.523 Application for wrecked vessel determination.
- 67.525 Application for determination of rebuilding.
- 67.527 Application for filing and recording bills of sale and instruments in the nature of a bill of sale.
- 67.529 Application for filing and recording mortgages and related instruments.
- 67.531 Application for filing and recording notices of claim of lien.
- 67.533 Application for Certificate of Compliance.
- 67.535 Issuance of Abstract of Title.

- Sec.
- 67.537 Copies of instruments and documents.
- 67.550 Fee summary table.

##### Subpart Y—Fees

###### § 67.500 Applicability.

(a) This subpart specifies fees for documentation services provided for vessels. Fees are summarized in Table 67.550.

(b) No separate fees are specified for the annual renewal of the endorsement upon the Certificate of Documentation, unless renewal is late or renewal is at a port other than the port of record.

(c) Application fees under this subpart are not refundable.

###### § 67.501 Application for Certificate of Documentation.

The application fee for an initial Certificate of Documentation in accordance with subpart K of this part is \$133.00. No additional charge will be made for a recreational or registry endorsement or both if part of the same application. If application is made for a coastwise, a Great Lakes, a coastwise Bowaters, or a fishery endorsement the applicable fee in § 67.511 will be charged in addition to the application fee. The application fee does not include the fee in § 67.527 for filing and recording any required bills of sale or instruments in the nature of a bill of sale, or the application fee in § 67.519 for waivers in accordance with §§ 67.89 or 67.101.

###### § 67.503 Application for exchange or replacement of a Certificate of Documentation.

(a) The application fee for exchange or the simultaneous exchange and replacement of a Certificate of Documentation in accordance with subpart K of this part is \$84.00. No additional charge will be made for a recreational or registry endorsement or both if part of the same application. If application is made for a coastwise, a Great Lakes, a coastwise Bowaters, or a fishery endorsement the applicable fee in § 67.511 will be charged in addition to the application fee. Only a single fee will be assessed when two or more reasons for exchange occur simultaneously.

- (b) This fee does not apply to:
- (1) Endorsement of a change in the owner's address;
  - (2) Exchange or replacement solely by reason of clerical error on the part of a documentation officer; or
  - (3) Deletion of a vessel from documentation.

###### § 67.505 Application for return of vessel to documentation.

The application fee for a return of a vessel to documentation after deletion in accordance with subpart K of this part is \$84.00. No additional charge will be made for a recreational or registry endorsement or both. If application is made for a fishery, coastwise, or Great Lakes endorsement, an additional fee will be required in accordance with § 67.511.

###### § 67.507 Application for replacement of lost or mutilated Certificate of Documentation.

The application fee for replacement of a lost or mutilated Certificate of Documentation in accordance with subpart K of this part is \$50.00. This fee does not apply to a replacement due to a wrongful withholding.

###### § 67.509 Application for approval of exchange of Certificate of Documentation requiring mortgagee consent.

The application fee for approval of exchange of a Certificate of Documentation in accordance with subpart K of this part is \$24.00.

###### § 67.511 Application for trade endorsement(s).

(a) *Coastwise or Great Lakes endorsement.* The application fee for a coastwise or a Great Lakes endorsement, or both, in accordance with subpart B of this part is \$29.00.

(b) *Coastwise Bowaters endorsement.* The application fee for a coastwise Bowaters endorsement in accordance with 46 CFR part 68 is \$29.00.

(c) *Fishery endorsement.* The application fee for a fishery endorsement in accordance with subpart B of this part is \$12.00. No fee will be charged for a fishery endorsement if it is requested as part of the same application for a coastwise, Great Lakes, or coastwise Bowaters endorsement.

###### § 67.513 Application for evidence of deletion from documentation.

The application fee for evidence of deletion from documentation in accordance with subpart L of this part is \$15.00.

###### § 67.515 Application for renewal at port other than port of record.

The application fee for renewal in accordance with subpart L of this part at a port other than the vessel's port of record is \$15.00.

