

generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information, to protect privacy and physical safety of witnesses and informants, and to avoid the disclosure of investigative techniques and procedures. TVA Police will, nevertheless, publish such a notice in broad generic terms.

(i) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Much the same rationale is applicable to this proposed exemption as that set out previously in item (d) (duty to maintain in agency records only "relevant and necessary" information about an individual). While the TVA Police make every effort to maintain records that are accurate, relevant, timely, and complete, it is not always possible in an investigation to determine with certainty that all the information collected is accurate, relevant, timely, and complete. During a thorough investigation, a trained investigator would be expected to collect allegations, conflicting information, and information that may not be based upon the personal knowledge of the provider. At the point of determination to refer the matter to a prosecutive agency, for example, that information would be in the system of records, and it may not be possible until further investigation is conducted, or indeed in many cases until after a trial (if at all), to determine the accuracy, relevance, and completeness of some information. This requirement would inhibit the ability of trained investigators to exercise professional judgment in conducting a thorough investigation. Moreover, fairness to affected individuals is assured by the due process they are accorded in any trial or other proceeding resulting from the TVA Police investigation.

(j) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available under compulsory legal process when such process becomes a matter of public record. Compliance with this provision could prematurely reveal and compromise an ongoing criminal investigation to the target of the investigation and reveal techniques, procedures, or evidence.

(k) 5 U.S.C. 552a(g) provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections

(d)(1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any other provision of the Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Allowing civil lawsuits for alleged Privacy Act violations by TVA Police would compromise TVA Police investigations by subjecting the sensitive and confidential information in the TVA Police Records to the possibility of inappropriate disclosure under the liberal civil discovery rules. That discovery may reveal confidential sources, the identity of informants, and investigative procedures and techniques, to the detriment of the particular criminal investigation as well as other investigations conducted by the TVA Police.

The pendency of such a suit would have a chilling effect on investigations, given the possibility of discovery of the contents of the investigative case file, and a Privacy Act lawsuit could therefore become a ready strategic weapon used to impede TVA Police investigations. Furthermore, since, under the current and proposed regulations, the system would be exempt from many of the Act's requirements, it is unnecessary and contradictory to provide for civil remedies from violations of those provisions in particular.

This proposed rule has been reviewed under Executive Order No. 12291 and has been determined not to be a "major rule" since it will not have an annual effect on the economy of \$100 million or more.

In addition, it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 18 CFR Part 31

Administrative practice and procedure, Freedom of Information, Privacy Act, Sunshine Act.

For the reasons set forth in the preamble, it is proposed to amend 18 CFR chapter XIII, part 1301, as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301 continues to read as follows:

Authority: 16 U.S.C. 831–831dd, 5 U.S.C. 552.

§ 1301.24 [Amended]

2. Section 1301.24(e) is added to read as follows:

* * * * *

(e) The TVA system TVA Police Records is exempt from subsections (c)(3), (d), (e)(1), (e)(4), (G), (H), and (I)

and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act) and corresponding sections of these rules pursuant to 5 U.S.C. 552a(k)(2). The TVA system Police Records is exempt from subsections (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), and (g) pursuant to 5 U.S.C. 552a(j)(2). This system is exempt because application of these provisions might alert investigation subjects to the existence or scope of investigations, lead to suppression, alteration, fabrication, or destruction of evidence, disclose investigative techniques or procedures, reduce the cooperativeness or safety of witnesses, or otherwise impair investigations.

