

further investigation has revealed a longitudinal crack that grows lengthwise in the tube in the bevel gear where the ring retains the pinion toe bearing. The alert telex specifies inspecting the bevel gear for cracks using a borescope. Pending the result of the investigation into the cause of the fatigue crack initiation currently being conducted in France, Eurocopter specifies inspecting the bevel gear for a crack using a borescope. The DGAC classified this alert telex as mandatory and issued AD No. T2002-424-081(A), dated August 8, 2002, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that this interim AD action is necessary for products of these type designs that are certificated for operation in the United States until the cause of these fatigue cracks in the bevel gear are discovered.

This unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, the proposed AD would require, for bevel gears with more than 6,600 hours time-in-service (TIS), inspecting the bevel gear for cracks using a borescope within 50 hours TIS, and thereafter at intervals not to exceed 150 hours TIS. If a crack were found in the bevel gear, replacing the bevel gear would be required. The actions would be required to be accomplished in accordance with the alert telex described previously.

The FAA estimates that 4 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per helicopter to accomplish the inspections and 16 work hours per helicopter to replace the bevel gear. The average labor rate is \$60 per work hour. Required parts would cost approximately \$31,372. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$130,288, assuming that upon the first inspection a crack is detected and the bevel gear will be replaced.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of

power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption

ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2002-SW-45-AD.

Applicability: Model AS332C, C1, L, and L1 helicopters, with main gearbox bevel gear (bevel gear), part numbers (P/N) 332A32-2027-00 or 332A32-2026-00, containing bevel gears, P/N 332A-2181-00, -02, -03, or -04, or 331A32-3110-07, -09, or -19, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not

been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated.

To detect a bevel gear crack and prevent failure of the bevel gear, loss of torque to the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) For bevel gears that have more than 6,600 hours time-in-service (TIS), within 50 hours TIS, unless accomplished previously, and thereafter at intervals not to exceed 150 hours TIS, inspect for a crack using a borescope in accordance with the Operational Procedure, paragraph 2.B.1. and 2.B.2., of Eurocopter Telex No. 05.00.58, dated August 6, 2002.

(b) If a crack is found in the bevel gear, before further flight, replace the bevel gear with an airworthy bevel gear.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD T2002-424-081(A), dated August 8, 2002.

Issued in Fort Worth, Texas, on December 20, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02-32889 Filed 12-30-02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-126016-01]

RIN 1545-AY97

Establishing Defenses to the Imposition of the Accuracy-Related Penalty

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that limit the defenses available to the imposition of the accuracy-related penalty when

taxpayers fail to disclose reportable transactions or fail to disclose that they have taken a position on a return based upon a regulation being invalid. By limiting a taxpayer's ability to use an opinion or advice from a tax professional as a basis for a defense, the proposed regulations are intended to promote the disclosure of reportable transactions and positions by taxpayers that conflict with regulations issued by the Secretary. The proposed regulations also clarify the existing regulations with respect to the facts and circumstances that the IRS will consider in determining whether a taxpayer acted with reasonable cause and in good faith in relying on an opinion or advice.

DATES: Written or electronically generated comments and requests for a public hearing must be received by March 31, 2003.

ADDRESSES: Send submissions to CC: IT&A:RU (REG-126016-01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC: IT&A:RU (REG-126016-01), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at: <http://www.irs.gov/regs>.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jamie G. Bernstein or Heather L. Dostaler at (202)622-4940; concerning submissions of comments and requests for a public hearing, Ms. LaNita Van Dyke of the Regulations Unit at (202)622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the regulations promulgated pursuant to sections 6662 and 6664, relating to the accuracy-related penalty. Section 6662 provides for the imposition of an accuracy-related penalty for underpayments of tax, including underpayments due to negligence or disregard of rules or regulations and understatements that are *substantial* within the meaning of the statute. Taxpayers, however, can avoid the accuracy-related penalty if they can establish, among other things, that there was reasonable cause for the underpayment and that they acted in good faith within the meaning of section 6664(c).