###### § 67.517 Application for late renewal.

The application fee for a late renewal in accordance with subpart L of this part is \$5.00.

**§ 67.519 Application for waivers.**

The application fee for waiver of original build evidence in accordance with subpart F of this part, or for waiver of bill of sale eligible for filing and recording in accordance with subpart E of this part, is \$15.00. In cases where more than one waiver is required, each waiver application is subject to this fee.

**§ 67.521 Application for new vessel determination.**

The application fee for a new vessel determination in accordance with subpart M of this part is \$166.00.

**§ 67.523 Application for wrecked vessel determination.**

The application fee for a determination of whether a vessel is entitled to coastwise, Great Lakes, and fisheries privileges as a result of having been wrecked in waters adjacent to the United States and repaired in accordance with subpart J of this part is \$555.00. This application fee is in addition to the cost associated with the vessel appraisals.

**§ 67.525 Application of determination of rebuilding**

The application fee for a determination of whether a vessel has been rebuilt in accordance with subpart M of this part is \$450.00. This application fee will be assessed for each request submitted in writing by the vessel owner or the vessel owner's representative.

**§ 67.527 Application for filing and recording bills of sale of instruments in the nature of a bill of sale.**

The application fee for filing and recording bills of sale and instruments in the nature of a bill of sale in accordance with subpart P of this part is \$8.00 per page.

**§ 67.529 Application for filing and recording mortgages and related instruments.**

The application fee for filing and recording mortgages and relating instruments in accordance with subpart Q of this part is \$4.00 per page.

**§ 67.531 Application for filing and recording notices of claim of lien.**

The application fee for filing and recording notices of claim of lien in accordance with subpart R of this part is \$8.00 per page.

**§ 67.533 Application for Certification of Compliance.**

The application fee for a Certificate of Compliance to be issued in accordance with regulations set forth in 46 CFR part 68 is \$55.00.

**§ 67.535 Issuance of Abstract of Title.**

The issuance fee for the Abstract of Title in accordance with subpart T of this part is \$41.00.

**§ 67.537 Copies of instruments and documents.**

The fee for furnishing a copy of any instrument is calculated in accordance with 49 CFR 7.95.

**§ 67.550 Fee summary table.**

TABLE 67.550.—SUMMARY OF FEES

Activity	Reference	Fee
<b>Applications:</b>		
Initial certificate of documentation including registry or recreational endorsement or both.....	Subpart K.....	\$133
Exchange of certificate of documentation including registry or recreational endorsement or both.....	.....do.....	84
Return of vessel to documentation including registry or recreational endorsement or both.....	.....do.....	84
Replacement of lost or mutilated certificate of documentation.....	.....do.....	49
Approval of exchange of certificate of documentation requiring mortgagee consent.....	.....do.....	24
<b>Trade endorsement(s):</b>		
Coastwise endorsement.....	.....do.....	29
Coastwise Bowaters endorsement.....	46 CFR part 68.....	29
Great Lakes endorsement.....	Subpart B.....	19
Fishery endorsement.....	.....do.....	12
NOTE: When multiple endorsements are requested on the same application, only the single highest applicable endorsement fee will be charged, resulting in a maximum endorsement fee of \$29.00		
Evidence of deletion from documentation.....	Subpart L.....	15
Renewal at port other than port of record.....	Subpart L.....	5
Late renewal fee.....	.....do.....	5
<b>Waivers:</b>		
Original build evidence.....	Subpart F.....	15
Bill of sale eligible for filing and recording.....	Subpart E.....	15
<b>Miscellaneous applications:</b>		
Wrecked vessel determination.....	Subpart J.....	555
New vessel determination.....	Subpart M.....	166
Rebuild determination—preliminary or final.....	.....do.....	450
<b>Filing and recording:</b>		
Bills of sale and instruments in nature of bills of sale.....	Subpart P.....	18
Mortgages and related instruments.....	Subpart Q.....	14
Notice of claim of lien and related instruments.....	Subpart R.....	18
<b>Certificate of compliance:</b>		
Certificate of compliance.....	46 CFR part 68.....	55
<b>Miscellaneous:</b>		
Abstract of title.....	Subpart T.....	41
Copy of instrument or document.....		

