

phenylbutazone in each milliliter of sterile aqueous solution.

(2) *Sponsor.* See code No. 017 in § 135.501(c) of this chapter.

(3) *Conditions of use.* (i) It is administered intravenously as an aid in relieving inflammation associated with musculoskeletal conditions such as arthritides (osteoarthritis) in horses and dogs and intervertebral disc syndrome in dogs.

(ii) It is administered to horses at a dosage level of 1 to 2 grams of phenylbutazone per 1,000 pounds of body weight daily for a maximum of 5 successive days. It is administered to dogs at a dosage level of 10 milligrams of phenylbutazone per pound of body weight daily for a maximum of 2 successive days.

(iii) Not for use in horses intended for food.

(iv) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

2. Part 135c is amended in § 135c.57 by adding a new paragraph (e) as follows:

§ 135c.57 Phenylbutazone tablets and boluses.

(e) (1) *Specifications.* The drug is in tablet form with each tablet containing 100 milligrams or 1 gram of phenylbutazone per tablet.

(2) *Sponsor.* See code No. 017 in § 135.501(c) of this chapter.

(3) *Conditions of use.* (i) It is used as an aid in relieving inflammation associated with musculoskeletal conditions such as arthritides (osteoarthritis) in the horse and dogs and intervertebral disc syndrome in dogs.

(ii) It is administered to dogs at a dosage level of 20 milligrams per pound of body weight in three divided doses daily with a maximum dosage level of 800 milligrams per day regardless of body weight. Dosage should be reduced as symptoms regress. It is used in horses at a dosage level of 2 to 4 grams per 1,000 pounds of body weight but not to exceed 4 grams per animal daily. The dosage should be gradually reduced to a maintenance dosage, the lowest dosage required to produce clinical response.

(iii) Not for use in horses intended for food.

(iv) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. This order shall be effective March 5, 1973.

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(1))

Dated: February 26, 1973.

C. D. VAN HOUWELING,

Director,

Bureau of Veterinary Medicine.

[FR Doc. 73-4053 Filed 3-2-73; 8:45 am]

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Chlorpromazine Hydrochloride

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (10-905V) filed by Pitman-Moore, Inc., Washington Crossing, N.J. 08560, proposing the safe and effective use of chlorpromazine hydrochloride tablets and injection for the treatment of dogs and cats. The supplemental application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(1)) and under authority delegated to the Commissioner (21 CFR 2.120), Parts 135b and 135c are amended as follows:

1. Part 135b is amended by adding a new section as follows:

§ 135b.80 Chlorpromazine hydrochloride injection.

(a) *Specifications.* Chlorpromazine hydrochloride injection contains 25 milligrams of chlorpromazine hydrochloride in each milliliter.

(b) *Sponsor.* See code No. 066 in § 135.501(c) of this chapter.

(c) *Conditions of use.* (1) It is administered either intramuscularly or intravenously to dogs and cats as a tranquilizer, potentiator, and antiemetic with a sedating effect.

(2) It is administered to dogs and cats intravenously at a dosage level of 25 milligrams per 12.5 to 100 pounds body weight. It is administered intramuscularly at a dosage level of 25 milligrams per 8 pounds to 50 pounds body weight. It is administered one to four times daily depending upon size of dose and the needs of the patient.

(3) It is not to be used in conjunction with organophosphates and/or procaine hydrochloride since phenothiazines may potentiate the toxicity of organophosphates and the activity of procaine hydrochloride.

(4) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

2. Part 135c is amended by adding a new section as follows:

§ 135c.105 Chlorpromazine hydrochloride.

(a) *Specifications.* The drug is in tablet form with the tablets containing chlorpromazine hydrochloride as the active drug ingredient.

(b) *Sponsor.* See code No. 066 in § 135.501(c) of this chapter.

(c) *Conditions of use.* (1) The drug is administered orally to dogs and cats as a tranquilizer, potentiator, and antiemetic with a sedating effect.

(2) It is administered orally to dogs and cats at a dosage level of one tablet containing 10 milligrams of chlorpromazine hydrochloride per 7 pounds body

weight or at a dosage level of one tablet containing 25 milligrams of chlorpromazine hydrochloride per 17 pounds body weight. It is administered one to four times daily depending upon the size of the dose and the needs of the patient.

(3) It is not to be used in conjunction with organophosphates and/or procaine hydrochloride since phenothiazines may potentiate the toxicity of organophosphates and the activity of procaine hydrochloride.

(4) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. This order shall be effective March 5, 1973.

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(1))

Dated: February 26, 1973.

C. D. VAN HOUWELING,

Director,

Bureau of Veterinary Medicine.

[FR Doc. 73-4052 Filed 3-2-73; 8:45 am]

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Trichlorfon Oral Veterinary

The Commissioner of Food and Drugs has evaluated a new animal drug application (48-915V) filed by Ralston Purina Co., Checkerboard Square, St. Louis, Mo. 63199, proposing the safe and effective use of trichlorfon as an anthelmintic for use in horses. The application is approved. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(1)) and under authority delegated to the Commissioner (21 CFR 2.120), § 135c.39 is amended in paragraph (b) by substituting a code number for the present firm name and adding thereto an additional code number as follows:

§ 135c.39 Trichlorfon oral veterinary.

(b) *Sponsor.* See code Nos. 047 and 048 in § 135.501(c) of this chapter.

Effective date. This order shall be effective on March 5, 1973.

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(1))

Dated: February 26, 1973.

C. D. VAN HOUWELING,

Director,

Bureau of Veterinary Medicine.

[FR Doc. 73-4054 Filed 3-2-73; 8:45 am]

**Title 24—Housing and Urban Development
CHAPTER IX—OFFICE OF INTERSTATE
LAND SALES REGISTRATION, DEPARTMENT
OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. R-73-226]

PART 1700—INTRODUCTION

Subpart B—Delegations of Basic Authority and Functions

ASSISTANT DEPUTY ADMINISTRATOR

The delegations of Basic Authority and Functions published July 1, 1972, 37 FR

13097, are amended to add responsibility as follows:

1. Add § 1700.95, to read as follows:

§ 1700.95 Assistant Deputy Administrator.

The Assistant Deputy Administrator is designated by the Administrator to perform routine matters concurrently with the Deputy Administrator.

Effective date. This amendment is effective on March 5, 1973.

GEORGE K. BERNSTEIN,
Interstate Land
Sales Administrator.

[FR Doc. 73-4148 Filed 3-2-73; 8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7262]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Disallowance of Interest on Certain Indebtedness Incurred by Corporations To Acquire Stock or Assets of Another Corporation

By a notice of proposed rule making appearing in the *FEDERAL REGISTER* for May 4, 1972 (37 FR 9030), amendments of the Income Tax Regulations (26 CFR Part 1) were proposed in order to provide rules under section 279 enacted by the Tax Reform Act of 1969, relating to interest on indebtedness incurred by a corporation to acquire stock or assets of another corporation. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, certain changes were made and the proposed amendments of the regulations subject to the changes indicated below are adopted by this document:

Section 279 was enacted to provide specific rules for determining whether interest paid on an obligation in the context of a corporate acquisition, is deductible. It provides that a corporation is not to be allowed an interest deduction with respect to certain types of indebtedness which it issues as consideration for the acquisition of stock in another corporation, or the acquisition of assets of another corporation.

Under the proposed regulations, obligations issued within 12 months prior or subsequent to an acquisition were deemed to be used to provide consideration for the acquisition. In addition, if at the time of the issuance of an obligation the issuing corporation anticipated an acquisition or at the time of an acquisition the issuing corporation foresaw the need to issue obligations for its future economic needs then the obligation was deemed to be used to provide consideration for the acquisition.

The final regulations pursuant to comments pointing out that the rule was beyond the scope of the statute, has abandoned the 12-month presumption. Instead, whether an obligation is issued

to provide consideration will depend on the facts and circumstances. As an illustration of the facts and circumstances test, the final regulations couple the anticipation and the foreseeable tests that appeared in the proposed notice with a provision that an obligation will not be deemed issued to provide consideration unless it would not have been issued otherwise.

Where the corporation, which issued the obligation, is a member of an affiliated group, the affiliated group is to be treated as the issuing corporation. The final regulations are more explicit as to how affiliated groups are treated as the issuing corporation. Thus, with respect to the 5-percent stock ownership rule of section 279(d)(5), and in determining "control" for purposes of section 279, the holdings of each member of the affiliated group are added together. Also a retesting as provided in section 279(c) is to be done if any member of the affiliated group issues another obligation to acquire additional stock or assets of the acquired corporation.

The rule that appeared in the proposed regulations with respect to the exemption for acquisitions of certain foreign corporations has been modified. The provision that gross income from sources without the United States shall not include income which is effectively connected with a U.S. trade or business, has been eliminated. The final regulations adhere to the traditional rules of income from sources without the United States. Additionally, corporations whose gross income includes 50 percent or more of foreign personal holding company income are no longer excluded from the exemption applicable to foreign corporations.

The final regulations relieve corporations with an interest deduction of \$5 million or less on obligations issued to provide consideration for an acquisition, of the reporting requirements that appeared in the proposed regulations. Since section 279 disallows an interest deduction only when the deduction is in excess of \$5 million it was felt unnecessary to require a statement of taxpayers with an interest deduction of a lesser amount.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

On May 4, 1972, a notice of proposed rule making was published in the *FEDERAL REGISTER* (37 FR 9030) to amend the regulations to provide rules under section 279 enacted by the Tax Reform Act of 1969 relating to interest on indebtedness incurred by a corporation to acquire stock or assets of another corporation. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted, subject to the changes set forth below.

PARAGRAPH 1. Section 1.279-1 as set forth in the May 4, 1972, notice of proposed rule making, is amended by revising the first sentence therein. Such revised provision reads as set forth below.

PAR. 2. Paragraphs (a)(2), (b)(1), and (c) of § 1.279-2, as set forth in the May 4, 1972, notice of proposed rule making, are amended by revising the language immediately following subdivision (iv) of paragraph (a)(2), by revising the last sentence in subparagraph (1) of paragraph (b), by redesignating examples (1), (2), and (3) of paragraph (c) as examples (2), (3), and (4), respectively, and by inserting immediately before redesignated example (2) new example (1). Such revised and added provisions read, as set forth below.

PAR. 3. Paragraphs (b)(2), (3), (5) and (g)(3) of § 1.279-3, as set forth in the May 4, 1972, notice of proposed rule making, are amended by revising paragraphs (b)(2) and (3), by adding two sentences at the end of subdivision (1) of paragraph (b)(5), and by eliminating the last two sentences from paragraph (g)(3). Such revised and added provisions read, as set forth below.

PAR. 4. Paragraphs (b)(1) and (c)(2) of § 1.279-4, as set forth in the May 4, 1972, notice of proposed rule making, are amended by revising paragraph (b)(1) and by revising example (2) of paragraph (c)(2). Such revised provisions read, as set forth below.

PAR. 5. Paragraphs (b)(2), (d)(1), (e)(1), and (h) of § 1.279-5, as set forth in the May 4, 1972 notice of proposed rule making, are amended by adding two sentences at the end of subdivision (1) of paragraph (b)(2), by adding a sentence at the end of subdivision (ii) of paragraph (d)(1), by revising the penultimate sentence of that portion of paragraph (e)(1) that immediately follows subdivision (ii) and by revising paragraph (h). Such revised and added provisions read, as set forth below.

PAR. 6. Paragraph (a) of § 1.279-6, as set forth in the May 4, 1972 notice of proposed rule making, is amended by adding a sentence at the end thereof. Such revised provision reads, as set forth below. (Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

Approved: February 26, 1973.

JOHN H. HALL,
Deputy Assistant Secretary
of the Treasury.

The following new sections are added immediately after § 1.278-1:

§ 1.279 Statutory provisions; disallowance of interest on certain indebtedness incurred by corporation to acquire stock or assets of another corporation.

SEC. 279. Interest on indebtedness incurred by corporation to acquire stock or assets of another corporation—(a) General rules. No deduction shall be allowed for any interest paid or incurred by a corporation during the taxable year with respect to its corporate acquisition indebtedness to the extent that such interest exceeds—

- (1) \$5 million, reduced by
- (2) The amount of interest paid or incurred by such corporation during such year on obligations (A) issued after December 31,

1967, to provide consideration for an acquisition described in paragraph (1) of subsection (b), but (B) which are not corporate acquisition indebtedness.

(b) *Corporate acquisition indebtedness.* For purposes of this section, the term "corporate acquisition indebtedness" means any obligation evidenced by a bond, debenture, note, or certificate or other evidence of indebtedness issued after October 9, 1969, by a corporation (hereinafter in this section referred to as "issuing corporation") if—

(1) Such obligation is issued to provide consideration for the acquisition of—

(A) Stock in another corporation (hereinafter in this section referred to as "acquired corporation"), or

(B) Assets of another corporation (hereinafter in this section referred to as "acquired corporation") pursuant to a plan under which at least two-thirds (in value) of all the assets (excluding money) used in trades and businesses carried on by such corporation are acquired,

(2) Such obligation is either—

(A) Subordinated to the claims of trade creditors of the issuing corporation generally, or

(B) Expressly subordinated in right of payment to the payment of any substantial amount of unsecured indebtedness, whether outstanding or subsequently issued, of the issuing corporation,

(3) The bond or other evidence of indebtedness is either—

(A) Convertible directly or indirectly into stock of the issuing corporation, or

(B) Part of an investment unit or other arrangement which includes, in addition to such bond or other evidence of indebtedness, an option to acquire, directly or indirectly, stock in the issuing corporation, and

(4) As of a day determined under subsection (c) (1), either—

(A) The ratio of debt to equity (as defined in subsection (c) (2)) of the issuing corporation exceeds 2 to 1, or

(B) The projected earnings (as defined in subsection (c) (3)) do not exceed three times the annual interest to be paid or incurred (determined under subsection (c) (4)).

(c) *Rules for application of subsection (b) (4).* For purposes of subsection (b) (4)—

(1) *Time of determination.* Determinations are to be made as of the last day of any taxable year of the issuing corporation in which it issues any obligation to provide consideration for an acquisition described in subsection (b) (1) of stock in, or assets of, the acquired corporation.

(2) *Ratio of debt to equity.* The term "ratio of debt to equity" means the ratio which the total indebtedness of the issuing corporation bears to the sum of its money and all its other assets (in an amount equal to their adjusted basis for determining gain) less such total indebtedness.

(3) *Projected earnings.*

(A) The term "projected earnings" means the "average annual earnings" (as defined in subparagraph (B)) of—

(i) The issuing corporation only, if clause (1) does not apply, or

(ii) Both the issuing corporation and the acquired corporation, in any case where the issuing corporation has acquired control (as defined in section 368(c)), or has acquired substantially all of the properties, of the acquired corporation.

(B) The average annual earnings referred to in subparagraph (A) is, for any corporation, the amount of its earnings and profits for any 3-year period ending with the last day of a taxable year of the issuing corporation described in paragraph (1), computed without reduction for—

(i) Interest paid or incurred,

(ii) Depreciation or amortization allowed under this chapter,

(iii) Liability for tax under this chapter, and

(iv) Distributions to which section 301(c) (1) applies (other than such distributions from the acquired to the issuing corporation),

and reduced to an annual average for such 3-year period pursuant to regulations prescribed by the Secretary or his delegate. Such regulations shall include rules for cases where any corporation was not in existence for all of such 3-year period or such period includes only a portion of a taxable year of any corporation.

(4) *Annual interest to be paid or incurred.* The term "annual interest to be paid or incurred" means—

(A) If subparagraph (B) does not apply, the annual interest to be paid or incurred by the issuing corporation only, determined by reference to its total indebtedness outstanding, or

(B) If projected earnings are determined under clause (1) of paragraph (3) (A), the annual interest to be paid or incurred by both the issuing corporation and the acquired corporation, determined by reference to their combined total indebtedness outstanding.