Temporary regulations issued under section 6011 require taxpayers to disclose *reportable transactions* on their

returns within the meaning of those temporary regulations. Treas. Reg. § 1.6011-4T. Reportable transactions may be abusive tax avoidance transactions. The early identification of potentially abusive tax avoidance transactions is a high priority for the IRS and Treasury. On October 22, 2002, the IRS and Treasury published proposed and temporary regulations that significantly revise the definition of certain types of reportable transactions. See Tax Shelter Disclosure Statements, (67 FR 64799 and 67 FR 64840 (October 22, 2002)) (to be codified in 26 CFR parts 1, 20, 25, 31, 53, 54, 56, and 301). The proposed amendments to the disclosure rules under section 6011 generally will apply to transactions entered into on or after January 1, 2003.

The IRS and Treasury believe that taxpayers have improperly relied on opinions or advice issued by tax advisors to establish reasonable cause and good faith as a basis for avoiding the accuracy-related penalty, even when the opinion or advice relates to a reportable transaction that the taxpayer should have, but did not, disclose pursuant to § 1.6011-4T. The IRS and Treasury also believe that taxpayers have improperly relied upon opinions or advice that a regulation is invalid without disclosing on their returns their position that the regulation is invalid.

Accordingly, the IRS and Treasury have concluded that the regulations under sections 6662 and 6664 should be amended and clarified so that (1) a taxpayer who takes a position that a regulation is invalid cannot rely on an opinion or advice to satisfy the reasonable cause and good faith exception under section 6664(c) with respect to any underpayment attributable to such position if the position was not disclosed on a return; and (2) a taxpayer who engages in a reportable transaction cannot rely on an opinion or advice to satisfy the reasonable cause and good faith exception under section 6664(c) with respect to any underpayment attributable to the transaction if the transaction was not disclosed pursuant to the regulations promulgated under section 6011. Further, a taxpayer who engages in a reportable transaction cannot rely on the realistic possibility standard under section 6662 to avoid the accuracy-related penalty for negligence or disregard of rules or regulations if the position regarding the reportable transaction is contrary to a revenue ruling or notice.

Explanation of Provisions

These proposed regulations amend 26 CFR part 1 relating to the defenses

available to the imposition of the accuracy-related penalty under section 6662(b)(1) (underpayments of tax attributable to negligence or disregard of rules or regulations) and the general exception to the accuracy-related penalty under section 6664(c).

Under these proposed regulations, the adequate disclosure exception to the accuracy-related penalty for underpayments of tax attributable to negligence or disregard of rules or regulations (*see* § 1.6662-3(a)) will not apply to underpayments relating to a reportable transaction unless the reportable transaction also is disclosed under § 1.6011-4T. In addition, if a position relates to a reportable transaction and is contrary to a revenue ruling or notice (other than a notice of proposed rulemaking), a taxpayer may not rely upon the fact that the position has a realistic possibility of being sustained on the merits as a defense to the penalty imposed under section 6662(b)(1). The taxpayer instead would be required to satisfy the adequate disclosure exception under § 1.6662-3(c)(1), including the disclosure of the reportable transaction under § 1.6011-4T.

The proposed regulations also clarify and modify the standards for, and limits on, the use of opinions and advice to satisfy the reasonable cause and good faith exception under section 6664(c) as a defense to the imposition of the accuracy-related penalty under section 6662. The proposed regulations, for instance, clarify that a taxpayer's education, sophistication and business experience will be relevant in determining whether the taxpayer's reliance on the opinion or advice was reasonable and made in good faith. The IRS currently takes these facts and circumstances into account in determining whether a taxpayer has satisfied the reasonable cause and good faith exception under section 6664(c).

These proposed regulations amend § 1.6664-4(c) to specify when a taxpayer cannot rely upon an opinion or advice to satisfy the reasonable cause and good faith exception. Taxpayers who do not disclose positions based upon a regulation being invalid (*see* § 1.6662-3(c)(2)) cannot use an opinion or advice concerning the invalidity of the regulation as a basis for satisfying the reasonable cause and good faith exception under section 6664(c). Similarly, the proposed regulations prohibit taxpayers from using an opinion or advice as a basis for satisfying the reasonable cause and good faith exception under section 6664(c) with respect to a reportable transaction

that the taxpayer did not disclose in accordance with § 1.6011-4T.

