

- (d) \* \* \*
- (6) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7) ..... 7348
- \* \* \* \* \*

- (f) \* \* \*
- (2) N-Benzylpiperazine (some other names: BZP, 1-benzylpiperazine) ..... 7493
- Dated: March 15, 2004.

Michele M. Leonhart,

*Acting Deputy Administrator.*

[FR Doc. 04-6110 Filed 3-17-04; 8:45 am]

BILLING CODE 4410-09-P

## DEPARTMENT OF STATE

### 22 CFR Part 41

[Public Notice: 4654]

RIN 1400-AB49

#### Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended—Elimination of Crew List Visas

**AGENCY:** Department of State.

**ACTION:** Interim final rule.

**SUMMARY:** This rule makes final on an interim basis the Department's proposed regulations regarding the elimination of crew list visas.

**EFFECTIVE DATE:** This rule takes effect on June 16, 2004.

*Comment Date:* Comments on the interim final rule must be received by May 17, 2004. The remaining 30 days until implementation will provide the Department time to evaluate and review public comments received and determine if any additional steps, including a possible extension of an additional 90 days, needs to be taken to ameliorate effects on the shipping industry.

**ADDRESSES:** Comments may be sent by regular mail to CA/VO/L/R, L-603, SA-1, 2401 E Street, NW., U.S. Department of State, Washington, DC 20520-0106; or by e-mail to [ackerrl@state.gov](mailto:ackerrl@state.gov). You may view this rule online at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ron Acker, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520-0106, (202) 663-1205 or e-mail [ackerrl@state.gov](mailto:ackerrl@state.gov).

**SUPPLEMENTARY INFORMATION:** On December 13, 2002, the Department published a rule (67 FR 76711) proposing to eliminate crew list visas. The Department is now making final on an interim basis that proposed rule.

DHS has authorized this regulation pursuant to the Memorandum of Understanding Between the Secretaries of State and Homeland Security Concerning Implementation of Section 428 of the Homeland Security Act of 2002. The requirements of 22 CFR 41.42 are being removed in coordination with the removal of similar requirements by DHS in its corresponding regulations.

#### What Are the Statutory Authorities Pertaining to the Crew List Visa?

Authority for the issuance of a crew list visa is derived from sections 101(a)(15)(D) and 221(f) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(D) and 1201(f), respectively. Section 101(a)(15)(D) exempts aliens serving in good faith as crewmen on board a vessel (other than a fishing vessel having its home port or an operating base in the United States, unless temporarily landing in Guam), or aircraft from being deemed immigrants. Section 221(f), permits an alien to enter the United States on the basis of a crew manifest that has been visaed by a consular officer. However, the latter section does not require a consular officer to visa a crew manifest and it authorizes the officer to deny admission to any individual alien whose name appears on a visaed crew manifest. Further, according to the wording of section 221(f) the use of the visaed crew list appears to have been intended principally as a temporary or emergency measure to be used only until such time as it becomes practicable to issue individual documents to each member of a vessel's or aircraft's crew.

#### Why Is the Department Eliminating the Crew List Visa?

The Department is eliminating the crew list visa for security reasons. Since the September 11, 2001 attacks, the Department made a review of its regulations to ensure that every effort is being made to screen out undesirable aliens. By eliminating the crew list visa, the Department will ensure that each crewmember entering the United States will be required to complete the nonimmigrant visa application forms, submit a valid passport and undergo an interview and background checks. Additionally, the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107-173) requires that all visas issued after October 26, 2004 have a biometric indicator. This means crew list visas would necessarily be eliminated by that date.

#### Did the Department Solicit Comments in the Proposed Rule?

The Department did solicit comments, and 82 were received. The text of about half the comments was identical. Most of the other letters expressed the same views, and some had additional comments. A summary of the comments received and the Department's responses follows.

While most of the commentaries requested that the crew list visa be maintained, others asked instead for a long phase-in period of up to a year in order to allow crewmembers time to get individual visas. While the Department agrees that there should be a phase-in period, because the principal purpose of eliminating the crew list visa is to enhance security, the Department does not agree that it should wait an entire year before requiring individual visas of crewmen. Therefore, the Department will make the rule effective ninety days after publication. The Department believes this will be sufficient time for most crewmen who wish to obtain visas to do so. This is especially true in light of the additional procedures the Department will be undertaking to expedite the issuance of individual visas as mentioned later in this discussion.

Several commenters requested that before determining whether to make the proposed rule final, the Department wait at least until the International Labor Organization (ILO) makes a decision on a proposal it has under consideration for a seafarer's ID document that would include biometrics. Most of these commenters felt that the proposed ID could serve as a substitute for a passport and that due to its security features would make crew list visas more secure, even in the absence of consular interviews of all crew members, which is typical when crew list visas are issued. While the Department recognizes that a seafarer's ID containing biometrics could be useful, it is likely to take years for such a document to be developed and adopted widely. Further, one of the principal reasons for requiring individual visas is the need, for security purposes, for a consular officer to personally interview each applicant. Adoption of the new ID card will not address the need for interviews.