(5) *Special rules for banks and lending or finance companies.* With respect to any corporation which is a bank (as defined in section 581) or is primarily engaged in a lending or finance business—

(A) In determining under paragraph (2) the ratio of debt to equity of such corporation (or of the affiliated group of which such corporation is a member), the total indebtedness of such corporation (and the assets of such corporation) shall be reduced by an amount equal to the total indebtedness owed to such corporation which arises out of the banking business of such corporation, or out of the lending or finance business of such corporation, as the case may be;

(B) In determining under paragraph (4) the annual interest to be paid or incurred by such corporation (or by the issuing and acquired corporations referred to in paragraph (4) (B) or by the affiliated group of which such corporation is a member) the amount of such interest (determined without regard to this paragraph) shall be reduced by an amount which bears the same ratio to the amount of such interest as the amount of the reduction for the taxable year under subparagraph (A) bears to the total indebtedness of such corporation; and

(C) In determining under paragraph (3) (B) the average annual earnings, the amount of the earnings and profits for the 3-year period shall be reduced by the sum of the reductions under subparagraph (B) for such period.

For purposes of this paragraph, the term "lending or finance business" means a business of making loans or purchasing or discounting accounts receivable, notes, or installment obligations.

(d) *Taxable years to which applicable.* In applying this section—

(1) *First year of disallowance.* The deduction of interest on any obligation shall not be disallowed under subsection (a) before the first taxable year of the issuing corporation as of the last day of which the application of either subparagraph (A) or subparagraph (B) of subsection (b) (4) results in such obligation being corporate acquisition indebtedness.

(2) *General rule for succeeding years.* Except as provided in paragraphs (3), (4), and (5), if an obligation is determined to be corporate acquisition indebtedness as of the last day of any taxable year of the issuing corporation, it shall be corporate acquisition indebtedness for such taxable year and all subsequent taxable years.

(3) *Redetermination where control, etc., is acquired.* If an obligation is determined to be corporate acquisition indebtedness as of the close of a taxable year of the issuing corporation in which clause (1) of subsection (c) (3) (A) applied, but would not be corporate acquisition indebtedness if the determination were made as of the close of the first taxable year of such corporation thereafter in which clause (1) of subsection (c) (3) (A) could apply, such obligation shall be considered not to be corporate acquisition indebtedness for such later taxable year and all taxable years thereafter.

(4) *Special 3-year rule.* If an obligation which has been determined to be corporate acquisition indebtedness for any taxable year would not be such indebtedness for each of any 3 consecutive taxable years thereafter if subsection (b) (4) were applied as of the close of each of such 3 years, then such obligation shall not be corporate acquisition indebtedness for all taxable years after such 3 consecutive taxable years.

(5) *Five-percent stock rule.* In the case of obligations issued to provide consideration for the acquisition of stock in another corporation, such obligations shall be corporate acquisition indebtedness for a taxable year only if at some time after October 9, 1969, and before the close of such year the issuing corporation owns 5 percent or more of the total combined voting power of all classes of stock entitled to vote of such other corporation.

(e) *Certain nontaxable transactions.* An acquisition of stock of a corporation of which the issuing corporation is in control (as defined in section 368(c)) in a transaction in which gain or loss is not recognized shall be deemed an acquisition described in paragraph (1) of subsection (b) only if immediately before such transaction (1) the acquired corporation was in existence, and (2) the issuing corporation was not in control (as defined in section 368(c)) of such corporation.

(f) *Exemption for certain acquisitions of foreign corporations.* For purposes of this section, the term "corporate acquisition indebtedness" does not include any indebtedness issued to any person to provide consideration for the acquisition of stock in, or assets of, any foreign corporation substantially all of the income of which, for the 3-year period ending with the date of such acquisition or for such part of such period as the foreign corporation was in existence, is from sources without the United States.

(g) *Affiliated groups.* In any case in which the issuing corporation is a member of an affiliated group, the application of this section shall be determined, pursuant to regulations prescribed by the Secretary or his delegate, by treating all of the members of the affiliated group in the aggregate as the issuing corporation, except that the ratio of debt to equity of, projected earnings of, and annual interest to be paid or incurred by any corporation (other than the issuing corporation determined without regard to this subsection) shall be included in the determinations required under subparagraphs (A) and (B) of subsection (b) (4) as of any day only if such corporation is a member of the affiliated group on such day, and, in determining projected earnings of such corporation under subsection (c) (3), there shall be taken into account only the earnings and profits of such corporation for the period during which it was a member of the affiliated group. For purposes of the preceding sentence, the term "affiliated group" has the meaning assigned to such term by section 1504(a), except that all corporations other than the acquired corporation shall be treated as includable corporations (without any exclusion under section 1504(b)) and

the acquired corporation shall not be treated as an includable corporation.

(h) *Changes in obligation.* For purposes of this section—

(1) Any extension, renewal, or refinancing of an obligation evidencing a preexisting indebtedness shall not be deemed to be the issuance of a new obligation.

(2) Any obligation which is corporate acquisition indebtedness of the issuing corporation is also corporate acquisition indebtedness of any corporation which becomes liable for such obligation as guarantor, endorser, or indemnitor or which assumes liability for such obligation in any transaction.

(i) *Certain obligations issued after October 9, 1969.* For purposes of this section, an obligation shall not be corporate acquisition indebtedness if issued after October 9, 1969, to provide consideration for the acquisition of—

(1) Stock or assets pursuant to a binding written contract which was in effect on October 9, 1969, and at all times thereafter before such acquisition, or

(2) Stock in any corporation where the issuing corporation, on October 9, 1969, and at all times thereafter before such acquisition, owned at least 50 percent of the total combined voting power of all classes of stock entitled to vote of the acquired corporation.

Paragraph (2) shall cease to apply when (at any time on or after October 9, 1969) the issuing corporation has acquired control (as defined in section 368(c)) of the acquired corporation.

(j) *Effect on other provisions.* No inference shall be drawn from any provision in this section that any instrument designated as a bond, debenture, note, or certificate or other evidence of indebtedness by its issuer represents an obligation or indebtedness of such issuer in applying any other provision of this title.

[Sec. 279 as added by section 411(a), Tax Reform Act of 1969 (83 Stat. 604)]

§ 1.279-1 General rule; purpose.

An obligation issued to provide a consideration directly or indirectly for a corporate acquisition, although constituting a debt under section 385, may have characteristics which make it more appropriate that the participation in the corporation which the obligation represents be treated for purposes of the deduction of interest as if it were a stockholder interest rather than a creditors interest. To deal with such cases, section 279 imposes certain limitations on the deductibility of interest paid or incurred on obligations which have certain equity characteristics and are classified as corporate acquisition indebtedness. Generally, section 279 provides that no deduction will be allowed for any interest paid or incurred by a corporation during the taxable year with respect to its corporate acquisition indebtedness to the extent such interest exceeds \$5 million. However, the \$5 million limitation is reduced by the amount of interest paid or incurred on obligations issued under the circumstances described in section 279(a)(2) but which are not corporate acquisition indebtedness. Section 279(b) provides that an obligation will be corporate acquisition indebtedness if it was issued under certain circumstances and meets the four tests enumerated therein. Although an obligation may satisfy the conditions referred to in the preceding sentence, it

may still escape classification as corporate acquisition indebtedness if the conditions as described in sections 279(d)(3), (4), and (5), 279(f), or 279(i) are present. However, no inference should be drawn from the rules of section 279 as to whether a particular instrument labeled a bond, debenture, note, or other evidence of indebtedness is in fact a debt. Before the determination as to whether the deduction for payments pursuant to an obligation as described in this section is to be disallowed, the obligation must first qualify as debt in accordance with section 385. If the obligation is not debt under section 385, it will be unnecessary to apply section 279 to any payments pursuant to such obligation.

§ 1.279-2 Amount of disallowance of interest on corporate acquisition indebtedness.

(a) *In general.* Under section 279(a), no deduction is allowed for any interest paid or incurred by a corporation during the taxable year with respect to its corporate acquisition indebtedness to the extent that such interest exceeds—

(1) \$5 million, reduced by

(2) The amount of interest paid or incurred by such corporation during such year on any obligation issued after December 31, 1967, to provide consideration directly or indirectly for an acquisition described in section 279(b)(1) but which is not corporate acquisition indebtedness. Such an obligation is not corporate acquisition indebtedness if it—

(i) Was issued prior to October 10, 1969, or

(ii) Was issued after October 9, 1969, but does not meet any one or more of the tests of section 279(b)(2), (3), or (4), or

(iii) Was originally deemed to be corporate acquisition indebtedness but is no longer so treated by virtue of the application of paragraphs (3) or (4) of section 279(d), or

(iv) Is specifically excluded from treatment as corporate acquisition indebtedness by virtue of sections 279(d)(5), (f), or (i).

The computation of the amount by which the \$5 million limitation described in this paragraph is to be reduced with respect to any taxable year is to be made as of the last day of the taxable year in which an acquisition described in section 279(b)(1) occurs. In no case shall the \$5 million limitation be reduced below zero.

(b) *Certain terms defined.* When used in section 279 and the regulations thereunder—

(1) The term "issued" includes the giving of a note or other evidence of indebtedness to a bank or other lender as well as an issuance of a bond or debenture. In the case of obligations which are registered with the Securities and Exchange Commission, the date of issue is the date on which the issue is first offered to the public. In the case of obligations which are not so registered, the date of issue is the date on which the obligation is sold to the first purchaser.

(2) The term "interest" includes both stated interest and unstated interest (such as original issue discount as defined in paragraph (a)(1) of § 1.163-4 and amounts treated as interest under section 483).

(3) The term "money" means cash and its equivalent.

(4) The term "control" shall have the meaning assigned to such term by section 368(c).

(5) The term "affiliated group" shall have the meaning assigned to such term by section 1504(a), except that all corporations other than the acquired corporation shall be treated as includable corporations (without any exclusion under section 1504(b)) and the acquired corporation shall not be treated as an includable corporation. This definition shall apply whether or not some or all of the members of the affiliated group file a consolidated return.

(c) *Examples.* The provisions of paragraph (a) of this section may be illustrated by the following examples:

Example (1). On March 4, 1973, X Corporation, a calendar year taxpayer, issues an obligation which satisfies the test of section 279(b)(1) but fails to satisfy either of the tests of section 279(b)(2) or (3). Since at least one of the tests of section 279(b) is not satisfied the obligation is not corporate acquisition indebtedness. However, since the test of section 279(b)(1) is satisfied, the interest on the obligation will reduce the \$5 million limitation provided by section 279(a)(1).

Example (2). On January 1, 1969, X Corporation, a calendar year taxpayer, issues an obligation, which satisfies all the tests of section 279(b), requiring it to pay \$3.5 million of interest each year. Since the obligation was issued before October 10, 1969, the obligation cannot be corporate acquisition indebtedness, and a deduction for the \$3.5 million of interest attributable to such obligation is not subject to disallowance under section 279(a). However, since the obligation was issued after December 31, 1967, in an acquisition described in section 279(b)(1), under section 279(a)(2) the \$3.5 million of interest attributable to such obligation reduces the \$5 million limitation provided by section 279(a)(1) to \$1.5 million.

Example (3). Assume the same facts as in example (2). Assume further that on January 1, 1970, X Corporation issues more obligations which are classified as corporate acquisition indebtedness and which require X Corporation to pay \$4 million of interest each year. For 1970 the amount of interest paid or accrued on corporate acquisition indebtedness, which may be deducted is \$1.5 million (\$5 million maximum provided by section 279(a)(1) less \$3.5 million, the reduction required under section 279(a)(2)). Thus, \$2.5 million of the \$4 million interest incurred on a corporate acquisition indebtedness is subject to disallowance under section 279(a) for the taxable year 1970.

Example (4). Assume the same facts as in example (3). Assume further that on the last day of each of the taxable years 1971, 1972, and 1973 of X Corporation neither of the conditions described in section 279(b)(4) was present.

Under these circumstances, such obligations for all taxable years after 1973 are not corporate acquisition indebtedness under section 279(d)(4). Therefore, the \$2.5 million of interest previously not deductible is now deductible for all taxable years after 1973. Although such obligations are no longer

treated as corporate acquisition indebtedness, the interest attributable thereto must be applied in further reduction of the \$5 million limitation. The \$5 million limitation of section 279(a)(1) is therefore reduced to zero. While the limitation is at the zero level any interest paid or incurred on corporate acquisition indebtedness will be disallowed.

§ 1.279-3 Corporate acquisition indebtedness.

(a) *Corporate acquisition indebtedness.* For purposes of section 279, the term "corporate acquisition indebtedness" means any obligation evidenced by a bond, debenture, note, or certificate or other evidence of indebtedness issued after October 9, 1969, by a corporation (referred to in section 279 and the regulations thereunder as "issuing corporation") if the obligation is issued to provide consideration directly or indirectly for the acquisition of stock in, or certain assets of, another corporation (as described in paragraph (b) of this § 1.279-3), is "subordinated" (as described in paragraph (c) of this § 1.279-3), is "convertible" (as described in paragraph (d) of this § 1.279-3), and satisfies either the ratio of debt to equity test (as described in paragraph (f) of § 1.279-5) or the projected earnings test (as described in paragraph (d) of § 1.279-5).

(b) *Acquisition of stock or assets.* (1) Section 279(b)(1) describes one of the tests to be satisfied if an obligation is to be classified as corporate acquisition indebtedness. Under section 279(b)(1), the obligation must be issued to provide consideration directly or indirectly for the acquisition of—

(i) Stock (whether voting or non-voting) in another corporation (referred to in section 279 and the regulations thereunder as "acquired corporation"), or

(ii) Assets of another corporation (referred to in section 279 and the regulations thereunder as "acquired corporation") pursuant to a plan under which at least two-thirds (in value) of all the assets (excluding money) used in trades or businesses carried on by such corporation are acquired.

The fact that the corporation that issues the obligation is not the same corporation that acquires the acquired corporation does not prevent the application of section 279. For example, if X Corporation acquires all the stock of Y Corporation through the utilization of an obligation of Z Corporation, a wholly owned subsidiary of X Corporation, this section will apply.

(2) *Direct or indirect consideration.* Obligations are issued to provide direct consideration for an acquisition within the meaning of section 279(b)(1) where the obligations are issued to the shareholders of an acquired corporation in exchange for stock in such acquired corporation or where the obligations are issued to the acquired corporation in exchange for its assets. The application of the provisions of this subsection relating to indirect consideration for an acquisition of stock or assets depends upon the facts and circumstances surrounding

the acquisition and the issuance of the obligations. Obligations are issued to provide indirect consideration for an acquisition of stock or assets within the meaning of section 279(b)(1) where (i) at the time of the issuance of the obligations the issuing corporation anticipated the acquisition of such stock or assets and the obligations would not have been issued if the issuing corporation had not so anticipated such acquisition, or where (ii) at the time of the acquisition the issuing corporation foresaw or reasonably should have foreseen that it would be required to issue obligations, which it would not have otherwise been required to issue if the acquisition had not occurred, in order to meet its future economic needs.

(3) *Stock acquisition.* (i) For purposes of section 279, an acquisition in which the issuing corporation issues an obligation to provide consideration directly or indirectly for the acquisition of stock in the acquired corporation shall be treated as a stock acquisition within the meaning of section 279(b)(1)(A). Where the stock of one corporation is acquired from another corporation and such stock constitutes at least two-thirds (in value) of all the assets (excluding money) of the latter corporation, such acquisition shall be deemed an asset acquisition as described in section 279(b)(1)(B) and subparagraph (4) of this section. If the issuing corporation acquires less than two-thirds (in value) of all the assets (excluding money) used in trades or businesses carried on by the acquired corporation within the meaning of section 279(b)(1)(B) and subparagraph (4) of this paragraph and such assets include stock of another corporation, the acquisition of such stock is a stock acquisition within the meaning of section 279(b)(1)(A) and of this subparagraph. In such a case the amount of the obligation which is characterized as corporate acquisition indebtedness shall bear the same relationship to the total amount of the obligation issued as the fair market value of the stock acquired bears to the total of the fair market value of the assets acquired and stock acquired, as of the date of acquisition. For rules with respect to acquisitions of stock, where the total amount of stock of the acquired corporation held by the issuing corporation never exceeded 5 percent of the total combined voting power of all classes of stock of the acquired corporation entitled to vote, see § 1.279-4(b)(1).

(ii) If the issuing corporation acquired stock of an acquired corporation in an acquisition described in section 279(b)(1)(A), and liquidated the acquired corporation under section 334(b)(2) and the regulations thereunder before the last day of the taxable year in which such stock acquisition is made, such obligation issued to provide consideration directly or indirectly to acquire such stock of the acquired corporation shall be considered as issued in an acquisition described in section 279(b)(1)(B).

