further. For example, if the spilled feed contained ruminant protein, would this practice represent a significant break in the feed regulations? In order to further investigate possible risk, FDA is seeking information on the following questions:

- How extensive is the use of poultry litter in cattle feed in the United States?
- What is the level of feed spillage in poultry litter?
- What are the methods used to process poultry litter before inclusion in animal feed?
- What will be the adverse and positive impacts (economic, environmental, health, etc.) resulting from banning poultry litter in ruminant feed?

3. Use of Pet Food In Ruminant Feed

Under the current regulation, pet food for retail sale is exempt from the labeling requirement and need not bear the caution statement ''Do not feed to cattle or other ruminants.'' However, if the pet food products are sold or are intended for sale as distressed or salvage items, then, under § 589.2000(d)(4), such products must state, ''Do not feed to cattle or other ruminants.'' In order to assure that salvaged pet food is not used in ruminant feed despite the requirement that it be labeled with the caution statement, FDA is asking for comments on the following questions.

- Should pet food for retail sale be labeled with the statement ''Do not feed to cattle or other ruminants.''?
- What would be the adverse and positive impacts (economic, environmental, health, etc.) of such a labeling requirement?

4. Preventing Cross-Contamination

The Harvard risk assessment and the FDA public hearing identified cross-contamination of feed and facilities as a possible BSE risk. The current animal feed regulation permits feed and feed ingredients for ruminant animals to be processed in facilities that also process prohibited proteins. The rule requires that those firms handling both prohibited and nonprohibited material have a system in place and a written plan to prevent cross-contamination. We provided suggestions in the preamble to the final rule and in the small entity compliance guides on ways to prevent carry-over in shared equipment. Small entity compliance guides include: No. 67—Renderers; No. 68—Protein Blenders, Feed Manufacturers, and Distributors; No. 69—Feeders of Ruminant Animals With On-Farm Feed Mixing Operations; No. 70—Feeders of Ruminant Animals Without On-Farm Feed Mixing Operations; and No. 76—Questions and Answers, BSE Feed Regulation. You may see the small entity compliance guides on the Center for Veterinary Medicine (CVM) Internet site at *http://www.fda.gov/cvm* or by calling the CVM Communications Staff at 301–594–1755. For feed mills, these suggestions were based on medicated feed good manufacturing practices (GMPs) and included physical cleaning, flushing, or sequencing. For renderers, we suggested flushing, using one complete change of operating volume of the entire system.

The rule requires that those firms handling both prohibited and nonprohibited material have a system in place and a written plan to prevent cross-contamination. The only way to be sure that there is absolutely no potential for carry-over of, or cross-contamination with, prohibited material is to use completely separate facilities. We are interested in information on control measures, other than dedicated facilities, that apply specifically to transmissible spongiform encephalopathy (TSE) agents and in information on whether such measures can prevent carry-over of prohibited material. The agency is asking for comments on the following questions:

- Are there practical ways, other than dedicated facilities, for firms to demonstrate that the level of carry-over could not transmit BSE to cattle or other ruminants? If so, what is the safe level of carry-over in a feed mill; and
- What is the scientific rationale used to establish this safe level?
- What steps are firms currently taking to prevent cross-contamination of prohibited protein into ruminant feed, and what are the costs of those steps?

5. Elimination of the Plate Waste Exemption

The current regulation contains an exemption that permits ''inspected meat products which have been cooked and offered for human food and further heat processed for feed (such as plate waste and used cellulosic food casings)'' to be fed to ruminants. Although the Harvard study concluded that plate waste posed a minimal risk, FDA wishes to reconsider this exemption and is seeking information on the following questions.

- To what extent is plate waste used in ruminant feed?
- What is the composition of plate waste, and what are its sources?
- How is plate waste processed before inclusion in ruminant feed?
- What would be the adverse and positive impacts (economic, environmental, health, etc.) from excluding plate waste from ruminant feed?