Almost all of the commenters expressed concern about the difficulty of crewmen obtaining individual visas. It was stated that cargo shipping is generally routed at the last minute. Thus crewmembers frequently don't know in advance that they will travel to the United States. Further, schedules are

often shifted at the last minute, all of which make it difficult for crewmen to apply for individual visas. The Department acknowledges that there may be some situations initially when rerouting and other circumstances may cause an individual or individuals not to have visas. However, the Department continues to believe that the security of the U.S. demands individual crew visas despite the dislocations that the requirement may cause initially. Nevertheless, the Department hopes that shipping companies and unions will encourage their employees and members to obtain visas where there is a reasonable possibility that a crewman may be required to enter the U. S. at any time. The visa, once obtained, and depending upon bilateral reciprocity for like documents held by U.S. seamen, will generally be valid for up to five years. Therefore, once individual crew visas are obtained and used generally by seamen working for companies that ship to the U.S., there should be reasonable certainty that most of the crew will be able to enter the U.S. on short notice.

Many commenters have expressed concerns that crewmembers will incur additional expenses. This issue was addressed in the proposed rule. In general, in terms of the actual cost of a visa, per crewman, the cost of an individual visa will be no more than it is, per crewman, on a crew list visa, and in most cases over a period of years will average out to be less. For crew list visas, each crewman already pays an individual processing, *i.e.*, machine-readable visa (MRV) fee of \$100.00. Although reciprocity fees are waived for individuals on a crew list visa and are not for individual visas, that cost should be more than offset in most cases by the fact that the crewman will be receiving (depending upon reciprocity for each individual's country of nationality) a multiple entry, long term visa instead of the one entry, 6 month crew list visa.

Some shipping companies have expressed concerns that there will be costly delays at port while crewmembers await the necessary processing and clearances to obtain a visa. The Department recognizes that such delays indeed could be costly, but in light of September 11, believes it is in the national interest to ensure that all aliens, including crewmembers, are properly screened before entering the United States. Therefore, the Department is making and will continue to make every effort to ensure that applications made for crew visas will be processed expeditiously. The Department recognizes that crewmembers may not be able to file an application for a visa in their home

country. Thus, crewmembers will be able to apply at any U.S. Embassy or Consulate that issues visas. The Department will remind all visa-issuing offices of already existing regulations that they must accept applications from all persons physically present in a consular district, regardless of place of residence. The Department will also emphasize to visa issuing offices the need to process expeditiously applications for individual crew visas. The Department understands that some consular posts may see a significant increase in crew visas and, is prepared, if necessary, to increase staff to handle the additional workload. The Department has already added an additional officer position at the Embassy in Manila, which handles the largest volume of applications from crewmembers.

#### **How Does This Rule Amend the Department's Regulations?**

This rule removes the Department's regulations at 22 CFR 41.42 that establish the crew list visa. By doing so, all crewmembers seeking to enter the United States in that capacity will be required to apply for individual crew visas.

#### **Regulatory Findings**

##### *Administrative Procedure Act*

The Department is publishing this rule as an interim final rule, with a 60-day provision for post-promulgation public comments, based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). It is dictated by the necessity to ensure that every effort is being made to screen out undesirable aliens; additionally, the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107-173) requires that all visas issued after October 26, 2004 have a biometric indicator, which means crew list visas would necessarily be eliminated by that date.

##### *Regulatory Flexibility Act/Executive Order 13272: Small Business*

These changes to the regulations are hereby certified as not expected to have a significant effect on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

##### *The Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121. This rule will

not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

##### *The Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Pub. L. 104-4; 109 Stat. 48; 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule does not result in any such expenditure nor will it significantly or uniquely affect small governments.

##### *Executive Order 13132: Federalism*

The Department finds that this regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor does the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

##### *Executive Order 12866: Regulatory Review*

The Department of State considers this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Therefore, the Department has submitted the rule to the Office of Management and Budget for its review.

##### *Executive Order 12988: Civil Justice Reform*

The Department has reviewed the proposed regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

##### *The Paperwork Reduction Act of 1995*

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

##### *The Treasury and General Government Appropriations Act of 1999—Assessment of Federal Regulations and Policies on Families*

In light of the nature of these regulations and section 654 of the

Treasury and General Government Appropriations Act of 1999, Pub. L. 105-277, 112 Stat. 2681 (1998), the Department has assessed the impact of these proposed regulations on family well being in accordance with section 654(c) of that Act. This rule is intended to promote child and family safety by helping prevent child abduction and trafficking.

#### List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports, Visas.

■ In view of the foregoing, 22 CFR Part 41 is amended as follows:

#### PART 41—[AMENDED]

■ 1. The authority citation for Part 41 continues to read:

**Authority:** 8 U.S.C. 1104; Pub. L. 105-277, 112 Stat. 2681-795 through 2681-801.

#### § 41.42 [Removed and Reserved]

Remove and reserve § 41.42.