Fees will be calculated in accordance with 49 CFR 7.95.

<sup>1</sup> Per page.

Dated: May 13, 1992.

J.W. Kime,  
*Admiral, U.S. Coast Guard, Commandant.*  
[FR Doc. 92-11801 Filed 5-19-92; 8:45 am]  
BILLING CODE 4910-14-M

US EPA ARCHIVE DOCUMENT

# Federal Register

---

Wednesday  
May 20, 1992

---

Part VI

## Department of the Interior

---

Bureau of Indian Affairs

---

Cheyenne River Sioux Tribe of South  
Dakota's Liquor Ordinance; Notice

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## Cheyenne River Sioux Tribe of South Dakota's Liquor Ordinance

May 14, 1992.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

**SUMMARY:** This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that the Cheyenne River Sioux Tribe of South Dakota's Liquor Ordinance No. 48 adopted on February 7, 1991, relating to the use and distribution of liquor was duly adopted by the Cheyenne River Sioux Tribe of South Dakota by Ordinance No. 48 (as amended February 7, 1991). The Ordinance provides for the regulation of possession, consumption and importation of alcohol into the area of the Cheyenne River Sioux of South Dakota and the surrounding Indian Country under the jurisdiction of the Cheyenne River Sioux. (See 18 U.S.C. 1151 and 1161).

**DATES:** This Ordinance is effective as of May 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street NW., MS 2612-MIB, Washington, DC 20240-4001; telephone (202) 208-4400, (FTS) 268-4400.

**SUPPLEMENTARY INFORMATION:** Ordinance No. 48, as amended February 7, 1991, reads as follows: The Cheyenne River Sioux Tribal Council, acting in accordance with the customary law and practice of the Cheyenne River Sioux Community hereby adopts the following ordinance governing the possession, consumption and importation of alcohol into the Cheyenne River Sioux Reservation.

### Section 1. Legislation Findings and Policy

#### Section 1-1-1. Alcohol Abuse is an Epidemic

The Tribal Council, being vested with the power to protect the public health and to provide for the peace and safety of residents of the Cheyenne River Indian Reservation, hereby finds that alcohol abuse is an epidemic within the territory of the Cheyenne River Sioux Tribe, and further finds that:

(A) Alcohol abuse leads to frequent early loss of life and morbidity among

tribal members and other residents of the Reservation. For example, the age adjusted accident death rates due to homicide, suicide, motor vehicle accidents and diseases related to alcohol abuse are several times higher among tribal members than among the general population of the United States, and 90 to 95% of serious trauma cases treated by the Indian Health Service (IHS) on the Reservation are alcohol related.

(B) Alcohol abuse results in dysfunctional families on the Reservation, and the vast majority of child abuse, spousal abuse and elderly abuse that occurs on the Reservation is alcohol related.

(C) Fetal Alcohol Syndrome and Fetal Alcohol Effect occur at alarming rates among children born within the territory of the Tribe and children born with prenatal alcohol damage have difficulty caring for themselves all of their lives. The Tribe has a compelling interest in protecting children from Fetal Alcohol Syndrome and Fetal Alcohol Effect.

(D) Unemployment ranges from 60 to 65% among tribal members on the Reservation and poverty is widespread. Many tribal members suffer serious economic deprivation due to alcohol abuse, ranging from unemployment to starvation.

(E) Alcohol abuse contributes to the vast majority of the crime which takes place within tribal territory and places heavy burdens on the tribal criminal justice system and the tribal courts.

(F) Alcohol abuse has a devastating impact on our families and the Reservation Community, and the Tribal Council has a duty to combat alcohol abuse.