III. Comments

You may submit written or electronic comments regarding the advance notice of proposed rulemaking (ANPRM) by February 4, 2003, to the Dockets Management Branch (see **ADDRESSES**). Please submit two copies of any comments, except that individuals may submit one copy. Identify your comments with the docket number found in brackets in the heading of this document. You may see received comments in the Dockets Management Branch reading room between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may submit comments electronically on the Internet at: *http://www.fda.gov/dockets/ecomments*. On this Internet site, select ''02N–0273'' and follow the directions.

This ANPRM is issued under sections 201, 402, 409, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, and 371) and under the authority of the Commissioner of Food and Drugs.

Dated: November 4, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–28373 Filed 11–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG–103777–02]

RIN 1545–BA54

User Fees for Processing Offers to Compromise

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed amendments to the regulations relating to user fees to provide for the imposition of user fees for the processing of offers to compromise. The charging of user fees implements the Independent Offices Appropriations Act (IOAA). This document also contains a notice of public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by February 4, 2003. Outlines of topics to be discussed at the public hearing scheduled for Thursday, February 13, 2003, must be received by Thursday, January 23, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–103777–02), 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 5 p.m. to: CC:ITA:RU (REG–103777–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may send submissions electronically directly to the IRS Internet site at *www.irs.gov/regs.* The public hearing will be held in Room 4718 of the Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning submissions and/or to be placed on the building access list to attend the hearing, Treena Garrett, 202–622–7180; concerning cost methodology, Eva Williams, 202–622–6400; concerning the regulations, G. William Beard, 202–622–3620 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Offers To Compromise

Section 7122 of the Internal Revenue Code gives the IRS the authority to compromise any civil or criminal case arising under the internal revenue laws, prior to the referral of that case to the Department of Justice. Section 7122 also directs the IRS to prescribe guidelines for officers and employees of the IRS to determine whether an offer to compromise is adequate and should be accepted. Guidelines are contained in § 301.7122–1. Pursuant to § 301.7122–1(b), an offer may be accepted if there is doubt as to liability, if there is doubt as to collectibility, or if acceptance will promote effective tax administration. Pursuant to § 301.7122–1(b)(3), offers may be accepted to promote effective tax administration if either: (1) The IRS determines that, although collection in full could be achieved, collection of the full liability would cause the taxpayer economic hardship within the meaning of § 301.6343–1, or (2) there are no other grounds for compromise and there are compelling public policy or equity considerations.

When an offer to compromise is received, an initial determination is made as to whether the offer is processable. Currently, an offer is returned as nonprocessable if the taxpayer is in bankruptcy, has not filed required tax returns, or has not perfected the offer by properly preparing the offer to compromise form and submitting other required documents. Absent these conditions, the offer is accepted for processing and cannot be rejected without an independent administrative review of the decision to reject and, if the taxpayer chooses to appeal the rejection, independent review by the Office of Appeals. Even though an offer accepted for processing may later be returned to the taxpayer if the taxpayer fails to provide requested information or the IRS determines that the offer was submitted solely to delay collection, such an offer may not be returned before a managerial review of the proposed return is completed pursuant to § 301.7122–1(f)(5)(ii).

When the IRS accepts an offer, the taxpayer receives the benefit of resolving its tax liabilities for a compromised amount, provided the taxpayer complies with the terms of the compromise agreement. To ensure that the taxpayer complies with the terms of the compromise agreement, the IRS must continue to monitor the taxpayer for a period of five years after the compromise is reached.

Even if an offer is rejected, the taxpayer receives the benefit of having the IRS process the offer and make an individualized determination as to the adequacy of the amount offered. In order to make that determination, the IRS must value assets, verify income-earning potential, and compute allowable expenses. The taxpayer also receives the benefit of certain deferred collection activities. The IRS generally does not make any levies to collect liabilities that are the subject of an offer during the period the IRS is evaluating whether the offer will be accepted or rejected, for 30 days immediately following the rejection of an offer, and during any period when a timely appeal from the rejection is being considered by the Office of Appeals.

Establishment of User Fees on Offers To Compromise

The IRS is proposing user fees for the processing of certain offers to compromise tax liabilities pursuant to § 301.7122–1.

