

applicable, the first sentence of this paragraph shall apply.

(Sec. 211, National Housing Act, as amended, (12 U.S.C. 1715b))

Issued at Washington, D.C., July 24, 1980.

Lawrence B. Simons

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 80-22908 Filed 7-30-80; 8:45 am]

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24 CFR Part 236

[Docket No. R-80-728]

Mortgage Insurance and Interest Reduction Payment for Rental Projects; Rental Assistance Payments, Non-Insured Section 236 Projects

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This final rule amends the Rental Assistance Payments (RAP) regulations by making all previously ineligible, non-insured Section 236 projects eligible for RAP at the discretion of the sponsor, State or local agencies financing the projects and the Secretary.

EFFECTIVE DATE: September 11, 1980.

FOR FURTHER INFORMATION CONTACT: Lynda Murphy, Director, Office of State Agency and Bond Financed Programs, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 426-7113 (not a toll free number).

SUPPLEMENTARY INFORMATION: On October 24, 1979, the Department published an interim rule revising the Rental Assistance Payments Program, 44 FR 61177. Section 236.701(c) was changed to provide that all section 236 non-insured projects which were previously ineligible for Rental Assistance Payments (RAP) be eligible for RAP at the discretion of the sponsor, the State housing finance agency providing financing for projects and the Secretary. The interim rule became effective on November 23, 1979.

Only one comment was received by the due date of December 26, 1979, and this voiced full agreement with the change. As a result of the lack of adverse comments the rule is being published in final form without change.

A Finding of Inapplicability with respect to environmental impact has been prepared in accordance with HUD Procedures for Protection and Enhancement of Environmental Quality. This rule is listed as item number H-5-79 in the Department's semi-annual agenda of significant rules, published pursuant to Executive Order 12044. This

regulation has been evaluated and has been found not to have major economic consequences for the general economy or for individual industries, geographic regions, or levels of government. Copies of the Findings are available for inspection and copy in the Office of the Rules Docket Clerk Office of the General Counsel, Room 5218, HUD, 451 7th Street SW., Washington, D.C. 20410.

Accordingly, 24 CFR, Part 236; Subpart D, is amended by revising § 236.701(c) to read as follows:

§ 236.701 Scope of rental assistance.

(c) Had received a reservation of section 236 contract authority (in the case of projects processed without HUD mortgage insurance and to be financed under a State or local government aided program pursuant to section 236(b) of the National Housing Act) on or before August 22, 1974, but are reprocessed with rental assistance pursuant to an Agreement between the sponsor, the State or local agency providing additional aid to the project, and the Secretary. Projects in this category which are converted from Rent Supplement shall have Rental Assistance Contracts with terms which do not exceed the unexpired terms of the Rent Supplement Contracts. Projects in this category which have no Rent Supplement Contract shall have Rental Assistance Contracts with terms which do not exceed the unexpired terms of Agreement for Interest Reduction Payments or equivalent documents or 40 years whichever is less; or

(Sec. 212, Housing and Community Development Act of 1974, Pub. L. 93-383, 88 Stat. 633)

Issued at Washington, D.C., July 24, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 80-22976 Filed 7-30-80; 8:45 am]

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24 CFR Part 300

[Docket No. R-80-627]

General; List of Attorneys-in-Fact

Correction

In FR Doc. 80-6784 appearing at page 14026 in the issue of Tuesday, March 4, 1980, third column, the list under 2. Paragraph (c) . . . , "Pan Andrus" should be corrected to read "Pam Andrus".

BILLING CODE 1505-01-M

Government National Mortgage Association

24 CFR Part 390

[Docket No. R-80-689]

Amendment To Permit Combination Mobile Home and Lot Loans To Be Included in GNMA Mortgage-Backed Securities Program

AGENCY: Government National Mortgage Association, HUD.

ACTION: Final rule.

SUMMARY: The amendment will permit "combination loans," which finance the purchase of mobile homes and developed lots in a single transaction, to be included in pools of mobile home loans under the existing GNMA program for mobile home loan securities.

EFFECTIVE DATE: September 11, 1980.

FOR FURTHER INFORMATION CONTACT: Warren Lasko, Government National Mortgage Association, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755-8772. This is not a toll free number.