(4) *Asset acquisition.* (i) For purposes of section 279, an acquisition in which the issuing corporation issues an obligation

to provide consideration directly or indirectly for the acquisition of assets of an acquired corporation pursuant to a plan under which at least two-thirds of the gross value of all the assets (excluding money) used in trades and businesses carried on by such acquired corporation are acquired shall be treated as an asset acquisition within the meaning of section 279(b)(1)(B). For purposes of section 279(b)(1)(B), the gross value of any acquired asset shall be its fair market value as of the day of its acquisition. In determining the fair market value of an asset, no reduction shall be made for any liabilities, mortgages, liens, or other encumbrances to which the asset or any part thereof may be subjected. For purposes of this subparagraph, an asset which has been actually used in the trades and businesses of a corporation but which is temporarily not being used in such trades and businesses shall be treated as if it is being used in such manner. For purposes of this paragraph, the day of acquisition will be determined by reference to the facts and circumstances surrounding the transaction.

(ii) For purposes of the two-thirds test described in section 279(b)(1)(B), the stock of any corporation which is controlled by the acquired corporation shall be considered as an asset used in the trades and businesses of such acquired corporation.

(5) *Certain nontaxable transactions.* (i) Under section 279(e), an acquisition of stock of a corporation of which the issuing corporation is in control in a transaction in which gain or loss is not recognized shall be deemed an acquisition described in section 279(b)(1)(A) only if immediately before such transaction the acquired corporation was in existence, and the issuing corporation was not in control of such corporation. If the issuing corporation is a member of an affiliated group, then in accordance with section 279(g), the affiliated group shall be treated as the issuing corporation. Thus, any stock of the acquired corporation, owned by members of the affiliated group, shall be aggregated in determining whether the issuing corporation was in control of the acquired corporation.

(ii) The \$5 million limitation provided by section 279(a)(1) is not reduced by the interest on an obligation issued in a transaction which, under section 279(e), is deemed not to be an acquisition described in section 279(b)(1).

(iii) The provisions of this subparagraph may be illustrated by the following examples:

Example (1). On January 1, 1973, W Corporation, a calendar year taxpayer, issues to the public 10,000 10 year convertible bonds each with a principal of \$1,000 for \$9 million. On June 6, 1973, W Corporation transfers the \$9 million proceeds of such bond issue to X Corporation in exchange for X Corporation's common stock in a transaction that satisfies the provisions of section 351(a). On December 31, 1973, W Corporation's ratio of debt to equity is 1½ to 1 and its project earnings exceed three times the annual interest to be paid or incurred. Immediately prior

to the transaction between the two corporations W Corporation owned no stock in X Corporation which had been in existence for several years. However, immediately after this transaction W Corporation is in control of X Corporation. Since X Corporation, the acquired corporation, was in existence and W Corporation, the issuing corporation, was not in control of X Corporation immediately before the section 351 transaction (a transaction in which gain or loss is not recognized) and since W Corporation is now in control of X Corporation, the acquisition of X Corporation's common stock by W Corporation is not protected from treatment as an acquisition described in section 279(b)(1)(A). However, the obligation will not be deemed to be corporate acquisition indebtedness since the test of section 279(b)(4) is not met. The interest on the obligation will reduce the \$5 million limitation of section 279(a).

Example (2). Assume the facts are the same as described in example (1), except that X Corporation was not in existence prior to June 6, 1973, but rather is newly created by W Corporation on such date. Since X Corporation, the acquired corporation, was not in existence before June 6, 1973, the date on which W Corporation, the issuing corporation, acquired control of X Corporation in a transaction on which gain or loss is not recognized, the acquisition is not deemed to be an acquisition described in section 279(b)(1)(A). Thus, under the provisions of subdivision (ii) of this subparagraph, the \$5 million limitation provided by section 279(a)(1) will not be reduced by the yearly interest incurred on the convertible bonds issued by W Corporation.

Example (3). Assume that the facts are the same as described in example (1), except that W Corporation was in control of X Corporation immediately before the transaction. Since W Corporation was in control of X Corporation immediately before the section 351(a) transaction and is in control of X Corporation after such transaction, the result will be the same as in example (2).

(c) **Subordinated obligation.**—(1) *In general.* An obligation which is issued to provide consideration for an acquisition described in section 279(b)(1) is subordinated within the meaning of section 279(b)(2) if it is either—

(i) Subordinated to the claims of trade creditors of the issuing corporation generally, or

(ii) Expressly subordinated in right of payment to the payment of any substantial amount of unsecured indebtedness, whether outstanding or subsequently issued, of the issuing corporation,

irrespective of whether such subordination relates to payment of interest, or principal, or both. In applying section 279(b)(2) and this paragraph in any case where the issuing corporation is a member of an affiliated group of corporations, the affiliated group shall be treated as the issuing corporation.

(2) **Expressly subordinated obligation.** In applying subparagraph (1)(ii) of this paragraph, an obligation is considered expressly subordinated whether the terms of the subordination are provided in the evidence of indebtedness itself, or in another agreement between the parties to such obligation. An obligation shall be considered to be expressly subordinated within the meaning of

subparagraph (1)(ii) of this paragraph if such obligation by its terms can become subordinated in right of payment to the payment of any substantial amount of unsecured indebtedness which is outstanding or which may be issued subsequently. However, an obligation shall not be considered expressly subordinated if such subordination occurs solely by operation of law, such as in the case of bankruptcy laws. For purposes of this paragraph, the term "substantial amount of unsecured indebtedness" means an amount of unsecured indebtedness equal to 5 percent or more of the face amount of the obligations issued within the meaning of section 279(b)(1).

(d) **Convertible obligation.** An obligation which is issued to provide consideration directly or indirectly for an acquisition described in section 279(b)(1) is convertible within the meaning of section 279(b)(3) if it is either—

(1) Convertible directly or indirectly into stock of the issuing corporation, or

(2) Part of an investment unit or other arrangement which includes, in addition to such bond or other evidence of indebtedness, an option to acquire directly or indirectly stock in the issuing corporation. Stock warrants or convertible preferred stock included as part of an investment unit constitute options within the meaning of the preceding sentence. Indebtedness is indirectly convertible if the conversion feature gives the holder the right to convert into another bond of the issuing corporation which is then convertible into the stock of the issuing corporation.

In any case where the corporation which in fact issues an obligation to provide consideration for an acquisition described in section 279(b)(1) is a member of an affiliated group, the provisions of section 279(b)(3) and this paragraph are deemed satisfied if the stock into which either the obligation or option which is part of an investment unit or other arrangement is convertible, directly or indirectly, is stock of any member of the affiliated group.

(e) **Ratio of debt to equity and projected earnings test.** For rules with respect to the application of section 279(b)(4) (relating to the ratio of debt to equity and the ratio of projected earnings to annual interest to be paid or incurred), see paragraphs (d), (e), and (f) of § 1.279-5.

(f) **Certain obligations issued after October 9, 1969.**—(1) *In general.* Under section 279(i), an obligation shall not be corporate acquisition indebtedness if such obligation is issued after October 9, 1969, to provide consideration for the acquisition of—

(i) Stock or assets pursuant to a binding written contract which was in effect on October 9, 1969, and at all times thereafter before such acquisition, or

(ii) Stock in any corporation where the issuing corporation, on October 9,

1969, and at all times thereafter before such acquisition, owned at least 50 percent of the total combined voting power of all classes of stock entitled to vote of the acquired corporation.

Subdivision (ii) of this subparagraph shall cease to apply when (at any time on or after October 9, 1969) the issuing corporation has acquired control of the acquired corporation. The interest attributable to any obligation which satisfies the conditions stated in the first sentence of this subparagraph shall reduce the \$5 million limitation of section 279(a)(1).

(2) **Examples.** The provisions of this paragraph may be illustrated by the following examples:

Example (1). On September 5, 1969, M Corporation, a calendar year taxpayer, entered into a binding written contract with N Corporation to purchase 20 percent of the voting stock of N Corporation. The contract was in effect on October 9, 1969, and at all times thereafter before the acquisition of the stock on January 1, 1970. Pursuant to such contract M Corporation issued on January 1, 1970, to N Corporation an obligation which satisfies the tests of section 279(b) requiring it to pay \$1 million of interest each year. However, under the provisions of subparagraph (1)(i) of this paragraph, such obligation is not corporate acquisition indebtedness since it was issued to provide consideration for the acquisition of stock pursuant to a binding written contract which was in effect on October 9, 1969, and at all times thereafter before such acquisition. The \$1 million of yearly interest on the obligation reduces the \$5 million limitation provided for in section 279(a)(1) to \$4 million since such interest is attributable to an obligation which was issued to provide consideration for the acquisition of stock in an acquired corporation.

Example (2). On October 9, 1969, O Corporation, a calendar year taxpayer, owned 50 percent of the total combined voting power of all classes of stock entitled to vote of P Corporation. P Corporation has no other class of stock. On January 1, 1970, while still owning such voting stock O Corporation issued to the shareholders of P Corporation to provide consideration for an additional 40 percent of P Corporation's voting stock an obligation which satisfied the tests of section 279(b) requiring it to pay \$4 million of interest each year. Hence, O Corporation acquired control of P Corporation, and the provisions of subparagraph (1)(ii) of this paragraph ceased to apply to O Corporation. Thus, 75 percent of the obligation issued by O Corporation to provide consideration for the stock of P Corporation is not corporate acquisition indebtedness (that is, of the 40 percent of the voting stock of P Corporation which was acquired, only 30 percent was needed to give O Corporation control). Since 25 percent of the obligation is corporate acquisition indebtedness, \$1 million of interest attributable to such obligation is subject to disallowance under section 279(a) for the taxable year 1970. The remaining \$3 million of interest attributable to the obligation will reduce the \$5 million limitation provided by section 279(a)(1).

(g) **Exemptions for certain acquisitions of foreign corporations.**—(1) *In general.* Under section 279(f), the term "corporate acquisition indebtedness" does not include any indebtedness issued to any person to provide consideration directly or indirectly for the acquisition

of stock in, or assets of, any foreign corporation substantially all the income of which, for the 3-year period ending with the date of such acquisition or for such part of such period as the foreign corporation was in existence, is from sources without the United States. The interest attributable to any obligation excluded from treatment as corporate acquisition indebtedness by reason of this paragraph shall reduce the \$5 million limitation of 279(a)(1).

(2) *Foreign corporation.* For purposes of this paragraph, the term "foreign corporation" shall have the same meaning as in section 7701(a)(5).

(3) *Income from sources without the United States.* For purposes of this paragraph, the term "income from sources without the United States" shall be determined in accordance with sections 862 and 863. If more than 80 percent of a foreign corporation's gross income is derived from sources without the United States, such corporation shall be considered to be deriving substantially all of its income from sources without the United States.

§ 1.279-4 Special rules.

(a) *Special 3-year rule.* Under section 279(d)(4), if an obligation which has been deemed to be corporate acquisition indebtedness for any taxable year would not be such indebtedness for each of any 3 consecutive taxable years thereafter if the ratio of debt to equity and the ratio of projected earnings to annual interest to be paid or incurred of section 279(b)(4) were applied as of the close of each of such 3 years, then such obligation shall not be corporate acquisition indebtedness for any taxable years after such 3 consecutive taxable years. The test prescribed by section 279(b)(4) shall be applied as of the close of any taxable year whether or not the issuing corporation issues any obligation to provide consideration for an acquisition described in section 279(b)(1) in such taxable year. Thus, for example, if a corporation, reporting income on a calendar year basis, has an obligation outstanding as of December 31, 1975, which was classified as a corporate acquisition indebtedness as of the close of 1972 and such obligation would not have been classified as corporate acquisition indebtedness as of the close of 1973, 1974, and 1975 because neither of the conditions of section 279(b)(4) were present as of such dates, then such obligation shall not be corporate acquisition indebtedness for 1976 and all taxable years thereafter. Such obligation shall not be reclassified as corporate acquisition indebtedness in any taxable year following 1975, even if the issuing corporation issues more obligations (whether or not found to be corporate acquisition indebtedness) in such later years to provide consideration for the acquisition of additional stock in, or assets of, the same acquired corporation with respect to which the original obligation was issued. The interest attributable to such obligation shall reduce the \$5 million limitation provided by section 279(a)(1) for 1976 and all taxable years thereafter.

(b) *Five percent stock rule.*—(1) *In general.* Under section 279(d)(5), if an obligation issued to provide consideration for an acquisition of stock in another corporation meets the tests of section 279(b), such obligation shall be corporate acquisition indebtedness for a taxable year only if at sometime after October 9, 1969, and before the close of such year the issuing corporation owns or has owned 5 percent or more of the total combined voting power of all classes of stock entitled to vote in the acquired corporation. If the issuing corporation is a member of an affiliated group, then in accordance with section 279(g) the affiliated group shall be treated as the issuing corporation. Thus, any stock of the acquired corporation owned by members of the affiliated group shall be aggregated to determine if the percentage limitation provided by this subparagraph is exceeded. Once an obligation is deemed to be corporate acquisition indebtedness for all taxable years thereafter unless the provisions of section 279(d)(3) or (4) apply, notwithstanding the fact that the issuing corporation owns less than 5 percent of the combined voting power of all classes of stock entitled to vote of the acquired corporation in any or all taxable years thereafter.

(2) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). Corporation Y uses the calendar year as its taxable year and has only one class of stock outstanding. On June 1, 1972, X Corporation which is also a calendar year taxpayer and which has never been a shareholder of Y Corporation acquires from the shareholders of Y Corporation 4 percent of the stock of Y Corporation in exchange for obligations which satisfy the conditions of section 279(b). At no time during 1972 does X Corporation own 5 percent or more of the stock of Y Corporation. Accordingly, under the provisions of subparagraph (1) of this paragraph, for 1972 the obligations issued by X Corporation to provide consideration for the acquisition of Y Corporation's stock do not constitute corporate acquisition indebtedness.

Example (2). Assume the same facts as in example (1). Assume further that on February 24, 1973, X Corporation acquires from the shareholders of Y Corporation an additional 7 percent of the stock of Y Corporation in exchange for obligations which satisfy all of the tests of section 279(b). On December 28, 1973, X Corporation sells all of its stock in Y Corporation. For 1973, the obligations issued by X Corporation in 1972 and in 1973 constitute corporate acquisition indebtedness since X Corporation at some time after October 9, 1969, and before the close of 1973 owned 5 percent or more of the voting stock of Y Corporation. Furthermore, such obligations shall be corporate acquisition indebtedness for all taxable years thereafter unless the special provisions of section 279(d)(3) or (4) could apply.

(c) *Changes in obligation.*—(1) *In general.* Under section 279(h), for purposes of section 279—

(i) Any extension, renewal, or refinancing of an obligation evidencing a preexisting indebtedness shall not be deemed to be the issuance of a new obligation, and

(ii) Any obligation which is corporate acquisition indebtedness of the issuing corporation is also corporate acquisition indebtedness of any corporation which in any transaction or by operation of law assumes liability for such obligation or becomes liable for such obligation as guarantor, endorser, or indemnitor.

(2) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). On January 1, 1971, X Corporation, which files its return on the basis of a calendar year, issues an obligation, which satisfies the tests of section 279(b), and is deemed to be corporate acquisition indebtedness. On January 1, 1973, an agreement is concluded between X Corporation and the holder of the obligation whereby the maturity date of such obligation is extended until December 31, 1979. Under the provisions of subparagraph (1)(i) of this paragraph such extended obligation is not deemed to be a new obligation, and still constitutes corporate acquisition indebtedness.

Example (2). On June 12, 1971, X Corporation, a calendar year taxpayer, issued convertible and subordinated obligations to acquire the stock of Z Corporation. The obligations were deemed corporate acquisition indebtedness on December 31, 1971. On March 4, 1973, X Corporation and Y Corporation consolidated to form XY Corporation in accordance with State law. Corporation XY is liable for the obligations issued by X Corporation by operation of law and the obligations continue to be corporate acquisition indebtedness. In 1975 XY Corporation exchanges its own nonconvertible obligations for the obligations X Corporation issued. The obligations of XY Corporation issued in exchange for those of X Corporation will be deemed to be corporate acquisition indebtedness.

§ 1.279-5 Rules for application of section 279(b).