(G) Both the Tribe and the Federal Government devote tremendous resources to prevent and treat problems of a alcohol abuse on the Reservation, yet even the combined prevention and treatment programs sponsored by the Tribe and the Federal Government are not sufficient to address the problems of alcohol abuse. Far more must be done.

(H) The Tribe must exercise its regulatory authority to combat the problems of alcohol abuse on the Reservation through a comprehensive, consistent and clearly defined plan to minimize alcohol consumption on the Reservation and to discourage unsafe drinking practices. In addition, the Tribe must raise additional revenue to combat the problems of alcohol abuse.

#### Section 1-1-2. Declaration of War on Alcohol Abuse

For the spiritual well-being of our children and families and for the survival and strengthening of our

people, the Cheyenne River Sioux Tribe declares War on Alcohol Abuse and strives for the elimination of alcohol abuse and its associated problems from the Cheyenne River Indian Reservation by the year 2000. In furtherance of the Tribe's War on Alcohol Abuse, the Tribal Council hereby declares that it is the policy of the Cheyenne River Sioux Tribe:

(A) To minimize alcohol consumption among residents of the Reservation;

(B) To discourage unsafe drinking practices, including, but not limited to, driving while intoxicated, alcoholism or chronic intoxication, violence related to alcohol abuse, public intoxication and drinking during pregnancy;

(C) To minimize the adverse health effects of drinking alcohol through prevention, regulation and treatment;

(D) To protect unborn children, who are people in their own right, from prenatal alcohol damage;

(E) To control the supply of alcoholic beverages through taxation and regulation, and to control conditions of availability of alcoholic beverages through education and regulation;

(F) To maximize education, prevention and treatment programs to fight alcohol abuse; and

(G) To cause those who sell or consume alcoholic beverages to bear a greater proportion of the costs associated with alcohol abuse through taxation of alcoholic beverages and alcoholic beverage dealers and dedicating revenue derived therefrom for alcohol abuse education, enforcement, prevention, regulation and treatment.

### Section 2. General Provisions and Definitions

#### Section 2-1-1. Delegated Authority

In accordance with Article IV, section 3 of the Constitution (*Future powers*), the Tribal Council of the Cheyenne River Sioux Tribe hereby exercises the authority delegated to the Tribe by the Congress of the United States of America to regulate the manufacture, distribution, sale, possession and consumption of alcoholic beverages within the territory of the Tribe.

#### Section 2-1-2. Statement of Purpose

The purpose of this Alcoholic Beverages Control Law is to regulate the manufacture, distribution, sale, possession and consumption of liquor on the Cheyenne River Indian Reservation. It is the Cheyenne River Sioux Tribe's intent in enacting this Ordinance to prohibit all traffic in liquor on the Cheyenne River Indian Reservation



except to the extent allowed and permitted under the express terms of this Ordinance. Any person desiring to engage in the possession, sale, trade, transport or manufacture of alcoholic beverages on the Cheyenne River Sioux Indian Reservation shall comply with the rules and regulations set forth in this Alcoholic Beverages Control Law. This Ordinance shall be cited as the "Cheyenne River Sioux Alcoholic Beverages Control Law" and is promulgated pursuant to the constitutional, delegated and inherent authority of the Tribe for the purpose of protecting the welfare, health, peace, morals and safety of all people residing on the Cheyenne River Indian Reservation. All the provisions of this Ordinance shall be liberally construed to accomplish the above-declared purpose.

#### Section 2-1-3. Applicability

This Ordinance shall apply to all persons engaged in the activities described herein on any and all lands and areas within the exterior boundaries of the Cheyenne River Indian Reservation, including lands here in fee, and all other lands subject to the jurisdiction of the Cheyenne River Sioux Tribe.

#### Section 2-1-4. Definitions

The terms used in this Alcoholic Beverages Control Law, unless the context plainly otherwise requires, shall mean:

(A) "Alcoholic beverage," any distilled spirits, wine and malt beverages as defined in this Ordinance.