William S. Moore,

Senior Manager, Administrative Services.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–42–95]

RIN 1545–AU38

Definition of Reasonable Basis

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the accuracy-related penalty regulations under chapter 1 of the Internal Revenue Code. These amendments are necessary to define reasonable basis and provide corrections to final regulations relating to the accuracy-related penalty under chapter 1 of the Internal Revenue Code. The proposed regulations would affect all taxpayers who file tax returns. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronically generated comments must be received by February 10, 1997. Outlines of topics to be discussed at the public hearing scheduled for February 25, 1997, must be received by February 4, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (IA–42–95), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (IA–42–95), Courier's Desk, Internal Revenue

Service, 1111 Constitution Avenue NW., Washington, DC., or electronically, via the IRS Internet site at: <http://www.irs.ustreas.gov/prod/tax—regs/comments.html>. The public hearing will be held in room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Concerning the regulations, Nancy Romano, 202-622-6232 (not a toll-free number). Concerning submissions and the public hearing, Michael L. Slaughter, 202-622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 1, 1995, the IRS issued Treasury Decision 8617 (60 FR 45663), setting forth final regulations relating to the accuracy-related penalty under chapter 1 of the Internal Revenue Code. These regulations provided guidance concerning the reasonable basis standard for purposes of the negligence penalty (section 6662(b)(1)) and for purposes of the disclosure exception to the penalties for disregarding rules or regulations (section 6662(b)(1)) and substantial understatement of income tax (section 6662(b)(2)). In the preamble to the final regulations, Treasury requested comments and suggestions on providing further guidance on the reasonable basis standard. Treasury has not received any additional comment letters in response to this request for comments. Previous comments that were addressed in the preamble to the final regulations published on September 1, 1995 have been considered in drafting these proposed regulations.

Explanation of Provision

Under the final regulations currently in place, the reasonable basis standard is "significantly higher than the not frivolous standard applicable to preparers under 6694." These proposed regulations provide that the reasonable basis standard is not satisfied by a return position that is merely arguable or that is merely a colorable claim. A return position will generally satisfy the reasonable basis standard if it is reasonably based on one or more of the authorities set forth in § 1.6662-4(d)(3)(iii) (taking into account the relevance and persuasiveness of the authorities, and subsequent developments). Additionally, the proposed regulations clarify that if a return position does not satisfy the reasonable basis standard, the reasonable cause and good faith

exception as set forth in § 1.6664-4 may still provide relief from the penalty.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. 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 its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely (in the manner described under the **ADDRESSES** caption) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 25, 1997, at 10 a.m., in room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written or electronically generated comments (in the manner described under the **ADDRESSES** caption) by February 10, 1997 and submit an outline of the topics to be discussed and the time devoted to each topic by February 4, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Robert J. Fitzpatrick, formerly of the Office of the Assistant Chief Counsel (Income Tax & Accounting), IRS. However, other personnel from the IRS and Treasury

Department participated in their development.

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 1.6662-0 is amended by:

1. Revising the entry for § 1.6662-2.
2. Removing the entries for §§ 1.6662-3(b)(3) (i) and (ii).
3. Revising the entry for § 1.6662-7(d).
4. Removing the entries for §§ 1.6662-7(d) (1) and (2).

The amendments and revisions read as follows:

§ 1.6662-0 Table of contents.

* * * * *

§ 1.6662-2 Accuracy-related penalty.

* * * * *

§ 1.6662-7 Omnibus Budget Reconciliation Act of 1993 changes to the accuracy-related penalty.

* * * * *

(d) Reasonable basis.

* * * * *

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

1. Revising the third sentence in paragraph (b)(1) introductory text.
2. Revising paragraph (b)(3).

The revisions read as follows:

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

* * * * *

(b) * * * (1) * * * A return position that has a reasonable basis as defined in paragraph (b)(3) of this section is not attributable to negligence. * * *

* * * * *

(3) *Reasonable basis.* Reasonable basis is a relatively high standard of tax reporting, that is, significantly higher than not frivolous or not patently improper. The reasonable basis standard is not satisfied by a return position that is merely arguable or that is merely a colorable claim. If a return position is reasonably based on one or more of the authorities set forth in § 1.6662-4(d)(3)(iii) (taking into account the relevance and persuasiveness of the

authorities, and subsequent developments), the return position will generally satisfy the reasonable basis standard even though it may not satisfy the substantial authority standard as defined in § 1.6662-4(d)(2). In addition, the reasonable cause and good faith exception, as set forth in § 1.6664-4, may provide relief from the penalty, even if a return position does not satisfy the reasonable basis standard.