(a) *Taxable years to which applicable.*—(1) *First year of disallowance.* Under section 279(d)(1), the deduction of interest on any obligation shall not be disallowed under section 279(a) before the first taxable year of the issuing corporation as of the last day of which the application of either section 279(b)(4)(A) or (B) results in such obligation being classified as corporate acquisition indebtedness. See section 279(c)(1) and paragraph (b)(2) of this section for the time when an obligation is subjected to the test of section 279(b)(4).

(2) *General rule for succeeding years.* Under section 279(d)(2), except as provided in paragraphs (3), (4), and (5) of section 279(d), if an obligation is determined to be corporate acquisition indebtedness as of the last day of any taxable year of the issuing corporation, such obligation shall be corporate acquisition indebtedness for such taxable year and all subsequent taxable years.

(b) *Time of determination.*—(1) *In general.* The determination of whether an obligation meets the conditions of section 279(b)(1), (2), and (3) shall be made as of the day on which the obligation is issued.

(2) *Ratio of debt to equity, projected earnings, and annual interest to be paid or incurred.* (i) Under section 279(c)(1), the determination of whether an obligation meets the conditions of

section 279(b)(4) is first to be made as of the last day of the taxable year of the issuing corporation in which it issues the obligation to provide consideration directly or indirectly for an acquisition described in section 279(b)(1) of stock in, or assets of, the acquired corporation. An obligation which is not corporate acquisition indebtedness only because it does not satisfy the test of section 279(b)(4) in the taxable year of the issuing corporation in which the obligation is issued for stock in, or assets of, the acquired corporation may be subjected to the test of section 279(b)(4) again. A retesting will occur in any subsequent taxable year of the issuing corporation in which the issuing corporation issues any obligation to provide consideration directly or indirectly for an acquisition described in section 279(b)(1) with respect to the same acquired corporation, irrespective of whether such subsequent obligation is itself classified as corporate acquisition indebtedness. If the issuing corporation is a member of an affiliated group, then in accordance with section 279(g) the affiliated group shall be treated as the issuing corporation. Thus, if any member of the affiliated group issues an obligation to acquire additional stock in, or assets of, the acquired corporation, this paragraph shall apply.

(ii) For purposes of section 279(b)(4) and this paragraph, in any case where the issuing corporation is a member of an affiliated group (see section 279(g) and § 1.279-6 for rules regarding application of section 279 to certain affiliated groups) which does not file a consolidated return and all the members of which do not have the same taxable year, determinations with respect to the ratio of debt to equity of, and projected earnings of, and annual interest to be paid or incurred by, any member of the affiliated group shall be made as of the last day of the taxable year of the corporation which in fact issues the obligation to provide consideration for an acquisition described in section 279(b)(1).

(3) *Redetermination where control or substantially all the properties have been acquired.* Under section 279(d)(3), if an obligation is determined to be corporate acquisition indebtedness as of the close of a taxable year of the issuing corporation in which section 279(c)(3)(A)(i) (relating to the projected earnings of the issuing corporation only) applied, but would not be corporate acquisition indebtedness if the determination were made as of the close of the first taxable year of such corporation thereafter in which section 279(c)(3)(A)(ii) (relating to the projected earnings of both the issuing corporation and the acquired corporation) could apply, such obligation shall be considered not to be corporate acquisition indebtedness for such later taxable year and all taxable years thereafter. Where an obligation ceases to be corporate acquisition indebtedness as a result of the application of this paragraph, the interest on such obligation shall not be disallowed under section 279(a) as a deduction for the

taxable year in which the obligation ceases to be corporate acquisition indebtedness and all taxable years thereafter. However, under section 279(a)(2) the interest paid or incurred on such obligation which is allowed as a deduction will reduce the \$5 million limitation provided by section 279(a)(1).

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). In 1971, X Corporation, which files its Federal income tax return on the basis of a calendar year, issues its obligations to provide consideration for the acquisition of 15 percent of the voting stock of both Y Corporation and Z Corporation. Y Corporation and Z Corporation each have only one class of stock. When issued, such obligations satisfied the tests prescribed in section 279(b)(1), (2), and (3) and would have constituted corporate acquisition indebtedness but for the test prescribed in section 279(b)(4). On December 31, 1971, the application of section 279(b)(4) results in X Corporation's obligations issued in 1971 not being treated as corporate acquisition indebtedness for that year.

Example (2). Assume the same facts as in example (1), except that in 1972, X Corporation issues more obligations which come within the tests of section 279(b)(1), (2), and (3) to acquire an additional 10 percent of the voting stock of Y Corporation. No stock of Z Corporation is acquired after 1971. The application of section 279(b)(4)(B) (relating to the projected earnings of X Corporation) as of the end of 1972 results in the obligations issued in 1972 to provide consideration for the acquisition of the stock of Y Corporation being treated as corporate acquisition indebtedness. Since X Corporation during 1972 did issue obligations to acquire more stock of Y Corporation, under the provisions of section 279(c)(1) and subparagraph (2) of this paragraph the obligations issued by X Corporation in 1971 to acquire stock in Y Corporation are again tested to determine whether the test of section 279(b)(4) with respect to such obligations is satisfied for 1972. Thus, since such obligations issued by X Corporation to acquire Y Corporation's stock in 1971 previously came within the provisions of section 279(b)(1), (2), and (3) and the projected earnings test of section 279(b)(4)(B) is satisfied for 1972, all of such obligations are to be deemed to constitute corporate acquisition indebtedness for 1972 and subsequent taxable years. The obligations issued in 1971 to acquire stock in Z Corporation continue not to constitute corporate acquisition indebtedness.

Example (3). Assume the same facts as in examples (1) and (2). In 1973, X Corporation issues more obligations which come within the tests of section 279(b)(1), (2), and (3) to acquire more stock (but not control) in Y Corporation. On December 31, 1973, it is determined with respect to X Corporation that neither of the conditions described in section 279(b)(4) are present. Thus, the obligations issued in 1973 do not constitute corporate acquisition indebtedness. However, the obligations issued in 1971 and 1972 by X Corporation to acquire stock in Y Corporation continue to be treated as corporate acquisition indebtedness.

Example (4). Assume the same facts as in example (3), except that X Corporation acquires control of Y Corporation in 1973. Since X Corporation has acquired control of Y Corporation, the average annual earnings (as defined in section 279(c)(3)(B) and the annual interest to be paid or incurred (as provided by section 279(c)(4)) of both X Corporation and Y

Corporation under section 279(c)(3)(A)(ii) are taken into account in computing for 1973 the ratio of projected earnings to annual interest to be paid or incurred described in section 279(b)(4)(B). Assume further that after applying section 279(b)(4)(B) the obligations issued in 1973 escape treatment as corporate acquisition indebtedness for 1973. Under section 279(d)(3), all of the obligations issued by X Corporation to acquire stock in Y Corporation in 1971 and 1972 are removed from classification as corporate acquisition indebtedness for 1973 and all subsequent taxable years.

Example (5). In 1975, M Corporation, which files its Federal income tax return on the basis of a calendar year, issues its obligations to acquire 30 percent of the voting stock of N Corporation. N Corporation has only one class of stock. Such obligations satisfy the tests prescribed in section 279(b)(1), (2), and (3). Additionally, as of the close of 1975, M Corporation's ratio of debt to equity exceeds the ratio of 2 to 1 and its projected earnings do not exceed three times the annual interest to be paid or incurred. The obligations issued by M Corporation are corporate acquisition indebtedness for 1975 since all the provisions of section 279(b) are satisfied. In 1976 M Corporation issues its obligations to acquire from the shareholders of N Corporation an additional 60 percent of the voting stock of N Corporation, thereby acquiring control of N Corporation. However, with respect to the obligations issued by M Corporation in 1975, there is no redetermination under section 279(d)(3) and subparagraph (3) of this paragraph as to whether such obligations may escape classification as corporate acquisition indebtedness because in 1975 it was the ratio of debt to equity test which caused such obligations to be corporate acquisition indebtedness. If in 1975, M Corporation met the conditions of section 279(b)(4) solely because of the ratio of projected earnings to annual interest to be paid or incurred described in section 279(b)(4)(B), its obligation issued in 1975 could be retested in 1976.

(c) *Acquisition of stock or assets of several corporations.* An issuing corporation which acquires stock in, or assets of, more than one corporation during any taxable year must apply the tests described in section 279(b)(1), (2), and (3) separately with respect to each obligation issued to provide consideration for the acquisition of the stock in, or assets of, each such acquired corporation. Thus, if an acquisition is made with obligations of the issuing corporation that satisfy the tests described in section 279(b)(2) and (3) and obligations that fail to satisfy such tests, only those obligations satisfying such tests need be further considered to determine whether they constitute corporate acquisition indebtedness. Those obligations which meet the test of section 279(b)(1) but which are not deemed corporate acquisition indebtedness shall be taken into account for purposes of determining the reduction in the \$5 million limitation of section 279(a)(1).

(d) *Ratio of debt to equity and projected earnings—(1) In general.* One of the four tests to determine whether an obligation constitutes corporate acquisition indebtedness is contained in section 279(b)(4). An obligation will meet the test of section 279(b)(4) if, as of a day

determined under section 279(c) (1) and paragraph (b) (2) of this section, either—

(i) The ratio of debt to equity (as defined in paragraph (f) of this section) of the issuing corporation exceeds 2 to 1, or

(ii) The projected earnings (as defined in subparagraph (2) of this paragraph) of the issuing corporation, or of both the issuing corporation and acquired corporation in any case where subparagraph (2) (ii) of this paragraph is applicable, do not exceed three times the annual interest to be paid or incurred (as defined in paragraph (e) of this section) by such issuing corporation, or, where applicable, by such issuing corporation and acquired corporation. Where paragraphs (d) (2) (ii) and (e) (1) (ii) of this section are applicable in computing projected earnings and annual interest to be paid or incurred, 100 percent of the acquired corporation's projected earnings and annual interest to be paid or incurred shall be included in such computation, even though less than all of the stock or assets of the acquired corporation have been acquired.

(2) *Projected earnings.* The term "projected earnings" means the "average annual earnings" (as defined in subparagraph (3) of this paragraph) of—

(i) The issuing corporation only, if subdivision (ii) of this subparagraph, does not apply, or

(ii) Both the issuing corporation and the acquired corporation, in any case where the issuing corporation as of the close of its taxable year has acquired control, or has acquired substantially all of the properties, of the acquired corporation.

For purposes of subdivision (ii) of this subparagraph, an acquisition of "substantially all of the properties" of the acquired corporation means the acquisition of assets representing at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by the acquired corporation immediately prior to the acquisition.

(3) *Average annual earnings.* (i) The term "average annual earnings" referred to in subparagraph (2) of this paragraph is, for any corporation, the amount of its earnings and profits for any 3-year period ending with the last day of a taxable year of the issuing corporation in which it issues any obligation to provide consideration for an acquisition described in section 279(b) (1), computed without reduction for—

- (a) Interest paid or incurred,
- (b) Depreciation or amortization allowed under chapter 1 of the Code,
- (c) Liability for tax under chapter 1 of the Code, and

(d) Distributions to which section 301(c) (1) apply (other than such distributions from the acquired corporation to the issuing corporation),

and reduced to an annual average for such 3-year period. For the rules to determine the amount of earnings and profits of any corporation, see section 312 and the regulations thereunder.

(ii) Except as provided for in subdivision (iii) of this subparagraph, for purposes of subdivision (i) of this subparagraph in the case of any corporation, the earnings and profits for such 3-year period shall be reduced to an annual average by dividing such earnings and profits by 36 and multiplying the quotient by 12. If a corporation was not in existence during the entire 36-month period as of the close of the taxable year referred to in subdivision (i) of this subparagraph, its average annual earnings shall be determined by dividing its earnings and profits for the period of its existence by the number of whole calendar months in such period and multiplying the quotient by 12.

(iii) Where the issuing corporation acquires substantially all of the properties of an acquired corporation, the computation of earnings and profits of such acquired corporation shall be made for the period of such corporation beginning with the first day of the 3-year period of the issuing corporation and ending with the last day prior to the date on which substantially all of the properties were acquired. In determining the number of whole calendar months for such acquired corporation where the period for determining its earnings and profits includes 2 months which are not whole calendar months and the total number of days in such 2 fractional months exceeds 30 days, the number of whole calendar months for such period shall be increased by one. Where the number of days in the 2 fractional months total 30 days or less such fractional months shall be disregarded. After the number of whole calendar months is determined, the calculation for average annual earnings shall be made in the same manner as described in the last sentence of subdivision (ii) of this subparagraph.

(e) *Annual interest to be paid or incurred.*—(1) *In general.* For purposes of section 279(b) (4) (B), the term "annual interest to be paid or incurred" means—

(i) If subdivision (ii) of this subparagraph does not apply, the annual interest to be paid or incurred by the issuing corporation only, for the taxable year beginning immediately after the day described in section 279(c) (1), determined by reference to its total indebtedness outstanding as of such day, or

(ii) If projected earnings are determined under paragraph (d) (2) (ii) of this section, the annual interest to be paid or incurred by both the issuing corporation and the acquired corporation for 1 year beginning immediately after the day described in section 279(c) (1), determined by reference to their combined total indebtedness outstanding as of such day. However, where the issuing corporation acquires substantially all of the properties of the acquired corporation, the annual interest to be paid or incurred will be determined by reference to the total indebtedness outstanding of the issuing corporation only (including any indebtedness it assumed in the acquisition) as of the day described in section 279(c) (1).

The term "annual interest to be paid or incurred" refers to both actual interest and unstated interest. Such unstated interest includes original issue discount as defined in paragraph (a) (1) of § 1.163-4 and amounts treated as interest under section 483. For purposes of this paragraph and paragraph (f) of this section (relating to the ratio of debt to equity), the indebtedness of any corporation shall be determined in accordance with generally accepted accounting principles. Thus, for example, the indebtedness of a corporation includes short-term liabilities, such as accounts payable to suppliers, as well as long-term indebtedness. Contingent liabilities, such as those arising out of discounted notes, the assignment of accounts receivable, or the guarantee of the liability of another, shall be included in the determination of the indebtedness of a corporation if the contingency is likely to become a reality. In addition, the indebtedness of a corporation includes obligations issued by the corporation, secured only by property of the corporation, and with respect to which the corporation is not personally liable. See section 279 (g) and § 1.279-6 for rules with respect to the computation of annual interest to be paid or incurred in regard to members of an affiliated group of corporations.

(2) *Examples.* The provisions of these paragraphs may be illustrated by the following examples:

Example (1). Corporation X's earnings and profits calculated in accordance with section 279(c) (3) (B) for 1972, 1971, and 1970 respectively were \$29 million, \$23 million, and \$20 million. The interest to be paid or incurred during the calendar year of 1973 as determined by reference to the issuing corporation's total outstanding indebtedness as of December 31, 1972, was \$10 million. By dividing the sum of the earnings and profits for the 3 years by 36 (the number of whole calendar months in the 3-year period) and multiplying the quotient by 12, the average annual earnings for X Corporation is \$24 million. Since the projected earnings of X Corporation do not exceed by three times the annual interest to be paid or incurred (they exceed by only 2.4 times), one of the circumstances described in section 279(b) (4) is present.

Example (2). On March 1, 1972, W Corporation acquires substantially all of the properties of Z Corporation in exchange for W Corporation's bonds which satisfy the tests of section 279(b) (2) and (3). W Corporation files its income tax returns on the basis of fiscal years ending June 30. Z Corporation, which was formed on September 1, 1969, is a calendar year taxpayer. The earnings and profits of W Corporation for the last 3 fiscal years ending June 30, 1972, calculated in accordance with the provisions of section 279(c) (3) (B) were \$300 million, \$400 million, and \$380 million, respectively. The average annual earnings of W Corporation is \$360 million (\$1,080 million ÷ 3). The earnings and profits of Z Corporation calculated in accordance with the provisions of section 279(c) (3) (B) were \$4 million for the period of September 1, 1969 to December 31, 1969, \$10 million and \$14 million for the calendar years of 1970 and 1971, respectively, and \$2 million for the period of January 1, 1972, through February 29, 1972, or a total of \$30 million. To arrive at the average annual earnings, the sum of the earnings and profits,

\$30 million, must be divided by 30 (the number of whole calendar months that Z Corporation was in existence during W Corporation's 3-year period ending with the day prior to the date substantially all the assets were acquired) and the quotient is multiplied by 12, which results in an average annual earnings of \$12 million ($\$30 \text{ million} \div 30 \times 12$) for Z Corporation. The combined average annual earnings of W Corporation and Z Corporation is \$372 million. The interest for the fiscal year ending June 30, 1973, to be paid or incurred by W Corporation on its outstanding indebtedness as of June 30, 1972, is \$110 million. Since the projected earnings exceed the annual interest to be paid or incurred by more than three times, the obligation will not be corporate acquisition indebtedness, unless the issuing corporation's debt to equity ratio exceeds 2 to 1.