(B) "Alcoholic Beverage Dealer," any person who sells or engages in commercial traffic in alcoholic beverages, including manufacturers, retailers, solicitors, transporters and wholesalers.

(C) "Cheyenne River Indian Reservation" shall include any and all lands within the territory of the Cheyenne River Indian Reservation as set forth in Article I of the Constitution of the Cheyenne River Sioux Tribe, whether said lands are trust, allotted or lands held in fee patent status.

(D) "Commission," the Alcoholic Beverage Control Commission.

(E) "Contraband," any alcoholic beverage introduced into, or possessed, offered for sale or used within, the territory of the Tribe contrary to tribal law and any receptacle or container in which such alcoholic beverages are found.

(F) "Director," the Director of the Revenue Department.

(G) "Distilled spirits," ethyl alcohol, hydrated oxide of ethyl, spirits of wine,

whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use containing not less than one-half of one percent of alcohol by volume.

(H) "Distiller" means any person who owns, or who himself or through others, directly or indirectly, operates or aids in operating any distillery or other establishment for the production, rectifying, blending, or bottling of intoxicating liquor other than beer.

(I) "Liquor," any alcoholic beverage.

(J) "Malt beverage," a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption containing not less than one-half of one percent of alcohol by volume, and commonly referred to as beer or ale.

(K) "Manufacturer," any person who owns, or who himself or through others, directly or indirectly, operates or aids in operating any facility which produces alcoholic beverages.

(L) "Off Sale," the sale of any alcoholic beverage for consumption off the premises where sold.

(M) "On Sale," the sale of any alcoholic beverage for consumption only upon the premises where sold.

(N) "On-Sale dealer," any person who sells, or keeps for sale, any alcoholic beverage for consumption on the premises where sold.

(O) "Package" means the bottle or immediate container of any alcoholic beverage.

(P) "Package dealer," any person other than a distiller, manufacturer, or wholesaler, who sells, or keeps for sale, any alcoholic beverage for consumption off the premises where sold.

(Q) "Person," any individual, firm, partnership, joint venture, association, corporation, municipal corporation, estate, trust, business receiver, or any group or combination acting as a unit and the plural as well as the singular in number.

(R) "Retailer," or "retailer dealer" any person who sells alcoholic beverages for other than resale.

(S) "Retailer license," an on-or off license issued under the provisions of this Ordinance.

(T) "Revenue Department," the Cheyenne River Sioux Tribal Revenue Department.

(U) "Sale," the transfer, for a consideration, of title to any alcoholic beverage.

(V) "Solicitor," any person employed by a licensed wholesaler within or without the territorial limits of the Cheyenne River Indian Reservation, or by any distiller or manufacturer within or without the Reservation, who solicits orders of intoxicating liquor from wholesale or retail dealers within the Reservation.

(W) "Transportation company," or "transporter," any common carrier or operator of a private vehicle transporting or accepting for transportation any alcoholic beverage destined to be delivered to the Cheyenne River Indian Reservation, but not including transportation by carriers in interstate commerce where the shipment originates outside of the state and is destined to a point outside of the state.

(X) "Treasurer," the duly elected and acting Treasurer of the Cheyenne River Sioux Tribe.

(Y) "Tribal Council," the governing body of the Cheyenne River Sioux Tribe.

(Z) "Wholesaler," any person who sells alcoholic beverages to retailers for resale.

(AA) "Wine," any liquid either commonly used, or reasonably adapted to use, for beverage purposes, and obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar and containing not less than one-half of one percent of alcohol by volume but not more than twenty-four percent of alcohol by volume.