SUPPLEMENTARY INFORMATION: On August 9, 1979, the Government National Mortgage Association published a Notice of Proposed Rulemaking (44 FR 46891) to amend regulations relating to the GNMA Mortgage-Backed Securities Program (24 CFR 390). The amendment allows "combination loans" to purchase a mobile home unit and developed lot in a single transaction to be included in pools of loans which back GNMA-guaranteed mobile home loans securities. Comments were invited until October 9, 1979.

Two comment letters were received. Both commended HUD for the proposed program revision. One of the letters noted that the rule will "provide broader homeownership opportunities for more low and moderate income persons to afford homes on land which they own."

Only one specific change to the proposed rule was recommended. The commentator pointed out that the term "developed lot" is not specifically defined. The commentator suggested that GNMA either set forth in the regulation the precise conditions under which it will consider a lot to be "developed," or, alternatively, rely upon the FHA and the VA to determine and promulgate the appropriate standards for lots eligible for the combination mobile home and lot programs under each agency's authority.

The final rule contains the same requirement as the proposed rule. That is, the combination loan must be for the

purpose of acquiring a mobile home unit on a "developed lot." It is GNMA's intention to provide further instructions in its handbook, the *Mortgage-backed Securities Guide*, (GNMA 5500.1) to explain what will be acceptable as developed lots. Reliance will be placed on relevant definitions provided by FHA and VA in connection with their respective programs. In the FHA combination loan program, a definition of the term "developed lot" is provided in the program regulations (24 CFR Part 201) and lots satisfying this definition will also satisfy GNMA with respect to FHA insured loans. In the VA mobile home loan program, the program handbook (VA Pamphlet 26-9) describes a developed lot as one "not requiring substantial preparation to render it suitable as a site for a mobile home." The VA, with respect to all mobile home loans it guarantees, also requires that the VA Administrator determine the lot "to be an acceptable mobile home site." Lots which satisfy both of these VA requirements, or any more specific definitions of developed lots that the VA may establish, will satisfy GNMA with respect to VA guaranteed loans.

A Finding of Inapplicability with respect to environmental impact has been prepared in accordance with HUD Procedures for Protection and Enhancement of Environmental Quality. This regulation has been evaluated and has been found not to have major economic consequences for the general economy or for individual industries, geographic regions, or levels of government. Copies of the Findings are available for inspection and copy in the Office of the Rules Docket Clerk, Office of the General Counsel, room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. This rule is not listed in the Department's semiannual agenda of significant rules, published pursuant to Executive Order 12044.

Accordingly, 24 CFR § 390.3(c)(3) is amended by revising the introductory paragraph to read as follows:

§ 390.3 [Amended]

(c) * * *

(3) For the issuance of modified pass-through securities based on and backed by mortgages on mobile homes (which for the purpose of this Part means either a loan for the purchase of a mobile home unit or a combination loan for the purchase of a mobile home and a developed mobile home lot in a single transaction)—* * *

(Sections 306(g) and 309(a) of the National Housing Act, 12 U.S.C. 1721(g) and 1723a(a))

Issued at Washington, D.C., July 24, 1980.
Ronald P. Laurent,
President, Government National Mortgage Association.
 [FR Doc. 22977 Filed 7-30-80; 8:45 am]
 BILLING CODE 4210-01-M

Office of Interstate Land Sales Registration

24 CFR Parts 1710 and 1715

[Docket No. R-80-778]

Land Registration, Purchaser's Revocation Rights, Sales Practices and Standards, and Formal Procedures and Rules of Practice

Correction

In FR Doc. 80-17871 appearing at page 40474 in the issue for Friday, June 13, 1980, make the following corrections:

(1) On page 40487, first column, the paragraph beginning with Exemption Notice, "Dil SR No" should be corrected to read "DILSR No".

(2) On page 40497, first complete paragraph starting § 1715.4 (a), 4th line, "§§ 1710.5-1710-16" should read "§§ 1710.5-1710.16".

(3) On page 40497, second column, below the first complete paragraph "§ 1710.6-1710.9 [Reserved]" should be corrected to read "§ 1715.6-1715.9 [Reserved]."