(f) *Ratio of debt to equity*—(1) *In general.* The condition described in section 279(b)(4)(A) is present if the ratio of debt to equity of the issuing corporation exceeds 2 to 1. Under section 279(c)(2), the term "ratio of debt to equity" means the ratio which the total indebtedness of the issuing corporation bears to the sum of its money and all its other assets (in an amount equal to adjusted basis for determining gain) less such total indebtedness. For the meaning of the term "indebtedness", see paragraph (e)(1) of this section. See section 279(g) and § 1.279-6 for rules with respect to the computation of the ratio of debt to equity in regard to an affiliated group of corporations.

(2) *Examples.* The provisions of section 279(b)(4)(A) and this paragraph may be illustrated by the following example:

Example (1). On June 1, 1971, X Corporation, which files its federal income tax returns on a calendar year basis, issues an obligation for \$45 million to the shareholders of Y Corporation to provide consideration for the acquisition of all of the stock of Y Corporation. Such obligation has the characteristics of corporate acquisition indebtedness described in section 279(b)(2) and (3). The projected earnings of X Corporation and Y Corporation exceed 3 times the annual interest to be paid or incurred by those corporations and, accordingly, the condition described in section 279(b)(4)(B) is not present. Also, on December 31, 1971, X Corporation has total assets with an adjusted basis of \$150 million (including the newly acquired stock of Y Corporation having a basis of \$45 million) and total indebtedness of \$90 million. Hence, X Corporation's equity is \$60 million computed by subtracting its \$90 million of total indebtedness from its \$150 million of total assets. Since X Corporation's ratio of debt to equity of 1.5 to 1 (\$90 million of total indebtedness over \$60 million equity) does not exceed 2 to 1, the condition described in section 279(b)(4)(A) is not present. Therefore, X Corporation's obligation for \$45 million is not corporate acquisition indebtedness because on December 31, 1971, neither of the conditions specified in section 279(b)(4) existed.

(g) *Special rules for banks and lending or finance companies*—(1) *Debt to equity and projected earnings.* Under section 279(c)(5), with respect to any corporation which is a bank (as defined in section 581) or is primarily engaged in a lending or finance business, the following rules are to be applied:

(i) In determining under paragraph (f) of this section the ratio of debt to equity of such corporation (or of the affiliated group of which such corporation is a member), the total indebtedness of such corporation (and the assets of such corporation) shall be reduced by an amount equal to the total indebtedness owed to such corporation which arises out of the banking business of such corporation, or out of the lending or finance business of such corporation, as the case may be;

(ii) In determining under paragraph (e) of this section the annual interest to be paid or incurred by such corporation (or by the issuing corporation and acquired corporation referred to in section 279(c)(4)(B) or by the affiliated group of corporations of which such corporation is a member), the amount of such interest (determined without regard to this subparagraph) shall be reduced by an amount which bears the same ratio to the amount of such interest as the amount of the reduction for the taxable year under subdivision (i) of this subparagraph bears to the total indebtedness of such corporation; and

(iii) In determining under section 279(c)(3)(B) the average annual earnings, the amount of the earnings and profits for the 3-year period shall be reduced by the sum of the reductions under subdivision (ii) of this subparagraph for such period.

For purposes of this paragraph, the term "lending or finance business" means a business of making loans or purchasing or discounting accounts receivable, notes, or installment obligations. Additionally, the rules stated in this paragraph regarding the application of the ratio of debt to equity, the determination of the annual interest to be paid or incurred, and the determina-

$$(\$5 \text{ million interest to be paid or incurred} \times \frac{\$80 \text{ million owed to X Bank by its customers}}{\$100 \text{ million total indebtedness}})$$

Thus, X Bank's annual interest to be paid or incurred is \$1 million.

Example (2). Assume the same facts as in example (1). X Bank has earnings and profits of \$23 million for the 3-year period used to determine projected earnings. In computing the average annual earnings, the \$23 million amount will be reduced by \$12 million (three times the \$4 million reduction of interest in example (1), assuming that the reduction was the same for each year). Thus X Bank's earnings and profits for such 3-year period are \$11 million (\$23 million total earnings and profits less \$12 million reduction).

(h) *Statement to be attached to return.* In any case where any corporation claims a deduction in excess of \$5 million for interest paid or incurred during the taxable year on obligations issued to provide consideration for acquisitions described in section 279(b)(1) of stock in, or assets of, an acquired corporation, the corporation shall attach to its return for such taxable year a statement which includes the particular provisions of section 279 and, in sufficient detail, the facts establishing that such obligations were not corporate acquisition in-

tion of the average annual earnings also apply if the bank or lending or finance company is a member of an affiliated group of corporations. However, the rules are to be applied only for purposes of determining the debt, equity, projected earnings and annual interest of the bank or lending or finance company which then are taken into account in determining the debt to equity ratio and ratio of projected earnings to annual interest to be paid or incurred by the affiliated group as a whole. Thus, these rules are to be applied to reduce the bank's or lending or finance corporation's indebtedness, annual interest to be paid or incurred, and average annual earnings which are taken into account with respect to the group, but are not to reduce the indebtedness of, annual interest to be paid or incurred by, and average annual earnings of, any corporation in the affiliated group which is not a bank or a lending or finance company. In determining whether any corporation which is a member of an affiliated group is primarily engaged in a lending or finance business, only the activities of such corporation, and not those of the whole group, are to be taken into account. See § 1.279-6 for the application of section 279 to certain affiliated groups of corporations.

(2) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). As of the close of the taxable year, X Bank has a total indebtedness of \$100 million, total assets of \$115 million, and \$80 million is owed to X Bank by its customers. Bank X's indebtedness is \$20 million (\$100 million total indebtedness less \$80 million owed to the X Bank by its customers) and its assets are \$35 million (\$115 million total assets less \$80 million owed to the bank by its customers). If its annual interest to be paid or incurred is \$5 million, such amount is reduced by \$4 million

debtedness, or that the amount of the deduction for interest on its corporate acquisition indebtedness did not exceed the amount of interest which may be deducted on such obligations under section 279(a).

§ 1.279-6 Application of section 279 to certain affiliated groups.

(a) *In general.* Under section 279(g), in any case in which the issuing corporation is a member of an affiliated group, the application of section 279 shall be determined by treating all of the members of the affiliated group in the aggregate as the issuing corporation, except that the ratio of debt to equity of, projected earnings of, and the annual interest to be paid or incurred by any corporation (other than the issuing corporation determined without regard to this paragraph) shall be included in the determinations required under section 279(b)(4) as of any day only if such corporation is a member of the affiliated group on such day, and, in determining projected earnings of such corporation under section 279(c)(3), there shall be

taken into account only the earnings and profits of such corporation for the period during which it was a member of the affiliated group. The total amount of an affiliated member's assets, indebtedness, projected earnings, and interest to be paid or incurred will enter into the computation required by this section, irrespective of any minority ownership in such member.

(b) *Aggregate money and other assets.* In determining the aggregate money and all the other assets of the affiliated group, the money and all the other assets of each member of such group shall be separately computed and such separately computed amounts shall be added together, except that adjustments shall be made, as follows:

(1) There shall be eliminated from the aggregate money and all the other assets of the affiliated group intercompany receivables as of the date described in section 279(c) (1);

(2) There shall be eliminated from the total assets of the affiliated group any amount which represents stock ownership in any member of such group;

(3) In any case where gain or loss is not recognized on transactions between members of an affiliated group under paragraph (d) (3) of this section, the basis of any asset involved in such transaction shall be the transferor's basis;

(4) The basis of property received in a transaction to which § 1.1502-31(b) applies shall be the basis of such property determined under such section; and

(5) There shall be eliminated from the money and all the other assets of the affiliated group any other amount which, if included, would result in a duplication of amounts in the aggregate money and all the other assets of the affiliated group.

(c) *Aggregate indebtedness.* For purposes of applying section 279(c), in determining the aggregate indebtedness of an affiliated group of corporations the total indebtedness of each member of such group shall be separately determined, and such separately determined amounts shall be added together, except that there shall be eliminated from such total indebtedness as of the date described in section 279(c) (1) —

(1) The amount of intercompany accounts payable,

(2) The amount of intercompany bonds or other evidences of indebtedness, and

(3) The amount of any other indebtedness which, if included, would result in a duplication of amounts in the aggregate indebtedness of such affiliated group.

(d) *Aggregate projected earnings.* In the case of an affiliated group of corporations (whether or not such group files a consolidated return under section 1501), the aggregate projected earnings of such group shall be computed by separately determining the projected earnings of each member of such group under paragraph (d) of § 1.279-5, and then adding together such separately determined amounts, except that —

(1) A dividend (a distribution which is described in section 301(c) (1) other than

a distribution described in section 243 (c) (1)) distributed by one member to another member shall be eliminated, and

(2) In determining the earnings and profits of any member of an affiliated group, there shall be eliminated any amount of interest income received or accrued, and of interest expense paid or incurred, which is attributable to intercompany indebtedness,

(3) No gain or loss shall be recognized in any transaction between members of the affiliated group, and

(4) Members of an affiliated group who file a consolidated return shall not apply the provisions of § 1.1502-18 dealing with inventory adjustments in determining earnings and profits for purposes of this section.

(e) *Aggregate interest to be paid or incurred.* For purposes of section 279(c) (4), in determining the aggregate annual interest to be paid or incurred by an affiliated group of corporations, the annual interest to be paid or incurred by each member of such affiliated group shall be separately calculated under paragraph (e) of § 1.279-5, and such separately calculated amounts shall be added together, except that any amount of annual interest to be paid or incurred on any intercompany indebtedness shall be eliminated from such aggregate interest.

§ 1.279-7 Effect on other provisions.

Under section 279(j), no inference is to be drawn from any provision in section 279 and the regulations thereunder that any instrument designated as a bond, debenture, note, or certificate or other evidence of indebtedness by its issuer represents an obligation or indebtedness of such issuer in applying any other provision of this title. Thus, for example, an instrument, the interest on which is not subject to disallowance under section 279 could, under section 385 and the regulations thereunder, be found to constitute a stock interest, so that any amounts paid or payable thereon would not be deductible.

[FR Doc.73-4097 Filed 3-2-73;8:45 am]

Title 36—Parks, Forests and Memorials CHAPTER 1—NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

Ozark National Scenic Riverways, Missouri; Boating, Scuba Diving, Spelunking

A proposal was published at page 20562 of the FEDERAL REGISTER of September 30, 1972, to add § 7.83 to Title 36 of the Code of Federal Regulations. The effect of the proposal is to establish needed restrictions on certain visitor activities within the boundaries of the Ozark National Scenic Riverways.

Interested persons were given 30 days for submitting written comments, suggestions, or objections with respect to the proposed amendment. In addition, a public meeting was held at Eminence, Mo., on November 10, 1972 to receive public comments. As a result of the com-

ments received, the proposed regulations are being adopted with the following changes: restrictions concerning vessel motor horsepower, river zoning pertaining to the use of vessels with motors, solo diving, and cave entry have been deleted pending further study. No major revisions were made in the retained portions of previously published proposal.

Accordingly, the proposed regulations are hereby adopted as set forth below. They will take effect April 4, 1973.

§ 7.83 Ozark National Scenic Riverways.

(a) *Boating.* A vessel, commonly referred to as a "jet boat" is prohibited on the Current River and the tributaries thereof and the Jacks Fork River within the boundaries of Ozark National Scenic Riverways.

(b) *Scuba Diving.* (1) Scuba diving is prohibited within all springs and spring branches on federally owned land within the boundaries of Ozark National Scenic Riverways without a written permit from the superintendent.

(2) *Permits.* The Superintendent may issue written permits for scuba diving in springs within the boundaries of the Ozark National Scenic Riverways; *Provided,*

(i) That the permit applicant will be engaged in scientific or educational investigations which will have demonstrable value to the National Park Service in its management or understanding of riverways resources.

RANDALL R. POPE,
Superintendent,

Ozark National Scenic Riverways.

[FR Doc.73-4050 Filed 3-2-73;8:45 am]

CHAPTER II—FOREST SERVICE, DEPARTMENT OF AGRICULTURE RECREATION IN NATIONAL FORESTS Redesignation of Existing Regulations

Due to the complexity of Part 251, Land Uses, six additional parts, 290 through 295, are added to Chapter II, Title 36 of the Code of Federal Regulations. Several sections are transferred to these new parts from Part 251 and redesignated with new section numbers. These are existing regulations scattered throughout Part 251 which pertain to recreation in the National Forests. They are being redesignated for better public understanding and ease of use. There are no changes to the existing regulations.

The new parts are shown below in outline form. If a section has been transferred to one of these parts from Part 251, its former section number is also shown.

PART 290—RECREATION MANAGEMENT [RESERVED]

PART 291—OCCUPANCY AND USE OF DEVELOPED SITES AND AREAS OF CONCENTRATED PUBLIC USE

Section	Former section No.
291.1 [Reserved]	
291.2	251.90
291.3	251.91
291.4	251.92
291.5	251.93

Section	Former section No.
291.6	251.94
291.7	251.95
291.8	251.96
291.9	251.25a

PART 292—NATIONAL RECREATION AREAS

Section	Former section No.
292.1-292.10 [Reserved]	
292.11	251.40
292.12	251.41
292.13	251.42
292.14-292.19 [Reserved]	

PART 293—WILDERNESS—PRIMITIVE AREAS

Section	Former section No.
293.1	251.70
293.2	251.71
293.3	251.72
293.4	251.73
293.5	251.74
293.6	251.75
293.7	251.76
293.8	251.77
293.9	251.78
293.10	251.79
293.11	251.80
293.12	251.81
293.13	251.82
293.14	251.83
293.15	251.84
293.16	251.85
293.17	251.86

PART 294—SPECIAL AREAS

Section	Former section No.
294.1	251.22
294.2(a)	251.26
294.2(b)	251.27
294.2(c)	251.28
294.2(d)	251.29
294.2(e)	251.30
294.2(f)	251.31

PART 295—USE OF OFF-ROAD VEHICLES
[RESERVED]

PARTS 296-299 [RESERVED]

NOTE: By order published at 30 FR 5631, April 21, 1965, such lands as are described under § 294.1, "shall continue to be managed, insofar as is not inconsistent with the Wilderness Act of September 3, 1964 (Public Law 88-577, 78 Stat. 890), under the applicable regulations * * * in effect on September 3, 1964 * * * until such time as amendments can be promulgated with specific reference to the Wilderness Act."

In accordance with the exceptions to rule making procedures in 5 U.S.C. 553 and USDA policy (36 FR 13804), it has been found and determined that advance notice and request for comments would be unnecessary.

Effective date. This redesignation takes place on March 5, 1973.

T. K. COWDEN,
Assistant Secretary of Agriculture.

FEBRUARY 22, 1973.

In 36 CFR Chapter II, Part 251 is amended and new Parts 290-299 are added as set forth below.

PART 251—LAND USES

In Part 251, §§ 251.22, 251.25a, 251.26-251.30, 251.40-251.42, 251.70-251.86, 251.90-251.96 are deleted.

PART 290—RECREATION MANAGEMENT
[RESERVED]

PART 291—OCCUPANCY AND USE OF DEVELOPED SITES AND AREAS OF CONCENTRATED PUBLIC USE

Sec.
291.1 General applicability. [Reserved]
291.2 Definitions.
291.4 Sanitation.
291.5 Public behavior, preservation of public property and resources.
291.6 Audio devices.
291.7 Occupancy of developed recreation sites.
291.8 Vehicles.
291.9 Admission fees and special recreation use fees.