Dated: March 2, 2004.

**Maura Harty,**

*Assistant Secretary for Consular Affairs,  
Department of State.*

[FR Doc. 04-6121 Filed 3-17-04; 8:45 am]

BILLING CODE 4710-06-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9118]

RIN 1545-BC84

#### Loss Limitation Rules

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains amendments relating to certain aspects of the temporary regulations addressing the deductibility of losses recognized on dispositions of subsidiary stock by members of a consolidated group and to the consequences of treating subsidiary stock as worthless. In addition, this document contains temporary regulations that clarify when stock of a member of a consolidated group may be treated as worthless. These regulations apply to corporations filing consolidated returns. The text of these regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective March 18, 2004.

*Applicability Date:* For dates of applicability see §§ 1.337(d)-2T(g), 1.1502-35T(f) and 1.1502-80T(c).

#### FOR FURTHER INFORMATION CONTACT:

Regarding the amendments under section 337(d), Mark Weiss (202-622-7790) of the Office of Associate Chief Counsel (Corporate), and, regarding the amendments under section 1502, Lola L. Johnson (202-622-7550) of the Office of Associate Chief Counsel (Corporate) (neither is a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 12, 2002, the IRS and Treasury published TD 8984 (67 FR 11034, 2002-1 C.B. 668), which included temporary regulations under sections 337(d) and 1502 that limit the deductibility of loss recognized by a consolidated group on the disposition of stock of a subsidiary and that require certain basis reductions on the deconsolidation of stock of a subsidiary. Those regulations are intended to prevent a corporation from avoiding the recognition of gain on the disposition of assets through the use of the consolidated return regulations.

Section 1.337(d)-2T disallows loss recognized by a member of a consolidated group with respect to the disposition of stock of a subsidiary to the extent that such loss is attributable to the recognition of built-in gain on the disposition of an asset. For this purpose, built-in gain is gain recognized on the disposition of an asset to the extent attributable, directly or indirectly, in whole or in part, to any excess of value over basis that is reflected, before the disposition of the asset, in the basis of the share, directly or indirectly, in whole or in part, after applying section 1503(e) and other applicable provisions of the Internal Revenue Code and regulations.

On March 14, 2003, the IRS and Treasury published TD 9048 (68 FR 12287, 2003-13 I.R.B. 645), which included temporary regulations generally intended to prevent consolidated groups from obtaining more than one tax benefit from a single economic loss. In particular, § 1.1502-35T(f) of those temporary regulations prescribes rules that are intended to prevent groups from obtaining more than one tax benefit from a single economic loss when a group member claims a worthless stock deduction with respect to stock of a subsidiary. In such cases, the regulation requires an apportionment of the group's consolidated net operating loss (CNOL)

to the subsidiary under the principles of § 1.1502-21T(b), and then treats the apportioned losses as expired.

On August 15, 1994, the IRS and Treasury Department published TD 8560 (59 FR 41666, 1994-2 C.B. 200) adding paragraph (c) to § 1.1502-80. Section 1.1502-80(c) provides that, for consolidated return years beginning on or after January 1, 1995, stock of a member is not treated as worthless under section 165 before the stock is treated as disposed of under the principles of § 1.1502-19(c)(1)(iii). Under § 1.1502-19(c)(1)(iii), stock of a subsidiary is treated as disposed of, by reason of worthlessness, at the time substantially all of the subsidiary's assets are treated as disposed of, abandoned, or destroyed for Federal income tax purposes, at the time of certain discharges of indebtedness of the subsidiary, or at the time a member takes into account certain deductions and losses with respect to indebtedness of the subsidiary. Section 1.1502-80(c) was promulgated to more fully implement the single entity treatment of consolidated groups. It also had the effects of preventing certain inappropriate disallowances of loss that occurred when § 1.1502-20 governed the allowance of stock losses and of alleviating concerns regarding protecting the attributes of bankrupt subsidiaries.

#### Explanation of Provisions

Taxpayers have raised several questions regarding the interpretation and application of §§ 1.337(d)-2T, 1.1502-35T(f), and 1.1502-80(c). The following paragraphs describe these questions and the manner in which they are addressed in these temporary regulations.

##### A. Section 1.337(d)-2T

Taxpayers have questioned whether, in computing the amount of stock loss that is attributable to the recognition of built-in gain, gain recognized on the disposition of an asset may be reduced by expenses directly attributable to the recognition of that gain. The IRS and Treasury Department believe that, because expenses attributable to the recognition of built-in gain reduce the basis of the subsidiary's stock, the computation of the amount of stock loss that is attributable to the recognition of built-in gain should take such expenses into account. Accordingly, this document amends § 1.337(d)-2T to provide that stock loss is not disallowed to the extent the taxpayer establishes that the loss or basis is not attributable to recognized built-in gain reduced by expenses directly related to the