* * * * *

Par. 4. In § 1.6662-4, the second sentence in paragraph (d)(2) is revised to read as follows:

§ 1.6662-4 Substantial understatement of income tax.

* * * * *

(d) * * *

(2) * * * The substantial authority standard is less stringent than the more likely than not standard (the standard that is met when there is a greater than 50-percent likelihood of the position being upheld), but more stringent than the reasonable basis standard as defined in § 1.6662-3(b)(3). * * *

* * * * *

Par. 5. In 1.6662-7, paragraph (d) is revised to read as follows:

§ 1.6662-7 Omnibus Budget Reconciliation Act of 1993 changes to the accuracy-related penalty.

* * * * *

(d) *Reasonable basis.* For purposes of §§ 1.6662-3(c) and 1.6662-4 (e) and (f) (relating to methods of making adequate disclosure), the provisions of § 1.6662-3(b)(3) apply in determining whether a return position has a reasonable basis.

Par. 6. Section 1.6664-0 is amended by:

1. Revising the entry for paragraph (c)(2) of § 1.6664-4.

2. Removing the entries for paragraphs (c)(1)(iii), (c)(2)(i), and (c)(2)(ii) of § 1.6664-4.

The revision reads as follows:

§ 1.6664-0 Table of contents.

* * * * *

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

* * * * *

(c) * * *

(2) Advice defined.

* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 85

[FRL-5649-4]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Additional Update of Post-Rebuild Emission Levels in 1997

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Today's notice of proposed rulemaking describes proposed amendments to the current regulations regarding EPA's Urban Bus Retrofit/Rebuild Program. Today's proposed rule would allow one additional year for equipment manufacturers to certify equipment that might influence compliance under Option 2 of the program. Such a revision will remove the incentive to switch compliance options by guaranteeing the two options remain equivalent, as EPA originally intended. In the absence of such a revision to the program regulations, the two compliance options will not remain equivalent as EPA intended, and urban buses may not be utilizing the "best retrofit technology * * * reasonably achievable" as Congress required. In addition, urban areas, many of which are not in compliance with National Ambient Air Quality Standards (NAAQS) for PM, will not realize the full PM benefits of this program.

DATES: Written comments on this proposal will be accepted until December 12, 1996, or 30 days after the date of a public hearing, if one is held.

EPA will hold a public hearing on this proposal on December 6, 1996 if it receives a request by November 22, 1996. EPA will cancel this hearing if no one requests to testify. Members of the public should call the contact person indicated below to notify EPA of their

interest in testifying at the hearing. Interested parties may call the contact person to determine whether the hearing will be held.

Further information on the public hearing and the submission of comments can be found under "Public Participation" in the Supplementary Information" section of today's document.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to Public Docket No. A-91-28 (Category VII) at the address listed below.

Interested parties may contact the person listed in **FOR FURTHER INFORMATION CONTACT** to determine the time and location of the public hearing, if one is requested. A court reporter will be present to make a written transcript of the proceedings and a copy will be placed in the public docket following the hearing.

Materials relevant to this proposed rulemaking are contained in Public Docket A-91-28 (Category VII). This docket is located in room M-1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. Dockets may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Tom Stricker, Engine Programs and Compliance Division (6403-J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. Telephone: (202) 233-9322.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this proposed action consist of the same entities currently regulated by existing Retrofit/Rebuild Requirements of 40 CFR Part 85, Subpart O, and include urban transit operators in Metropolitan Statistical Areas (MSA's) and Consolidated Metropolitan Statistical Areas (CMSA's) with 1980 populations of 750,000 or more, and equipment manufacturers who voluntarily seek equipment certification pursuant to the program regulations. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Equipment manufacturers who voluntarily seek equipment certification pursuant to the program regulations.
Transit operators ...	Transit bus operators in Metropolitan Statistical Areas (MSA's) and Consolidated Metropolitan Statistical Areas (CMSA's) with 1980 populations of 750,000 or more, who operate 1993 and earlier model year urban buses, or who rebuild or replace such bus engines.