AUTHORITY: Sec. 1, 30 Stat. 35, as amended, 62 Stat. 100, sec. 1, 33 Stat. 628; 16 U.S.C. 551, 472, unless otherwise noted.

§ 291.1 General applicability. [Reserved]

§ 291.2 Definitions.

The following definitions shall apply to all regulations in §§ 291.2 through 291.8:

(a) The term "developed recreation sites" means all improved observation, swimming, boating, camping, and picnic sites.

(b) The word "sites" refers to recreation sites.

(c) The term "areas of concentrated public recreation use" means those areas identified by a posted map delineating its boundaries.

(d) The word "areas" refers to areas of concentrated public recreation use.

(e) The term "camping equipment" includes tent or vehicle used to accommodate the camper, the vehicles used for transport, and the associated camping paraphernalia.

§ 291.4 Sanitation.

The following acts are prohibited at developed recreation sites and posted areas of concentrated public recreation use.

(a) Failing to dispose of all garbage, including paper, cans, bottles, waste materials, and rubbish by removal from the site or area, or disposal at places provided for such disposition.

(b) Draining or dumping refuse or waste from any trailer or other vehicle except in places or receptacles provided for such uses.

(c) Cleaning fish or food, or washing clothing or articles of household use at hydrants or at water faucets located in restrooms.

(d) Polluting or contaminating water supplies or water used for human consumption.

(e) Depositing, except into receptacles provided for that purpose, any body waste in or on any portion of any comfort station or any public structure, or depositing any bottles, cans, cloths, rags, metal, wood, stone, or other damaging substance in any of the fixtures in such stations or structures.

(f) Using refuse containers or other refuse facilities for dumping household or commercial garbage or trash brought as such from private property.

§ 291.5 Public behavior, preservation of public property and resources.

The following acts are prohibited at developed recreation sites and posted areas of concentrated public recreation use.

(a) Inciting or participating in riots, or indulging in boisterous, abusive, threatening, or indecent conduct.

(b) Destroying, defacing, or removing any natural feature or plant.

(c) Destroying, injuring, defacing, removing, or disturbing in any manner any public building, sign, equipment, marker, or other structure or property.

(d) Selling or offering for sale any merchandise without the written consent of the Forest Supervisor.

(e) Distributing any handbills, or circulars, or posting, placing, or erecting any bills, notices, papers, or advertising devices or matter of any kind without the written consent of the Forest Supervisor.

(f) Discharging firearms, firecrackers, rockets, or any other fireworks.

§ 291.6 Audio devices.

The following acts are prohibited at developed recreation sites and posted areas of concentrated public recreation use.

(a) Operating or using any audio devices, including radio, television, and musical instruments, and other noise producing devices, such as electrical generator plants and equipment driven by motors or engines, in such a manner and at such times so as to disturb other persons.

(b) Operating or using public address systems, whether fixed, portable, or vehicle mounted, except when such use or operation has been approved by the Forest Supervisor in writing.

(c) Installing aerial or other special radiotelephone or television equipment unless approved by the Forest Supervisor in writing.

§ 291.7 Occupancy of developed recreation sites.

The following acts are prohibited within developed recreation sites.

(a) Occupying a site for other than primarily recreation purposes.

(b) Entering or using a site or a portion of a site closed to public use. Notices establishing closure shall be posted in such locations as will reasonably bring them to the attention of the public.

(c) Erecting or using unsightly or inappropriate structures.

(d) Occupying a site with camping equipment prohibited by the Forest Supervisor. Notices establishing limitations on the kind or type of camping equipment shall be posted in such locations as will reasonably bring them to the attention of the public.

(e) Building a fire outside of stoves, grills, fireplaces, or outside of fire rings provided for such purpose.

(f) Camping overnight in places restricted to day use only.

(g) Before departure, failing to remove their camping equipment or to clean their rubbish from the place occupied by the person or persons.

(h) Pitching tents or parking trailers or other camping equipment except in places provided for such purposes.

(i) Camping within a campground for a longer period of time than that established by the Forest Supervisor. Notices establishing limitations on the period of time persons may camp within a campground shall be posted in such locations as will reasonably bring them to the attention of the public.

(j) Leaving a camp unit unoccupied during the first night after camping equipment has been set up, or leaving unattended camping equipment for more than 24 hours thereafter, without permission of a Forest Officer. Unattended camping equipment which is not removed within the prescribed time limit is subject to impoundment in accordance with the provisions of § 261.16 of this chapter.

(k) Failing to maintain quiet in campgrounds between the hours of 10 p.m. and 6 a.m.

(l) Entering or remaining in campground closed during established night periods to persons other than those who occupy the campground for camping purposes or persons visiting those campers. Notices establishing the period of closure shall be posted in such locations as will reasonably bring them to the attention of the public.

(m) Bringing a dog, cat, or other animal into the site unless it is crated, caged, or upon a leash not longer than 6 feet, or otherwise under physical restrictive control at all times.

(n) Bringing animals, other than Seeing Eye dogs, to a developed swimming beach.

(o) Bringing saddle, pack, or draft animals into the site unless it has been developed to accommodate them and is posted accordingly.

§ 291.8 Vehicles.

The following are prohibited at developed recreation sites.

(a) Driving motor vehicles in excess of posted speeds.

(b) Driving or parking any vehicle or trailer except in places developed for this purpose.

(c) Driving any vehicle carelessly and heedlessly disregarding the rights or safety of others, or without due caution and at a speed, or in a manner, so as to endanger, or be likely to endanger, any person or property.

(d) Driving bicycles, motorbikes, and motorcycles on trails within developed recreation sites.

(e) Driving motorbikes, motorcycles, or other motor vehicles on roads in developed recreation sites for any purpose other than access into, or egress out of, the site.

(f) Operating a motor vehicle at any time without a muffler in good working order, or operating a motor vehicle in such a manner as to create excessive or unusual noise or annoying smoke, or using a muffler cutoff, bypass, or similar device.

(g) Excessively accelerating the engine of a motor vehicle or motorcycle

when such vehicle is not moving or is approaching or leaving a stopping place.

§ 291.9 Admission fees and special recreation use fees.

(a) Fees will be charged for admission or entrance to designated units of national recreation areas administered by the Department of Agriculture as provided by section 4(a) of the Land and Water Conservation Fund Act of 1965, as amended. Such fees shall be established by the Chief, Forest Service, or his delegate. Admission or entrance into any designated area of a national recreation area without payment of the established fee is prohibited.

(b) Special recreation use fees will be charged for the use of sites, facilities, equipment, or services furnished at Federal expense as provided by section 4(b) of the Land and Water Conservation Fund Act of 1965, as amended. Such fees shall be established by the Chief, Forest Service, or his delegate. Use of sites, facilities, equipment or services without payment of the established special recreation use fee is prohibited.

(c) Clear notice that an admission or entrance fee or special recreation use fee has been established shall be prominently posted at each area and at appropriate locations therein and shall be included in publications distributed at such areas. Any violation of this section is punishable by a fine of not more than \$100.

(Sec. 4, 86 Stat. 459)

PART 292—NATIONAL RECREATION AREAS

Subpart A—General [Reserved]

Sec. 292.1–292.10 [Reserved]

Subpart B—Whiskeytown-Shasta-Trinity National Recreation Area

Sec. 292.11 Introduction.
292.12 General provisions; procedures.
292.13 Standards.

Subpart C—Sawtooth National Recreation Area—Private Lands [Reserved]

Subpart D—Sawtooth National Recreation Area—Federal Lands [Reserved]

AUTHORITY: Sec. 1, 30 Stat. 35, as amended, 62 Stat. 100, Sec. 1, 33 Stat. 628; 16 U.S.C. 551, 472, unless otherwise noted.

Subpart A—General [Reserved]

§§ 292.1–292.10 [Reserved]

Subpart B—Whiskeytown-Shasta-Trinity National Recreation Area

§ 292.11 Introduction.

(a) Administration of the Shasta and Clair Engle-Lewiston Units will be coordinated with the other purposes of the Central Valley Project of the Bureau of Reclamation and of the recreation area as a whole so as to provide for: (1) Public outdoor recreation benefits; (2) conservation of scenic, scientific, historic, and other values contributing to public enjoyment; and (3) the management, utilization, and disposal of renewable natural resources which in the judgment of the Secretary of Agriculture will promote or is compatible with, and does not significantly impair, public recreation

and conservation of scenic, scientific, historic, or other values contributing to public enjoyment.

(b) The Secretary may not acquire without consent of the owner any privately owned "improved property" or interests therein within the boundaries of these units, so long as the appropriate local zoning agency shall have in force and applicable to such property a duly adopted, valid, zoning ordinance that is approved by the Secretary. This suspension of the Secretary's authority to acquire "improved property" without the owner's consent would automatically cease: (1) If the property is made the subject of a variance or exception to any applicable zoning ordinance that does not conform to the applicable standards contained in §§ 292.11–292.13; or (2) if such property is put to any use which does not conform to any applicable zoning ordinance approved by the Secretary.

(c) "Improved property" as used in §§ 292.11–292.13, means any building or group of related buildings, the actual construction of which was begun before February 7, 1963, together with not more than three acres of land in the same ownership on which the building or group of buildings is situated, but the Secretary may exclude from such "improved property" any shore or waters, together with so much of the land adjoining such shore or waters, as he deems necessary for public access thereto.

(d) Sections 292.11–292.13 specify the standards with which local zoning ordinances for the Shasta and Clair Engle-Lewiston Units must conform if the "improved property" or unimproved property proposed for development as authorized by the Act within the boundaries of the units is to be exempt from acquisition by condemnation. The objectives of §§ 292.11–292.13 are to: (1) Prohibit new commercial or industrial uses other than those which the Secretary considers to be consistent with the purposes of the act establishing the national recreation area; (2) promote the protection and development of properties in keeping with the purposes of that Act by means of use, acreage, setback, density, height or other requirements; and (3) provide that the Secretary receive notice of any variance granted under, or any exception made to, the application of the zoning ordinance approved by him.

(e) Following promulgation of §§ 292.11–292.13 in final form, the Secretary is required to approve any zoning ordinance or any amendment to an approved zoning ordinance submitted to him which conforms to the standards contained in the regulations in effect at the time of adoption of the ordinance or amendment.

(f) Any owner of unimproved property who proposes to develop his property for service to the public may submit to the Secretary a development plan setting forth the manner in which and the time by which the property is to be developed and the use to which it is proposed to be put. If the Secretary determines that the development and the use of the property conforms to approved

zoning ordinances, and serves the purposes of the National Recreation Area and that the property is not needed for easements and rights-of-way for access, utilities, or facilities, or for administration sites, campgrounds, or other areas needed for use by the United States for visitors, he may in his discretion issue to such owner a certification that so long as the property is developed, maintained, and used in conformity with approved zoning ordinances the Secretary's authority to acquire the property without the owner's consent is suspended.

§ 292.12 General provisions; procedures.

(a) *Approval of zoning ordinances and development plans.* (1) All validly adopted zoning ordinances and amendments thereto pertaining to the Shasta and Clair Engle-Lewiston Units may be submitted by the county of origin to the Secretary for written approval relative to their conformance with the applicable standards of §§ 292.11-292.13. Within 60 days following submission, the county will be notified of the Secretary's approval or disapproval of the zoning ordinances or amendments thereto. If more than 60 days are required, the county will be notified of the expected delay and of the additional time deemed necessary to reach a decision. The Secretary's approval shall remain effective so long as the zoning ordinances or amendments thereto remain in effect as approved.

(2) Development plans pertaining to unimproved property within the Shasta and Clair Engle-Lewiston Units may be submitted by the owner to the Secretary for determination as to whether they conform with approved zoning ordinances and whether the planned use and development would serve the Act. Within 30 days following submission of such plans the Secretary will approve or disapprove the plans or, if more than 30 days are required, will notify the applicant of the expected delay and of the additional time deemed necessary.

(b) *Amendment of ordinances.* Amendments of approved ordinances may be furnished in advance of their adoption to the Secretary for written decision as to their conformance with applicable standards of §§ 292.11-292.13.

(c) *Variances or exceptions to application of ordinances.* (1) The Secretary shall be given written notice of any variance granted under, or any exception made to, the application of a zoning ordinance or amendment thereto approved by him.

(2) The County, or private owners of improved property, may submit to the Secretary proposed variances or exceptions to the application of an approved zoning ordinance or amendment thereto for written advice as to whether the intended use will make the property subject to acquisition without the owner's consent. Within 30 days following his receipt of such a request, the Secretary will advise the interested party or parties as to his determination. If more than 30 days are required by the Secretary for such determination, he shall so notify

the interested party or parties stating the additional time required and the reasons therefor.

(d) *Certification of property.* Where improvements and land use of improved property conform with approved ordinances, or with approved variances from such ordinances, certification that the Secretary's authority to acquire the property without the owner's consent is suspended may be obtained by any party in interest upon request to the Secretary. Where the development and use of unimproved property for service to the public is approved by the Secretary, certification that the authority to acquire the property without the owner's consent is suspended may be issued to the owner.

(e) *Effect of noncompliance.* Suspension of the Secretary's authority to acquire any improved property without the owner's consent will automatically cease if (1) such property is made the subject of variance or exception to any applicable zoning ordinance that does not conform to the applicable standard in the Secretary's regulation, (2) such property is put to a use which does not conform to any applicable zoning ordinance, or, as to property approved by the Secretary for development, a use which does not conform to the approved development plan or (3) the local zoning agency does not have in force a duly adopted, valid, zoning ordinance that is approved by the Secretary in accordance with the standards of §§ 292.11-292.13.

(f) *Nonconforming commercial or industrial uses.* Any existing commercial or industrial uses not in conformance with approved zoning ordinances shall be discontinued within 10 years from the date such ordinances are approved: *Provided, however,* That with the approval of the Secretary such 10-year period may be extended by the county for a prescribed period sufficient to allow the owner reasonable additional time to amortize investments made in the property before November 8, 1965.

§ 292.13 Standards.

(a) The standards set forth in §§ 292.11-292.13 shall apply to the Shasta and Clair Engle-Lewiston Units, which are defined by the boundary descriptions in the notice of the Secretary of Agriculture of July 12, 1966 (31 FR 9469), and to a strip of land outside the National Recreation Area on either side of Federal Aid Secondary Highway Numbered 1089, as more fully described in 2(a) of the act establishing the recreation area (79 Stat. 1296).

(b) New industrial or commercial uses: new industrial or commercial uses will be prohibited in any location except under the following conditions:

(1) The industrial use is such that its operation, physical structures, or waste byproducts would not have significant adverse impacts on surrounding or nearby outdoor recreation, scenic and esthetic values. Industrial uses having an adverse impact include, but are not limited to, cement production, gravel extraction operations involving more than one-fourth acre of surface, smelters, sand,

gravel and aggregate processing plants, fabricating plants, pulp mills, and commercial livestock feeder yards.

(2) (i) The commercial use is for purposes of providing food, lodging, automotive or marine maintenance facilities and services to accommodate recreationists and the intended land occupancy and physical structures are such that they can be harmonized with adjacent land development and surrounding appearances in accordance with approved plans and schedules.

(ii) This standard provides for privately owned and operated businesses whose purposes and physical structures are in keeping with objectives for use and maintenance of the area's outdoor recreation resources. It precludes establishment of drive-in theaters, zoos, and similar nonconforming types of commercial entertainment.

(c) *Protection of roadsides:* Provisions to protect natural scenic qualities and maintain screening along public travel routes will include:

(1) Prohibition of new structural improvements or visible utility lines within a strip of land extending back not less than 150 feet from both sides of the centerline of any public road or roadway except roads within subdivisions or commercial areas. In addition to buildings, this prohibition pertains to above-ground power and telephone lines, borrow pits, gravel, or earth extraction areas, and quarries.

(2) Retention of trees and shrubs in the above-prescribed roadside strips to the full extent that is compatible with needs for public safety and road maintenance. Wholesale clearing by chemical or other means for fire control and other purposes will not be practiced under this standard.

(d) *Protection of shorelines:* Provisions to protect scenic qualities and reduce potentials for pollution of public reservoirs will include: Prohibition of structures within 300 feet horizontal distance from highwater lines of reservoirs other than structures the purpose of which is to service and accommodate boating or to facilitate picnicking and swimming: *Provided,* That exceptions to this standard may be made upon showing satisfactory to the Secretary that proposed structures will not conflict with scenic and antipollution considerations.