Under these proposed regulations, a taxpayer, in order to properly disclose a transaction, may be required to file with the taxpayer's return more than one disclosure form for the same transaction in order to satisfy the requirements in the regulations under sections 6662 and 6664 (as modified by these proposed regulations), and section 6011. The IRS and Treasury may consider permitting taxpayers to use a single disclosure document to satisfy those regulations, provided that all required information is provided by the taxpayer and provided that the taxpayer files a copy of the document with the Office of Tax Shelter Analysis as required under § 1.6011-4T (or as may be otherwise provided in any successor regulations).

Proposed Effective Date

These regulations are proposed to apply to returns filed after December 30, 2002, with respect to transactions entered into on or after January 1, 2003, to coincide with the temporary regulations relating to disclosure, promulgated under section 6011 and applicable for transactions entered into on or after January 1, 2003. The IRS, however, cautions taxpayers and tax practitioners that it will rigorously apply the existing facts and circumstances standard under § 1.6664-4(c) regarding a taxpayer's reasonable reliance in good faith on advice from a tax professional, as well as the other provisions of the regulations under sections 6662 and 6664, including § 1.6664-4(c) relating to special rules for the substantial understatement penalty attributable to tax shelter items of a corporation. In addition to the modifications contained in these proposed regulations, and regardless of when a transaction was entered into, the IRS, in appropriate circumstances, may consider a taxpayer's failure to disclose a reportable transaction or failure to disclose a position that a regulation is invalid as a factor in determining whether the taxpayer has satisfied the reasonable cause and good faith exception under section 6664(c) to the accuracy-related penalty.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection

of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Jamie G. Bernstein and Heather L. Dostaler of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6662-3 is amended by:

1. Revising paragraph (a).
2. Revising the last sentence of paragraph (b)(2)
3. Revising the first sentence of paragraph (c)(1).

The revisions read as follows:

§ 1.6662-3 Negligence or disregard of rules or regulations.

(a) *In general.* If any portion of an underpayment, as defined in section 6664(a) and § 1.6664-2, of any income

tax imposed under subtitle A of the Internal Revenue Code that is required to be shown on a return is attributable to negligence or disregard of rules or regulations, there is added to the tax an amount equal to 20 percent of such portion. The penalty for disregarding rules or regulations does not apply, however, if the requirements of paragraph (c)(1) of this section are satisfied and the position in question is adequately disclosed as provided in paragraph (c)(2) of this section (and, if the position relates to a reportable transaction as defined in § 1.6011-4T(b), the transaction is disclosed in accordance with § 1.6011-4T), or to the extent that the reasonable cause and good faith exception to this penalty set forth in § 1.6664-4 applies. In addition, if a position with respect to an item (other than with respect to a reportable transaction, as defined in § 1.6011-4T(b)) is contrary to a revenue ruling or notice (other than a notice of proposed rulemaking) issued by the Internal Revenue Service and published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), this penalty does not apply if the position has a realistic possibility of being sustained on its merits. See § 1.6694-2(b) of the income tax return preparer penalty regulations for a description of the realistic possibility standard.

(b)

* * * * *

(2) * * * Nevertheless, a taxpayer who takes a position (other than with respect to a reportable transaction, as defined in § 1.6011-4T(b)) contrary to a revenue ruling or a notice has not disregarded the ruling or notice if the contrary position has a realistic possibility of being sustained on its merits.

* * * * *

(c) * * * (1) * * * No penalty under section 6662(b)(1) may be imposed on any portion of an underpayment that is attributable to a position contrary to a rule or regulation if the position is disclosed in accordance with the rules of paragraph (c)(2) of this section (and, if the position relates to a reportable transaction as defined in § 1.6011-4T(b), the transaction is disclosed in accordance with § 1.6011-4T) and, in case of a position contrary to a regulation, the position represents a good faith challenge to the validity of the regulation.

Par. 3. Section 1.6664-0 is amended by:

1. Adding an entry for § 1.6664-4(c)(1)(iii).

2. Redesignating the entries for § 1.6664-4(c)(2) and (c)(3) as § 1.6664-4(c)(3) and (c)(4), respectively.

3. Adding a new entry for § 1.6664-4(c)(2).

The additions read as follows:

§ 1.6664-0 Table of contents.

* * * * *

§ 1.6664-4 Reasonable cause and good faith exception to section 6662 penalties.