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 258

Indian Fishing; Hoopa Valley Indian Reservation

AGENCY: Department of the Interior.

ACTION: Interim rule.

SUMMARY: The Department of the Interior is prohibiting the placement of set nets within 400 feet of the site at the mouth of the Klamath River selected by the U.S. Fish and Wildlife Service for its test seining operation. This prohibition was published as one of a number of proposed amendments to the conservation regulations governing Indian fishing on the Hoopa Valley Indian Reservation on June 27, 1980, 45 FR 43434. This one provision is being promulgated on an emergency basis in order to assure that the Fish and

Wildlife Service can begin tagging operations as soon as the run begins.

DATE: This rule becomes effective August 1, 1980.

FOR FURTHER INFORMATION CONTACT: Joe Weller, Superintendent, Hoopa Agency, Bureau of Indian Affairs, P.O. Box 387, Hoopa Valley, California 95546, telephone (916) 625-4285.

SUPPLEMENTARY INFORMATION: The Department of the Interior is responsible for the supervision and management of Indian Affairs under 43 U.S.C. 1457, 25 U.S.C. 2 and 9 and Reorganization Plan No. 3 of 1950 (64 Stat. 1262), including the protection and implementation of federally reserved Indian fishing rights.

Placement of nets within 400 feet of the site being used by the U.S. Fish and Wildlife Service for its seining and tagging operation is being prohibited. Run size estimates are based on the proportion of tagged to untagged fish recovered upstream from the seining site. Those estimates are based on the assumption that tagged fish are no more likely to be caught in gill nets than untagged fish. Gill nets placed too close to the seining operation prevent the random mixing of tagged fish with untagged fish and, consequently, create serious errors in the run size estimates.

In order to determine the total number of fish entering the river tagging should be done at the mouth of the river before the fish are exposed to the river net fishery. Tagging should be done on the side of the river closest to the channel through which most fish pass. Based on these requirements, the seining operation should be operated from the South Spit at the mouth of the Klamath.

Although the major chinook run for 1980 has not yet begun, gill net gear has already been observed set at that location. In order to assure the development of a reliable run size estimate (which is the crucial figure needed for proper management of the fishery resource) this site must be cleared before the run commences in mid-July.

This rule is being promulgated before the expiration of the comment period and is being made effective only one day after publication in the *Federal Register* in order to permit the tagging operation to begin at the same time the run begins. A prompt start to tagging operations is needed to develop the reliable run size estimates required for proper management of both river and ocean fisheries. This proposed rule was circulated in the Indian community and discussed with Indian fishers two months before its publication as a proposed rule. Efforts have been underway for the past two weeks to

locate the person who placed the fishing gear at the test site to ask him or her to remove it. Under these circumstances, the Department finds there is good cause and that it is in the public interest to promulgate this amendment prior to the expiration of the comment period and to make it effective less than 30 days after publication in the **Federal Register**.

The primary author of this document is David Etheridge, Office of the Solicitor, Division of Indian Affairs, Department of the Interior.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Dated: July 22, 1980.

Cecil D. Andrus,

Department of the Interior.

Section 258.8 of Title 25 of the Code of Federal Regulations is amended by adding a new subparagraph (e)(9) to read as follows:

§ 258.8 Permissible and prohibited fishing.

(e) Restrictions on fishing: * * *

(9) No set net may be placed within 400 feet of the test seining operation of the U.S. Fish and Wildlife Service.

[FR Doc. 80-22935 Filed 7-30-80; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, and 301

[T.D. 7710]

Income and Estate and Gift Taxes; Certain Farm Real Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to material participation requirements for and the method of valuing certain farm real property according to actual use. The document also contains final regulations on the procedure for electing the use valuation, for electing to extend payment of estate tax attributable to interests in closely held businesses, and for electing a special lien in lieu of personal liability for certain deferred amounts of estate tax as well as final regulations on material participation rules for certain tenants and owners of farms for self-employment income tax purposes. Changes to the applicable tax law were made by the Tax Reform Act

of 1976 and the Act of August 7, 1974 (Pub. L. 93-368, 88 Stat. 422). The regulations provide the public with the guidance needed to comply with those Acts. They affect farm owners and tenants, and estates comprised largely of farm and other closely-held business interests.