(e) *Property development:* Location and development of structures will conform with the following minimum standards:

(1) *Commercial development.* (i) Stores, restaurants, garages, service stations, and comparable business enterprises will be situated in centers zoned for this purpose unless they are operated as part of a resort or hotel. Commercial centers will be of sufficient size that expansion of facilities or service areas is not dependent upon use of public land.

(ii) Sites outside designated commercial centers will be used for resort development contingent upon case by case concurrence of the responsible county officials and the Secretary that such use is, in all aspects, compatible with the

purposes for establishing the recreation area.

(iii) Structures for commercial purposes, inclusive of isolated resorts or motels, will not exceed two stories height at front elevation, and will be conventional architecture and will utilize colors, nonglare roofing materials, and spacing or layout that harmonizes with forested settings. Except for signs, structures designed primarily for purposes of calling attention to products or service will not be permitted.

(2) **Residential development.** (i) Locations approved for residential development will be buffered by distance, topography, or forest cover from existing or planned public use areas such as trailer parks, campgrounds, or organization sites. Separation will be sufficient to avoid conflicts resulting from intervisibility, noise, and proximity that is conducive to private property trespass.

(ii) Requirements for approval of residential areas will include: (a) Construction of access when main access would otherwise be limited to a road constructed by the United States primarily to service publicly owned recreation developments; (b) limitation of residences to single-family units situated at a density not exceeding two per acre, but any lot of less than a half-acre may be used for residential purposes if, on or before promulgation of §§ 292.11-292.13, such lot was in separate ownership or was delineated in a county-approved plat that constitutes part of a duly recorded subdivision; (c) use of set-backs, limitations to natural terrain, neutral exterior colors, nonglare roofing materials, and limitations of building heights fully adequate to harmonize housing development with the objective of the National Recreation Area as set forth in the act.

(3) **Signs and signing.** Only those signs may be permitted which (i) do not exceed 1 square foot in area for any residential use; (ii) do not exceed 40 square feet in area, 8 feet in length, and 15 feet maximum height from ground for any other use, including advertisement of the sale or rental of property; and (iii) which are not illuminated by any neon or flashing device. Commercial signs may be placed only on the property on which the advertised use occurs, or on the property which is advertised for sale or rental. Signs shall be subdued in appearance, harmonizing in design and color with the surroundings and shall not be attached to any tree or shrub. Nonconforming signs may continue for a period not to exceed 2 years from the date a zoning ordinance containing these limitations is adopted.

Subpart C—Sawtooth National Recreation Area—Private Lands

§§ 292.14-292.16 [Reserved]

Subpart D—Sawtooth National Recreation Area—Federal Lands

§§ 292.17-292.19 [Reserved]

PART 293—WILDERNESS—PRIMITIVE AREAS

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AUTHORITY: Sec. 1, 30 Stat. 35, as amended, 62 Stat. 100, sec. 1, 33 Stat. 628; 16 U.S.C. 551, 472, unless otherwise noted.

§ 293.1 Definition.

National Forest Wilderness shall consist of those units of the National Wilderness Preservation System which at least 30 days before the Wilderness Act of September 3, 1964, were designated as Wilderness and Wild under Secretary of Agriculture's Regulations U-1 and U-2 (§§ 251.20, 251.21), the Boundary Waters Canoe Area as designated under Regulation U-3 (§ 294.1), and such other areas of the National Forests as may later be added to the System by act of Congress. Sections 293.1 to 293.15 apply to all National Forest units now or hereafter in the National Wilderness Preservation System, including the Boundary Waters Canoe Area, Superior National Forest, except as that area is subject to § 293.16.

§ 293.2 Objectives.

Except as otherwise provided in the regulations in this part, National Forest Wilderness shall be so administered as to meet the public purposes of recreational, scenic, scientific, educational, conservation, and historical uses; and it shall also be administered for such other purposes for which it may have been established in such a manner as to preserve and protect its wilderness character. In carrying out such purposes, National Forest Wilderness resources shall be managed to promote, perpetuate, and, where necessary, restore the wilderness character of the land and its specific values of solitude, physical and mental challenge, scientific study, inspiration, and primitive recreation. To that end:

(a) Natural ecological succession will be allowed to operate freely to the extent feasible.

(b) Wilderness will be made available for human use to the optimum extent consistent with the maintenance of primitive conditions.

(c) In resolving conflicts in resource use, wilderness values will be dominant to the extent not limited by the Wilder-

ness Act, subsequent establishing legislation, or the regulations in this part.

§ 293.3 Control of uses.

To the extent not limited by the Wilderness Act, subsequent legislation establishing a particular unit, or the regulations in this part, the Chief, Forest Service, may prescribe measures necessary to control fire, insects, and disease and measures which may be used in emergencies involving the health and safety of persons or damage to property and may require permits for, or otherwise limit or regulate, any use of National Forest land, including, but not limited to, camping, campfires, and grazing of recreation livestock.

§ 293.4 Maintenance of records.

The Chief, Forest Service, in accordance with section 3(a)(2) of the Wilderness Act, shall establish uniform procedures and standards for the maintenance and availability to the public of records pertaining to National Forest Wilderness, including maps and legal descriptions; copies of regulations governing Wilderness; and copies of public notices and reports submitted to Congress regarding pending additions, eliminations, or modifications. Copies of such information pertaining to National Forest Wilderness within their respective jurisdictions shall be available to the public in the appropriate offices of the Regional Foresters, Forest Supervisors, and Forest Rangers.

§ 293.5 Establishment, modification, or elimination.

National Forest Wilderness will be established, modified, or eliminated in accordance with the provisions of sections 3(b), (d), and (e) of the Wilderness Act. The Chief, Forest Service, shall arrange for issuing public notices, appointing hearing officers, holding public hearings, and notifying the Governors of the States concerned and the governing board of each county in which the lands involved are located.

(a) At least 30 days' public notice shall be given of the proposed action and intent to hold a public hearing. Public notice shall include publication in the FEDERAL REGISTER and in a newspaper of general circulation in the vicinity of the land involved.

(b) Public hearings shall be held at locations convenient to the area affected. If the land involved is in more than one State, at least one hearing shall be held in each State in which a portion of the land lies.

(c) A record of the public hearing and the views submitted subsequent to public notice and prior to the close of the public hearing shall be included with any recommendations to the President and to the Congress with respect to any such action.

(d) At least 30 days before the date of the public hearing, suitable advice shall be furnished to the Governor of each State and the governing board of each county or, in Alaska, the borough

in which the lands are located, and Federal departments and agencies concerned; and such officers or Federal agencies shall be invited to submit their views on the proposed action at the hearing or in writing by not later than 30 days following the date of the hearing. Any views submitted in response to such advice with respect to any proposed Wilderness action shall be included with any recommendations to the President and to the Congress with respect to any such action.

§ 293.6 Commercial enterprises, roads, motor vehicles, motorized equipment, motorboats, aircraft, aircraft landing facilities, airdrops, structures, and cutting of trees.

Except as provided in the Wilderness Act, subsequent legislation establishing a particular Wilderness unit, or §§ 294.2 (b), 294.2(c), and 294.2(e), paragraphs (c) and (d) of this section, and §§ 293.7, 293.8, and 293.12 through 293.16, inclusive, and subject to existing rights, there shall be in National Forest Wilderness no commercial enterprises; no temporary or permanent roads; no aircraft landing strips; no heliports or helispots, no use of motor vehicles, motorized equipment, motorboats, or other forms of mechanical transport; no landing of aircraft; no dropping of materials, supplies, or persons from aircraft; no structures or installations; and no cutting of trees for nonwilderness purposes.

(a) "Mechanical transport," as herein used, shall include any contrivance which travels over ground, snow, or water on wheels, tracks, skids, or by floatation and is propelled by a nonliving power source contained or carried on or within the device.

(b) "Motorized equipment," as herein used, shall include any machine activated by a nonliving power source, except that small battery-powered, hand-carried devices such as flashlights, shavers, and Geiger counters are not classified as motorized equipment.

(c) The Chief, Forest Service, may authorize occupancy and use of National Forest land by officers, employees, agencies, or agents of the Federal, State, and county governments to carry out the purposes of the Wilderness Act and will prescribe conditions under which motorized equipment, mechanical transport, aircraft, aircraft landing strips, heliports, helispots, installations, or structures may be used, transported, or installed by the Forest Service and its agents and by other Federal, State, or county agencies or their agents, to meet the minimum requirements for authorized activities to protect and administer the Wilderness and its resources. The Chief may also prescribe the conditions under which such equipment, transport, aircraft, installations, or structures may be used in emergencies involving the health and safety of persons, damage to property, or other purposes.

(d) The Chief, Forest Service, may permit, subject to such restrictions as he deems desirable, the landing of aircraft and the use of motorboats at places

within any Wilderness where these uses were established prior to the date the Wilderness was designated by Congress as a unit of the National Wilderness Preservation System. The Chief may also permit the maintenance of aircraft landing strips, heliports, or helispots which existed when the Wilderness was designated by Congress as a unit of the National Wilderness Preservation System.

§ 293.7 Grazing of livestock.

(a) The grazing of livestock, where such use was established before the date of legislation which includes an area in the National Wilderness Preservation System, shall be permitted to continue under the general regulations covering grazing of livestock on the National Forests and in accordance with special provisions covering grazing use in units of National Forest Wilderness which the Chief of the Forest Service may prescribe for general application in such units or may arrange to have prescribed for individual units.

(b) The Chief, Forest Service, may permit, subject to such conditions as he deems necessary, the maintenance, reconstruction, or relocation of those livestock management improvements and structures which existed within a Wilderness when it was incorporated into the National Wilderness Preservation System. Additional improvements or structures may be built when necessary to protect wilderness values.

§ 293.8 Permanent structures and commercial services.

Motels, summer homes, stores, resorts, organization camps, hunting and fishing lodges, electronic installations, and similar structures and uses are prohibited in National Forest Wilderness. The Chief, Forest Service, may permit temporary structures and commercial services within National Forest Wilderness to the extent necessary for realizing the recreational or other wilderness purposes, which may include, but are not limited to, the public services generally offered by packers, outfitters, and guides.

§ 293.9 Poisons and herbicides.

Poisons or herbicides will not be used to control wildlife, fish, insects, or plants within any Wilderness except by or under the direct supervision of the Forest Service or other agency designated by the Chief, Forest Service; however, the personal use of household-type insecticides by visitors to provide for health and sanitation is specifically excepted from this prohibition.

§ 293.10 Jurisdiction over wildlife and fish.

Nothing in the regulations in this part shall be construed as affecting the jurisdiction or responsibility of the several States with respect to wildlife and fish in the National Forests.

§ 293.11 Water rights.

Nothing in the regulations in this part constitutes an expressed or implied claim

or denial on the part of the Department of Agriculture as to exemption from State water laws.

§ 293.12 Access to surrounded State and private lands.

States or persons, and their successors in interest, who own land completely surrounded by National Forest Wilderness shall be given such rights as may be necessary to assure adequate access to that land. "Adequate access" is defined as the combination of routes and modes of travel which will, as determined by the Forest Service, cause the least lasting impact on the primitive character of the land and at the same time will serve the reasonable purposes for which the State and private land is held or used. Access by routes or modes of travel not available to the general public under the regulations in this part shall be given by written authorization issued by the Forest Service. The authorization will prescribe the means and the routes of travel to and from the privately owned or State-owned land which constitute adequate access and the conditions reasonably necessary to preserve the National Forest Wilderness.

§ 293.13 Access to valid mining claims or valid occupancies.

Persons with valid mining claims or other valid occupancies wholly within National Forest Wilderness shall be permitted access to such surrounded claims or occupancies by means consistent with the preservation of National Forest Wilderness which have been or are being customarily used with respect to other such claims or occupancies surrounded by National Forest Wilderness. The Forest Service will, when appropriate, issue permits which shall prescribe the routes of travel to and from the surrounded claims or occupancies, the mode of travel, and other conditions reasonably necessary to preserve the National Forest Wilderness.

§ 293.14 Mining, mineral leases, and mineral permits.

Notwithstanding any other provisions of the regulations in this part, the U.S. mining laws and all laws pertaining to mineral leasing shall extend to each National Forest Wilderness for the period specified in the Wilderness Act or subsequent establishing legislation to the same extent they were applicable prior to the date the Wilderness was designated by Congress as a part of the National Wilderness Preservation System.

(a) Whoever hereafter locates a mining claim in National Forest Wilderness shall within 30 days thereafter file a written notice of his Post Office address and the location of that mining claim in the office of the Forest Supervisor or District Ranger having jurisdiction over the National Forest land on which the claim is located.

(b) Holders of unpatented mining claims validly established on any National Forest Wilderness prior to inclusion of such unit in the National Wilderness Preservation System shall be accorded the rights provided by the U.S. mining

laws as then applicable to the National Forest land involved. Persons locating mining claims in any unit of National Forest Wilderness on or after the date on which the said unit was included in the National Wilderness Preservation System shall be accorded the rights provided by the U.S. mining laws as applicable to the National Forest land involved and subject to provisions specified in the establishing legislation. All claimants shall comply with reasonable conditions prescribed by the Chief, Forest Service, for the protection of National Forest resources in accordance with the general purposes of maintaining the National Wilderness Preservation System unimpaired for future use and enjoyment as wilderness and so as to provide for the preservation of its wilderness character; and a performance bond may be required.

(1) Prior to commencing operation or development of any mining claim, or to cutting timber thereon, mining claimants shall file written notice in the office of the Forest Supervisor or District Ranger having jurisdiction over the land involved. Unless within 20 days after such notice is given the Forest Service requires the claimant to furnish operating plans or to accept a permit governing such operations, he may commence operation, development, or timber cutting.

(2) No claimant shall construct roads across National Forest Wilderness unless authorized by the Forest Service. Application to construct a road to a mining claim shall be filed with the Forest Service and shall be accompanied by a plat showing the location of the proposed road and by a description of the type and standard of the road. The Chief, Forest Service, shall, when appropriate, authorize construction of the road as proposed or shall require such changes in location and type and standard of construction as are necessary to safeguard the National Forest resources, including wilderness values, consistent with the use of the land for mineral location, exploration, development, drilling, and production and for transmission lines, waterlines, telephone lines, and processing operations, including, where essential, the use of mechanical transport, aircraft or motorized equipment.

(3) Claimants shall cut timber on mining claims within National Forest Wilderness only for the actual development of the claim or uses reasonably incident thereto. Any severance or removal of timber, other than severance or removal to provide clearance, shall be in accordance with sound principles of forest management and in such a manner as to minimize the adverse effect on the wilderness character of the land.

(4) All claimants shall, in developing and operating their mining claims, take those reasonable measures, including settling ponds, necessary for the disposal of tailings, dumpage, and other deleterious materials or substances to prevent obstruction, pollution, excessive siltation, or deterioration of the land, streams, ponds, lakes, or springs, as may be directed by the Forest Service.

(5) On mining claims validly established prior to inclusion of the land within the National Wilderness Preservation System, claimants shall, as directed by the Forest Service and if application for patent is not pending, take all reasonable measures to remove any improvements no longer needed for mining purposes and which were installed after the land was designated by Congress as Wilderness and, by appropriate treatment, restore, as nearly as practicable, the original contour of the surface of the land which was disturbed subsequent to the date this section is adopted and which is no longer needed in performing location, exploration, drilling, and production and promote its revegetation by natural means. On such part of the claim where restoration to approximately the original contour is not feasible, restoration for such part shall provide a combination of bank slopes and contour gradient conducive to soil stabilization and revegetation by natural means.

(6) On claims validly established after the date the land was included within the National Wilderness Preservation System, claimants shall, as directed by the Forest Service, take all reasonable measures to remove improvements no longer needed for mining purposes and, by appropriate treatment, restore, as near as practicable, the original contour of the surface of the land which was disturbed and which is no longer needed in performing location and exploration, drilling and production, and to revegetate and to otherwise prevent or control accelerated soil erosion.