### Section 3. Licensing Policies and Procedures

#### Section 3-1-1. Granting of License

Any person intending to introduce, sell, trade, transport or manufacture alcoholic beverages on the Cheyenne River Indian Reservation shall make application for a license and present the completed application to the Cheyenne River Sioux Revenue Department. The liquor license fees shall be in annual payments, due prior to the 1st day of January of each calendar year, for the following prescribed fees:

#### Section 3-1-2. Wholesale Licensing

The fee for an annual wholesale license shall be set by Tribal Council resolution at not less than Two Hundred Dollars (\$200.00) and no more than Three Thousand Dollars (\$3,000.00).

#### Section 3-1-3. Retail Licensing

The fee for an annual retail license shall be set by Tribal Council resolution

at not less than One Hundred Dollars (\$100.00) and no more than Twenty-Five Hundred Dollars (\$2,500.00).

#### *Section 3-1-4. Transport Licensing*

The fee for an annual transport license shall be set by Tribal Council resolution at not less than Two Hundred Dollars (\$200.00) and no more than One Thousand, Five Hundred Dollars (\$1,500.00).

#### *Section 3-1-5. Operating of a Plant Distilling Intoxicating Liquor*

The fee for an annual distilling plant shall be set by Tribal Council resolution at not less than One Thousand Dollars (\$1,000.00) and no more than Five thousand Dollars (\$5,000.00).

#### *Section 3-1-6. Solicitors*

The fee for an annual solicitors license shall be set by Tribal Council resolution at not less than Two Hundred Dollars (\$200.00) and no more than Seven Hundred Fifty Dollars (\$750.00).

#### *Section 3-1-7. Alcoholic Beverage Control Commission*

There is hereby created a Cheyenne River Sioux Tribal Alcoholic Beverage Control Commission.

(A) The Alcoholic Beverage Control Commission shall consist of:

- (1) A member of the Tribal Council Health Committee;
- (2) A member of the Tribal Council Revenue Committee;
- (3) A member of the Tribal Council Education Committee;
- (4) A member of the Cheyenne River Sioux Tribal Police Commission; and
- (5) A physician or other expert professionally trained in the area of alcohol abuse prevention and treatment.

(B) The Commissioner from the Tribal Council Health Committee shall chair the Alcoholic Beverage Control Commission. The Chairman shall reside at Commission hearings but shall not exercise his power to vote, except in the case of a tie.

(C) A quorum of the Commission shall consist of three members, and a quorum is required to exercise Commission authority.

(D) No Commission member shall participate in any Commission decision in which he has direct interest or in which any member of his immediate family has a direct interest.

#### *Section 3-1-8. Powers of the Alcoholic Beverage Control Commission*

Commissioners shall be appointed by the Tribal Council for terms of two years, and shall be removed only for cause, after notice and an opportunity for a hearing before the Tribal Council.

When a vacancy occurs on the Commission, the Tribal Council shall appoint a new Commissioner for the balance of the term.

(A) The Alcoholic Beverage Control Commission shall have the power to:

- (1) Review license applications and grant licenses;
- (2) Conduct hearings on alleged violations of this Ordinance;
- (3) Establish rules and regulations governing the conduct of the Commission and the exercise of Commission authority;
- (4) Collect taxes, impose penalties, suspend and/or revoke licenses when violations of this Ordinance are proved by a preponderance of the evidence; and
- (5) Enjoin violations of this Ordinance and enforce the orders of the Commission.

(B)(1) Taxes may be collected by the Commission through assessment and distraint or other necessary means;

(2) Penalties may be collected through the attachment, levy and sale of property or other necessary means;

(3) Orders suspending or revoking licenses or enjoining the operations of liquor dealers may be enforced by the Tribal Police acting at the direction of the Commission.

#### *Section 3-1-9. Qualifications for License*

No license shall be issued unless the applicant shall be twenty-one years of age, has filed a sworn application, accompanied by the required fee, showing the following qualifications and subject to the following standard:

(A) An applicant, other than a corporation, must be a legal resident of the United States and a person of good moral character. If the applicant is a corporation, partnership, joint venture, association, municipal corporation, estate, trust, business receiver or firm, the manager of the licensed premises must be a resident of the United States and a person of good moral character. Officers and directors of corporations, partners, and directors of corporations, and partners, joint venturers, principals of associations and municipal corporations, trustees, business receivers and members of firms must be legal residents of the United States and persons of good moral character. Applicants must also be licensed with the Cheyenne River Indian Reservation.