For the IRS to process an offer, proposed section 300.3 establishes a $150 fee. The user fee would be paid out of the amount determined to be collectible from the taxpayer and would be taken into account when considering whether the amount offered is acceptable. Thus, imposition of the fee would not change the net amount paid by the taxpayer to compromise the liabilities.

The proposed user fee would not apply to offers based on doubt as to liability, offers made by certain low income taxpayers, offers accepted to promote effective tax administration, and offers accepted based on doubt as to collectibility where there has also been a determination that, although an amount greater than the amount offered could be collected, collection of more than the amount offered would create economic hardship within the meaning of § 301.6343–1 (currently referred to as ''special circumstances'' under IRS procedures). In most of these circumstances, the fees would be waived before being collected from the taxpayer. However, if the fee is collected from the taxpayer, but the offer is accepted to promote effective tax administration or based on considerations of economic hardship, the processing fee either would be refunded to the taxpayer or applied to the amount of the offer.

Offers based on doubt as to liability would be excepted from the user fee based on the inequity of the IRS charging a fee to compromise an uncertain liability when a compromise is based upon a reassessment of the taxpayer's liability for a tax (and the agreed upon amount may, in fact, provide for the full payment of the amount actually owed).

Offers made by low income taxpayers would be excepted from the user fee in light of section 7122(c)(3)(A), which prohibits the IRS from rejecting an offer from a low income taxpayer solely on the basis of the amount offered. Section 7122(c)(3)(A) literally applies to the rejection of an offer rather than the return of an offer for failure to pay a user fee. However, requiring payment of a user fee from a low income taxpayer would undermine section 7122(c)(3)(A) in cases where the taxpayer does not have the ability to pay the fee. Offers from low income taxpayers therefore would be excepted.

Offers accepted to promote effective tax administration would be excepted from the user fee because the collection of a fee in these circumstances would undermine the purposes of these programs. Offers accepted based on doubt as to collectibility and a determination that collecting more than the amount offered would create economic hardship within the meaning of § 301.6343–1 would also be excepted because the criteria for these offers is the same as offers accepted to promote effective tax administration based on economic hardship.

Authority

The IOAA authorizes agencies to prescribe regulations that establish charges for services provided by the agency (user fees). The charges must be fair and be based on the costs to the

Government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President, which are currently set forth in OMB Circular A–25, 58 FR 38142 (July 15, 1993) (the OMB Circular).

The OMB Circular encourages user fees for Government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. Under the OMB Circular, an agency that seeks to impose a user fee for Government-provided services must calculate its full cost of providing those services. In general, the amount of a user fee should recover the cost of providing the special service, unless the Office of Management and Budget (OMB) grants an exception. Pursuant to the guidelines in the OMB Circular, the IRS has calculated its cost of providing services under the offer in compromise program. The IRS has determined that the full cost of investigating doubt as to collectibility and effective tax administration offers averages $471 when streamlined procedures are used to investigate the financial condition of the taxpayer, and $3,983 when more detailed investigations are used. The IRS estimates that 70 percent of offers are processed under streamlined procedures. OMB has granted an exception to the ''full cost'' requirement of the OMB Circular.

The Treasury, Postal Service, and General Government Appropriations Act of 1995, Public Law 103–329 (108 Stat. 2382) (the 1995 Appropriations Act) provides that the Secretary may establish new fees for services provided by the IRS where such fees are authorized by another law, such as the IOAA.

The proposed user fees will be implemented under the authority of the IOAA, the OMB Circular, and the 1995 Appropriations Act.

Effective Date

These regulations are proposed to be effective thirty days after the date of publication in the **Federal Register** of the final regulations.

Special Analysis

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 is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. The economic impact of these regulations on any small entity would result from the entity being required to pay a fee prescribed by these regulations in order to obtain a particular service. The dollar amount of the fee is not, however, substantial enough to have a significant economic impact on any entity subject to the fee. 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 written (a signed original and eight (8) 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 may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, February 13, 2003, at 10 a.m. in room 4718, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the comments to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Thursday, January 23, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the 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 G. William Beard, Office of Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy and Summonses Division.