(c) The title to timber on patented claims validly established after the land was included within the National Wilderness Preservation System remains in the United States, subject to a right to cut and use timber for mining purposes. So much of the mature timber may be cut and used as is needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available. The cutting shall comply with the requirements for sound principles of forest management as defined by the National Forest rules and regulations and set forth in stipulations issued by the Chief, Forest Service, which as a minimum incorporate the following basic principles of forest management:

(1) Harvesting operations shall be so conducted as to minimize soil movement and damage from water runoff; and

(2) Slash shall be disposed of and other precautions shall be taken to minimize damage from forest insects, disease, and fire.

(d) Mineral leases, permits, and licenses covering lands within National Forest Wilderness will contain reasonable stipulations for the protection of the wilderness character of the land consistent with the use of the land for purposes for which they are leased, permitted, or licensed. The Chief, Forest Service, shall specify the conditions to be included in such stipulations.

(e) Permits shall not be issued for the removal of mineral materials com-

monly known as "common varieties" under the Materials Act of July 31, 1947, as amended and supplemented (30 U.S.C. 601-604).

§ 293.15 Prospecting for minerals and other resources.

The Chief, Forest Service, shall allow any activity, including prospecting, for the purpose of gathering information about minerals or other resources in National Forest Wilderness except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment, and except, further, that:

(a) No person shall have any right or interest in or to any mineral deposits which may be discovered through prospecting or other information-gathering activity after the legal date on which the United States mining laws and laws pertaining to mineral leasing cease to apply to the specific Wilderness, nor shall any person after such date have any preference in applying for a mineral lease, license, or permit.

(b) No overland motor vehicle or other form of mechanical overland transport may be used in connection with prospecting for minerals or any activity for the purpose of gathering information about minerals or other resources except as authorized by the Chief, Forest Service.

(c) Any person desiring to use motorized equipment, to land aircraft, or to make substantial excavations for mineral prospecting or for other purposes shall apply in writing to the office of the Forest Supervisor or District Ranger having jurisdiction over the land involved. Excavations shall be considered "substantial" which singularly or collectively exceed 200 cubic feet within any area which can be bounded by a rectangle containing 20 surface acres. Such use or excavation may be authorized by a permit issued by the Forest Service. Such permits may provide for the protection of National Forest resources, including wilderness values, protection of the public, and restoration of disturbed areas, including the posting of performance bonds.

(d) Prospecting for water resources and the establishment of new reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest and the subsequent maintenance of such facilities, all pursuant to section 4(d)(4) of the Wilderness Act, will be permitted when and as authorized by the President.

§ 293.16 Special provisions governing the Boundary Waters Canoe Area, Superior National Forest.

Subject to existing private rights, the lands now owned or hereafter acquired by the United States within the Boundary Waters Canoe Area of the Superior National Forest, Minn., as formerly designated under Reg. U-3 (§ 294.1) and incorporated into the National Wilderness Preservation System under the

Wilderness Act of September 3, 1964, shall be administered in accordance with this regulation for the general purpose of maintaining, without unnecessary restrictions on other uses, including that of timber, the primitive character of the Area, particularly in the vicinity of lakes, streams, and portages.

(a) In the management of the timber resources of the Boundary Waters Canoe Area, two zones are established:

(1) An Interior Zone, in which there will be no commercial harvesting of timber. The boundaries of this zone are defined on an official map dated the same date as that on which this regulation is promulgated, which map shows the specific boundaries established January 12, 1965, and the boundaries of the additional area which is to be progressively added by the Chief of the Forest Service between January 12, 1965, and December 31, 1975.

(2) A Portal Zone which will include all the Boundary Waters Canoe Area not designated as Interior Zone. Timber harvesting is permitted in the Portal Zone under conditions designed to protect and maintain primitive recreational values. Timber within 400 feet of the shorelines of lakes and streams suitable for boat or canoe travel or any portage connecting such waters will be specifically excluded from harvesting, and timber harvesting operations will be designed to avoid unnecessary crossings of portages. Timber sale plans will incorporate suitable provisions for prompt and appropriate cover restoration.

(b) Except as provided in the Wilderness Act, in this section and in §§ 294.2 (b), (c) and (e), and subject to existing private rights, there shall be no commercial enterprises and no permanent roads within the Boundary Waters Canoe Area and there shall be no temporary roads, no use of motor vehicles, motorized equipment, or motorboats, no landing of aircraft, and no other form of mechanical transport.

(1) All uses that require the erection of permanent structures and all permanent structures except as herein provided, are prohibited in the Boundary Waters Canoe Area. The Chief, Forest Service, may permit temporary structures and commercial services within the Boundary Waters Canoe Area to the extent necessary for realizing the recreational or other wilderness purposes, which may include the public services generally offered by outfitters and guides.

(2) In the Portal Zone temporary roads and the use of motorized equipment and mechanical transport for the authorized travel and removal of forest products will be permitted in accordance with special conditions established by the Chief, Forest Service; but such use of the roads for other purposes is prohibited.

(3) The overland transportation of any watercraft by mechanical means, including the use of wheels, rollers, or other devices, is prohibited except that mechanical transport and necessary attendant facilities may be permitted, in accordance with special conditions es-

tablished by the Chief, Forest Service, over portages along the International Boundary, including the Loon River Portage, when acquired; Beatty Portage and Prairie Portage; the other major portages into Basswood Lake; namely, Four Mile and Fall-Newton-Pipestone Bay Portages; and the Vermilion-Trout Lake Portage. Mechanical transport over Four Mile and Fall-Newton-Pipestone Bay Portages may be suspended, modified, or revoked upon acquisition by the United States of all lands on Basswood Lake, and the expiration of rights reserved in connection with the acquisition of such lands.

(4) No motor or other mechanical device capable of propelling a watercraft through water shall be transported by any means across National Forest land except over routes designated by the Chief, Forest Service, who shall cause a list and a map of all routes so designated, and any special conditions governing their use, to be maintained for public reference in the offices of the Regional Forester, the Forest Supervisor, and the Forest Rangers having jurisdiction.

(5) Except for holders of reserved rights, no watercraft, motor, mechanical device, or equipment not used in connection with a current visit may be stored on or moored to National Forest land and left unattended.

(6) No amphibious craft of any type and no watercraft designed for or used as floating living quarters shall be moored to, used on, or transported over National Forest land.

(7) The Chief, Forest Service, may permit the use of motor-driven ice and snow craft on routes over which motors may be transported, as authorized in subparagraph (4) of this paragraph; and over the Crane Lake-Little Vermilion Lake Winter Portage; and over the Saganaga Lake Winter Portage, in sections 18-19, T. 66 N., R. 4 W. The Chief shall cause a list and a map of routes over which use of ice and snow craft is permitted, and any special conditions governing their use, to be maintained for public reference in the offices of the Regional Forester, the Forest Supervisor, and the Forest Rangers having jurisdiction.

(8) In order to permit customary use of the Boundary Waters Canoe Area to continue pending a permanent solution to the change of water levels resulting from the failure of Prairie Portage Dam and notwithstanding the provisions of subparagraphs (3) and (5) of this paragraph until December 31, 1969, use of portage wheels to transport boats across the temporary portage between Moose Lake and Newfound Lake may be permitted, and permits may be issued for the storage of boats and related equipment in the vicinity of this temporary portage to the extent consistent with the operating practices of the permittees prior to the failure of Prairie Portage Dam as determined by the Forest Supervisor; and notwithstanding the provisions of subparagraph (1) of this paragraph, a structure to maintain normal water levels in Moose Lake is authorized.

(c) No permanent or semipermanent camp may be erected or used on National Forest land except as authorized in connection with a reserved right, or in the Portal Zone in connection with the harvest and removal of timber and other forest products.

(d) Public use of certain existing improvements within and adjacent to the boundaries of the Boundary Waters Canoe Area, to wit:

Road—sections 8, 9, 10, and 11, T. 61 N., R. 9 W.

Road and railroad—section 3, T. 61 N., R. 8 W.

Road and powerline—section 22, T. 64 N., R. 1 W.

is recognized and may continue, subject to general authority of the Chief, Forest Service, with respect to roads and public utility improvements, in accordance with the general purpose of maintaining without unnecessary restrictions on other uses, the primitive character of the Area.

(e) To the extent not limited by the Wilderness Act, the Chief, Forest Service, may prescribe measures necessary to control fire, insects, and disease; measures necessary to protect and administer the Area; measures which may be used in emergencies involving the health and safety of persons, or damage to property; and may require permits for, or otherwise limit or regulate, and use of National Forest land, including camping and campfires. The Chief may authorize occupancy and use of National Forest land by officers or agencies of the Federal Government, the State of Minnesota, and the Counties of St. Louis, Lake, and Cook, and will prescribe conditions under which motorized equipment, mechanical transport, or structures may be used, transported, or installed by the Forest Service and its agents and by other Federal, State, or County agencies, to meet the minimum requirements for protection and administration of the Area and its resources.

(f) Nothing in this regulation shall be construed as affecting the jurisdiction or responsibility of the State of Minnesota with respect to wildlife and fish in the National Forest.

(g) The State of Minnesota, other persons, and their successors in interest owning land completely surrounded by National Forest land shall be given such rights as may be necessary to assure adequate access to that land. Such rights may be recognized in stipulations entered into between the Forest Service and the private owner or State. Such stipulations may prescribe the means and the routes of travel to and from the privately owned or State land which constitute adequate access and any other conditions reasonably necessary for the preservation of the primitive conditions within the Boundary Waters Canoe Area.

(78 Stat. 890, 16 U.S.C. 1131-1136; 74 Stat. 215, 16 U.S.C. 528-531; 46 Stat. 1020, 16 U.S.C. 577-577c)

§ 293.17 National Forest Primitive Areas.

(a) Within those areas of National Forests classified as "Primitive" on the

effective date of the Wilderness Act, September 3, 1964, there shall be no roads or other provision for motorized transportation, no commercial timber cutting, and no occupancy under special-use permit for hotels, stores, resorts, summer homes, organization camps, hunting and fishing lodges, or similar uses: *Provided*, That existing roads over National Forest lands reserved from the public domain and roads necessary for the exercise of a statutory right of ingress and egress may be allowed under appropriate conditions determined by the Chief, Forest Service.

(b) Grazing of domestic livestock, development of water storage projects which do not involve road construction, and improvements necessary for the protection of the National Forests may be permitted, subject to such restrictions as the Chief, Forest Service, deems desirable. Within Primitive Areas, when the use is for other than administrative needs of the Forest Service, use by other Federal agencies when authorized by the Chief, and in emergencies, the landing of aircraft and the use of motorboats are prohibited on National Forest land or water unless such use by aircraft or motorboats has already become well established, the use of motor vehicles is prohibited, and the use of other motorized equipment is prohibited except as authorized by the Chief. These restrictions are not intended as limitations on statutory rights of ingress and egress or of prospecting, locating, and developing mineral resources.

(78 Stat. 890, 16 U.S.C. 1131-1136; 74 Stat. 215, 16 U.S.C. 528-531)

PART 294—SPECIAL AREAS

- Sec.
294.1 Recreation areas.
294.2 Navigation of aircraft within airspace reservation over certain areas of Superior National Forest in Minnesota.

AUTHORITY: Sec. 1, 30 Stat. 35, as amended, 62 Stat. 100, sec. 1, 33 Stat. 628; 16 U.S.C. 551, 472, unless otherwise noted.

§ 294.1 Recreation areas.

Suitable areas of national forest land, other than wilderness or wild areas, which should be managed principally for recreation use may be given special classification as follows:

(a) Areas which should be managed principally for recreation use substantially in their natural condition and on which, in the discretion of the officer making the classification, certain other uses may or may not be permitted may be approved and classified by the Chief of the Forest Service or by such officers as he may designate if the particular area is less than 100,000 acres. Areas of 100,000 acres or more will be approved and classified by the Secretary of Agriculture.

(b) Areas which should be managed for public recreation requiring development and substantial improvements may be given special classification as public recreation areas. Areas in single tracts of not more than 160 acres may be

approved and classified by the Chief of the Forest Service or by such officers as he may designate. Areas in excess of 160 acres will be classified by the Secretary of Agriculture. Classification hereunder may include areas used or selected to be used for the development and maintenance as camp grounds, picnic grounds, organization camps, resorts, public service sites (such as for restaurants, filling stations, stores, horse and boat livery, garages, and similar types of public service accommodations), bathing beaches, winter sports areas, lodges, and similar facilities and appurtenant structures needed by the public to enjoy the recreation resources of the national forests. The boundaries of all areas so classified shall be clearly marked on the ground and notices of such classification shall be posted at conspicuous places thereon. Areas classified under this section shall thereby be set apart and reserved for public recreation use and such classification shall constitute a formal closing of the area to any use or occupancy inconsistent with the classification.

§ 294.2 Navigation of aircraft within airspace reservation over certain areas of Superior National Forest in Minnesota.

(a) *Description of areas.* Sections 294.2(b) to 294.2(f), inclusive, apply to those areas of land and water in the Counties of Cook, Lake, and St. Louis, State of Minnesota, within the exterior boundaries of the Superior National Forest, which have heretofore been designated by the Secretary of Agriculture as the Superior Roadless Area, the Little Indian Sioux Roadless Area, and the Caribou Roadless Area, respectively, and to the airspace over said areas and below the altitude of 4,000 feet above sea level. Said areas are more particularly described in the Executive order setting apart said airspace as an airspace reservation (E.O. 10092, Dec. 17, 1949; 3 CFR 1949 Supp.). Copies of said Executive order may be obtained on request from the Forest Supervisor, Superior National Forest, Duluth, Minnesota (hereinafter called "Forest Supervisor").

(b) *Emergency landing and rescue operations.* The pilot of any aircraft landing within any of said areas for reasons of emergency or for conducting rescue operations, shall inform the Forest Supervisor within seven days after the termination of the emergency or the completion of the rescue operation as to the date, place, and duration of landing, and the type and registration number of the aircraft.

(c) *Low flights.* Any person making a flight within said airspace reservation for reasons of safety or for conducting rescue operations shall inform the Forest Supervisor within seven days after the completion of the flight or the rescue operation as to the date, place, and duration of flight, and the type and registration number of the aircraft.

(d) *Permits.* Permits for the navigation of aircraft within said airspace reservation until January 1, 1952, for the purpose of direct travel to and from private

lands within any of said areas will be issued by the Forest Supervisor to the pilot or owner of such lands whenever it is shown by the applicant to the satisfaction of the Forest Supervisor that air travel was a customary means of ingress to and egress from such lands prior to December 17, 1949. No person shall navigate an aircraft within said airspace reservation except as authorized by such permit or by the provisions of §§ 294.2(b), 294.2(c), and 294.2(e). Upon request of the Forest Supervisor the reports, records, and other information as to any flights made pursuant to such permits shall be made available. *Provided*, That no such request shall be made after October 31, 1957.

(e) *Official flights.* The provisions of §§ 294.2(b), 294.2(c), and 294.2(d) will not apply to flights made for conducting or assisting in the conduct of official business of the United States, the State of Minnesota or of Cook, St. Louis or Lake County, Minnesota.

(f) *Conformity with law.* Nothing in these regulations shall be construed as permitting the operation of aircraft contrary to the provisions of the Civil Aeronautics Act of 1938 (52 Stat. 973), as amended, or any rule, regulation or order issued thereunder.

PART 295—USE OF OFF-ROAD VEHICLES [RESERVED]

PARTS 296-299 [RESERVED]

[FR Doc. 73-3703 Filed 3-2-73; 8:45 am]

Title 46—Shipping

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 72-149R]

SUBCHAPTER B—MERCHANT MARINE OFFICERS AND SEAMEN

PART 10—LICENSING OF OFFICERS AND MOTORBOAT OPERATORS AND REGISTRATION OF STAFF OFFICERS

SUBCHAPTER T—SMALL PASSENGER VESSELS (UNDER 100 GROSS TONS)

PART 187—LICENSING

Requirements for Original Licenses

The purpose of the regulations in this document is to relax the visual acuity requirements for an original license as a deck engineer, or radio officer, or as an operator licensed under Part 10 or 187 of Title 46, Code of Federal Regulations. This change also affects the physical requirements for an endorsement as seaman because the visual acuity requirements for:

(1) An able seaman are the same as for an original license as a deck officer (46 CFR 12.05-5(b));

(2) A qualified member of the engine department are the same as for an original license as an engineer (46 CFR 12.15-5(b)); and

(3) A tankerman are the same as for an original license as an engineer, except the color vision test is the same as required for a deck officer (46 CFR 12.20-3(b)).