* * * * *

(c) * * *

(1) * * *

(iii) Reliance on the invalidity of a regulation.

(2) Opinions or advice relating to reportable transactions.

* * * * *

Par. 4. Section 1.6664-4 is amended by:

1. Revising paragraph (c)(1) introductory text.

2. Revising the last sentence of paragraph (c)(1)(i).

3. Adding paragraph (c)(1)(iii).

4. Redesignating paragraphs (c)(2) and (c)(3) as paragraphs (c)(3) and (c)(4), respectively.

5. Adding a new paragraph (c)(2).

The revision and additions read as follows:

§ 1.6664-4 Reasonable cause and good faith exception to section 6662 penalties.

(c) *Reliance on opinion or advice*—(1) *Facts and circumstances; minimum requirements.* All facts and circumstances must be taken into account in determining whether a taxpayer has reasonably relied in good faith on advice (including the opinion of a professional tax advisor) as to the treatment of the taxpayer (or any entity, plan, or arrangement) under Federal tax law. For example, the taxpayer's education, sophistication and business experience will be relevant in determining whether the taxpayer's reliance on the advice was reasonable and made in good faith. In no event will a taxpayer be considered to have reasonably relied in good faith on advice (including an opinion) unless the requirements of this paragraph (c)(1) are satisfied and the advice is not disqualified under paragraph (c)(2) of this section. The fact that these requirements are satisfied, however, will not necessarily establish that the taxpayer reasonably relied on the advice (including the opinion of a professional tax advisor) in good faith. For example, reliance may not be reasonable or in good faith if the taxpayer knew, or reasonably should have known, that the advisor lacked knowledge in the relevant aspects of Federal tax law.

(i) * * * In addition, the requirements of this paragraph (c)(1) are not satisfied if the taxpayer fails to disclose a fact that it knows, or reasonably should know, to be relevant to the proper tax treatment of an item.

* * * * *

(iii) *Reliance on the invalidity of a regulation.* A taxpayer may not rely on an opinion or advice that a regulation is invalid to establish that the taxpayer acted with reasonable cause and good faith unless the taxpayer adequately disclosed, in accordance with § 1.6662-3(c)(2), including the disclosure of the position that the regulation in question is invalid, and, if the position relates to a reportable transaction as defined in § 1.6011-4T(b), the transaction is disclosed in accordance with § 1.6011-4T.

(2) *Opinions or advice relating to reportable transactions.* Taxpayers may not reasonably rely on an opinion or advice of a tax advisor if the opinion or advice is disqualified under this paragraph. An opinion or advice is disqualified if it relates to the appropriate tax treatment of a reportable transaction, as defined in § 1.6011-4T(b), and the taxpayer does not disclose the transaction in accordance with § 1.6011-4T.

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David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 02-32927 Filed 12-30-02; 8:45 am]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN129-1b; FRL-7413-6]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a site-specific State Implementation Plan (SIP) revision request concerning volatile organic compound (VOC) reasonably available control technology (RACT) requirements for the Naval Surface Warfare Center, Crane Division (NSWC Crane) in Crane, Indiana as requested by the State of Indiana on April 3, 2000. The SIP submission allows the Department of the Navy to use military specification coatings containing a VOC content of up to 5.45 pounds per gallon for the

painting operations in Building 2728 at NSWC Crane.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The rationale for approval is set forth in the direct final rule. If EPA receives no written adverse comments, EPA will take no further action on this proposed rule. If EPA receives written adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments on this action must be received by January 30, 2003.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the State's SIP revision request is available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR-18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6061.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" are used we mean the EPA.

I. What action is EPA taking today?
II. Where can I find more information about this proposal and corresponding direct final rule?

I. What Action Is EPA Taking Today?

The EPA is proposing to approve a revision to Indiana's SIP to allow military specification coatings containing VOC control requirements with content up to 5.45 pounds of VOC per gallon of coating less water for the projectile renovations operations in Building 2728 at NSWC Crane.

NSWC Crane submitted a petition to the Commissioner of Indiana Department of Environmental Management (IDEM) on July 13, 1999 requesting to be allowed to use military specification coatings containing VOC content greater than 3.5 pounds per