List of Subjects in 26 CFR Part 300

Estate taxes, Excise taxes, Gift taxes, Income taxes, Reporting and recordkeeping requirements, User fees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

PART 300—USER FEES

1. The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

2. Section 300.0 is amended as follows:

1. Paragraph (b)(3) is added.

2. Paragraph (c) is revised.

The addition and revision read as follows:

§ 300.0 User fees, in general.

* * * * *

(b) * * *

(3) Processing an offer to compromise.

(c) *Effective Date.* This part 300 is applicable March 16, 1995, except that the user fee for processing offers to compromise is applicable thirty days after the date of publication in the **Federal Register** of the final regulations.

3. Section 300.3 is added to read as follows:

§ 300.3 Offer to compromise fee.

(a) *Applicability.* This section applies to the processing of offers to compromise tax liabilities pursuant to § 301.7122–1 of this chapter. Except as provided in this section, this fee applies to all offers to compromise accepted for processing.

(b) *Fee.* (1) The fee for processing an offer to compromise is $150.00, except that no fee will be charged if an offer is—

(i) Based on doubt as to liability as defined in § 301.7122–1(b)(1) of this chapter; or

(ii) Made by a low income taxpayer, that is, a taxpayer who falls at or below the dollar criteria established by the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 357, 511) or such other measure that is adopted by the Secretary.

(2) The fee will, in the taxpayer's discretion, either be refunded to the

taxpayer or applied against the amount of the offer if the offer is—

(i) Accepted to promote effective tax administration pursuant to § 301.7122–1(b)(3) of this chapter; or

(ii) Accepted based on doubt as to collectibility and a determination that collection of an amount greater than the amount offered would create economic hardship within the meaning of § 301.6343–1 of this chapter.

(3) Except as otherwise provided in this paragraph (b), the fee will not be refunded to the taxpayer if the offer is accepted, rejected, withdrawn, or returned as nonprocessable after acceptance for processing.

(c) *Person liable for the fee.* The person liable for the processing fee is the taxpayer whose tax liabilities are the subject of the offer.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–28249 Filed 11–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–092–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY:

We are reopening the public comment period on an amendment to the West Virginia surface mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Code of West Virginia (W. Va. Code) as contained in Senate Bill 603. We are reopening the comment period to provide an opportunity to review and comment on additional amendments to the W. Va. Code and the Code of State Regulations (CSR) provided by the State under Senate Bill 698. The amendments concern the Office of Coalfield Community Development, and relate to the West Virginia program.

This document gives the times and locations that the West Virginia program and the proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), December 6, 2002. If requested, we will hold a public hearing on the amendment on December 2, 2002. We will accept requests to speak at a hearing until 4:00 p.m. (local time), on November 21, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Mr. Roger W. Calhoun at the address listed below.

You may review copies of the West Virginia program, this amendment, the previous amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0510. The proposed amendment will be posted at the West Virginia Department of Environmental Protection's Internet home page: *http://www.dep.state.wv.us.*

In addition, you may review copies of the proposed amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004 (By appointment only).

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347–7158. Internet address: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act***; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981 **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description of the Proposed Amendment

By letter dated May 21, 2001 (Administrative Record Number WV–1217), the West Virginia Department of Environmental Protection (WVDEP) sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The proposed amendment consists of changes to the W. Va. Code at chapters 22–3 (West Virginia Surface Coal Mining and Reclamation Act) and 5B–2A (Office of Coalfield Community Development) as contained in Senate Bill 603.

We announced the receipt and provided an opportunity to comment on the amendment in the June 20, 2001, **Federal Register** (66 FR 33032) (Administrative Record Number WV–1219).

By letter and electronic mail dated August 12, 2002, WVDEP sent us additional amendments that relate to its program as contained in Senate Bill 698 (Administrative Record Numbers WV–1325 and WV–1326). The amendment consists of changes to W. Va. Code 5B–2A and implementing regulations at CSR 145–8. Enrolled Senate Bill 698 was signed by the Governor on March 21, 2002.

The State's provisions at W. Va. Code 5B–2A and CSR 145–8 have not been previously approved by OSM. The proposed rules at CSR 145–8 implement