(B) The Alcoholic Beverage Control Commission may require the applicant to set forth such other information as is necessary to enable it to determine if a license should be granted.

(C) The Alcoholic Beverage Control Commission shall issue a license only if the qualifications set forth herein are

satisfied and if it concludes, within its discretion, that the best interests of the Reservation community shall be served. In considering applications by retail dealers, the Alcoholic Beverage Control Commission may take into account the following factors, among others, in determining whether the issuance of a license will serve the best interests of the Reservation community:

(1) Whether the license applied for is for the operation of a new or an existing retail liquor establishment;

(2) Whether the applicant is in compliance with applicable tribal, state and federal law;

(3) Whether the applicant has violated any provision of this Ordinance, and if so, whether the violation has been remedied;

(4) The location, number and density of retail liquor establishments in the community;

(5) Whether food is sold at the establishment; and

(6) The health and welfare of the public.

#### *Section 3-1-10. Public Comments*

Before the issuance of any tribal liquor license, the Cheyenne River Sioux Tribe shall allow comments from the public. The Alcoholic Beverage Control Commission shall be the determining authority for the granting of any tribal liquor license.

#### *Section 3-1-11. Appeal*

Any applicant who is denied a license by the Alcoholic Beverage Control Commission may appeal the Commission's decision to deny the license to the Superior Court by filing a notice of appeal with the Court, clearly stating the grounds therefore, and serving a copy of the notice of appeal by hand on the Director of the Revenue Department within thirty (30) days from the date of the decision. The Superior Court shall uphold the decision of the Alcoholic Beverage Control Commission unless it finds that the Commission's decision was arbitrary and capricious, an abuse of discretion, or not in accordance with this Ordinance or other applicable tribal or federal law.

### **Section 4. Prohibitions**

#### *Section 4-1-1. General Prohibition*

It shall be unlawful to introduce, manufacture for sale, sell, or offer or keep for sale or transport alcoholic beverages on the Cheyenne River Indian Reservation except upon the terms, conditions, limitations, and restrictions specified in this Ordinance. In addition to any other civil penalty provided for this Ordinance, each violation of this

section may subject the violator to a civil fine not to exceed \$5,000.

*Section 4-1-2. Disposal Prohibited on Certain Days*

No licensee of any class shall sell intoxicating liquor on Sunday, Memorial Day and Christmas Day. No licensee of any class shall sell intoxicating liquor on Tribal election day while the polls are open. In addition to any other civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed \$500 for each violation. The Alcoholic Beverage Control Commission may, in its discretion, waive this prohibition for a specified day.

*Section 4-1-3. Disposal Prohibited During Certain Hours*

No licensee shall sell or provide alcoholic beverages to any person on the licensed premises before eleven o'clock a.m. or after one o'clock a.m., Mondays through Thursdays; and no licensee shall sell or provide alcoholic beverages to any person on the licensed premises before eleven o'clock a.m. or after two o'clock a.m., Fridays through Saturdays. No off-sale dealer shall sell or provide alcoholic beverages to any person before eleven o'clock a.m. or after eleven o'clock p.m., Mondays through Thursdays, and no off-sale dealer shall sell or provide alcoholic beverages to any person before eleven o'clock a.m. or after twelve o'clock a.m. (midnight), Fridays through Saturdays. In addition to any other civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed \$500 for each violation.

*Section 4-1-4. Prohibition as to Persons Under Twenty-One Years of Age*

No licensee of any class shall provide directly or by a clerk, agent or servant, intoxicating beverages to any person under the age of twenty-one years. In addition to any civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed \$100 for each violation.

(A) In addition, any person who is injured as a result of a violation of this section shall have a right of action against the person who contributed to his injury by providing alcoholic beverages to a minor person. The Superior Court shall have jurisdiction to hear such actions.

(B) An action under subsection (A) of this section shall be commenced within 2 years after the damage, injury or death.

*Section 4-1-5. Prohibition as to Provision to Intoxicated Persons*

(A) No licensee of any class shall provide directly or by a clerk, agent or servant, alcoholic beverages to a visibly intoxicated person. In addition to any other civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed \$500 for each violation.

(B) In addition, any person who is injured as a result of a violation of this section shall have a right of action against the person who contributed to his injury by providing alcoholic beverages to a visibly intoxicated person. The Superior Court shall have jurisdiction to hear such actions.

(C) An action under Subsection (B) of this section shall be commenced within 2 years after the damage, injury or death.

*Section 4-1-6. Prohibition as to Provision to Pregnant Persons*

No licensee of any class shall knowingly provide directly or by a clerk, agent or servant alcoholic beverages to any person who is pregnant. In addition to any other civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed \$500 for each violation.

*Section 4-1-7. Prohibition as to Purchase or Use by Pregnant Persons*

No person shall purchase, obtain or use alcoholic beverages while pregnant. Any person who violates this section may be subject to a civil fine not to exceed \$500. When there is serious danger of prenatal alcohol damage to the unborn child, the violator may be civilly committed to an alcohol abuse treatment facility for a period of time not to exceed the duration of the pregnancy by order of the Superior Court. The Superior Court shall, in determining such cases, follow the procedural rules provided by tribal law for involuntary civil commitments.

*Section 4-1-8. Prohibition Against Cashing Subsistence Checks*

No licensee of any class shall, directly or by clerk, agent or servant, knowingly cash or accept any General Assistance check issued by the Federal Government, any Aid to Families with Dependent Children check issued by the state government or any other government subsistence check. In addition to any other civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed \$500 for each violation.

*Section 4-1-9. Prohibition Against Drive-up Windows*

No licensee shall sell or provide alcoholic beverages from a drive through window or entrance. In addition to any other civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed \$500 for each violation.

**Section 5. Taxation**

*Section 5-1-1. Wholesale Alcoholic Beverage Excise Tax*

There is hereby imposed a wholesale alcoholic beverage tax excise tax of 7.5% on the wholesale price of all alcoholic beverages introduced into the Cheyenne River Indian Reservation for sale or provision to a retail alcoholic beverage dealer.

*Section 5-1-2. Delivery of Beverages for Resale Prohibited Except to Licensees*

No manufacturer, wholesaler, or transporter shall sell or deliver any package containing alcoholic beverages manufactured or distributed by him for resale, unless the person to whom such package is sold or delivered is a licensed alcoholic beverage dealer. In addition to any other civil penalty provided for in this Ordinance, any person who violates this section may be subject to a civil fine not to exceed \$250 for each violation.

*Section 5-1-3. Retail Alcoholic Beverages Dealers to Purchase only from Licensed Wholesalers, Etc.*

Retail alcoholic beverage dealers shall buy or receive alcoholic beverages only from wholesalers, solicitors or transporters licensed under this Ordinance. In addition to any other civil penalty provided for in this Ordinance, any person who violates this section may be subject to a civil fine not to exceed \$250 for each violation.

*Section 5-1-4. Monthly Return and Payment of Wholesale Alcoholic Beverage Excise Tax*

Wholesalers and other alcoholic beverage dealers who introduce, or otherwise cause to be introduced, alcoholic beverages into the Cheyenne River Indian Reservation for provision to retail alcoholic beverage dealers shall be liable for payment of the wholesale alcoholic beverage excise tax and shall file monthly returns with the Revenue Department, on such forms as the department may require, showing the kind, quantity and price of the alcoholic beverages introduced, or otherwise caused to be introduced, into