DATES: The regulations are effective as follows:

(1) For taxable years beginning after December 31, 1973, in the case of the provisions defining net earnings from self-employment; and

(2) For estates of decedents dying after December 31, 1976, in the case of the provisions on valuation of farm and closely held business real property, on extension of time to pay estate tax and on the special lien in lieu of personal liability for certain amounts of estate tax.

FOR FURTHER INFORMATION CONTACT:

H. B. Hartley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3287 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On July 13, 1978, the **Federal Register** published proposed amendments to the Estate Tax Regulations (26 CFR Part 20) relating to procedures for making the elections provided under sections 2032A, 6166, and 6324A of the Internal Revenue Code of 1954 ("Code") (43 FR 30070). On December 21, 1978, amendments to these July 13, 1978, proposed regulations were published in the **Federal Register** (43 FR 59517). On July 19, 1978, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 1402 (a) of the Code and to the Estate Tax Regulations (26 CFR Part 20) under section 2032A of the Code. (43 FR 31039). On September 10, 1979, a portion, proposed § 20.2032A-4 (b), of the July 19, 1978, proposed regulations was withdrawn by notice published in the **Federal Register** (43 FR 52698). Also on September 10, 1979, the **Federal Register** published new proposed regulations under section 2032A replacing the withdrawn proposal (44 FR 52696). All of these regulations were proposed to conform the regulations to section 10 (b) of the Act of August 7, 1974 (Public Law 93-368, 88 Stat. 422) and to sections 2003 (a) and 2004 (a) and (d) of the Tax Reform Act of 1976 (Public Law 94-455, 90 Stat. 1856, 1868).

A public hearing on the July 13, July 19, and December 21, 1978, proposed

regulations was held on April 3, 1979. A public hearing was held on the September 10, 1979, proposed regulations on January 16, 1980. After consideration of all written and oral comments regarding the proposed amendments, final regulations are adopted by this Treasury decision.

Provisions of the Regulations

Net Earnings from Self-Employment

Section 1402 (a)(1) of the Code, as amended in 1974, defines more narrowly the circumstances in which the owner or tenant of land must include farm rentals in self-employment income, which is subject to social security tax. Farm rentals are considered self-employment income when three requirements are met. First, the owner or tenant must arrange for another individual to farm the land. Second, that arrangement must contemplate material participation by the owner or tenant in the operation of the farm. Third, the owner or tenant must in fact participate materially in the operation of the farm.

Consistent with the various court decisions rendered prior to the enactment of Public Law 93-368, the existing regulations provide that the actions of an employee or agent will be attributed to the owner or tenant in determining whether the three requirements for material participation have been met. Thus, owners or tenants of land who arranged with agents (such as professional farm management companies) to manage and supervise the farming of their land had to include the rentals they received in their self-employment income. This was so even though they did not personally participate in the farming operation at all. As a result of this rule, many persons who thought they were merely receiving investment income found themselves liable for social security taxes.

The amendment changed the rule as to agents and employees for years beginning after 1973. Thus, activities of agents and employees are no longer taken into account in determining under section 1402 whether an owner or tenant has materially participated in the farming operation.

Material Participation and Estate Tax Valuation

Code section 2032A allows an executor to elect to value qualified real property used in farming or other closely-held business activity based upon its qualified use rather than its fair market value determined under otherwise applicable estate tax rules. That section requires, however, that the

owner or a member of the owner's family materially participate in the operation of the farm or other business for specified periods both before and after the decedent's death.

Along with property owned individually by the decedent, real property owned by a qualified closely-held corporation or partnership or by a trust is permitted to be specially valued for determining the value of the decedent's interest in that business. The regulations provide that where the property is owned in this manner, the participating owner or family member may be an employee rather than be self-employed. Even though the participants are not self-employed, material participation is tested by viewing their activities as if they were self-employed.

Participation is judged in light of actual personal involvement by the decedent and family members. If the involvement occurs on less than a full-time basis, it must be pursuant to an arrangement entered into by the participant (or a member of the participant's family) calling for the activities that occur. Acts of an agent or an employee are not considered in determining whether material participation occurs unless the agent or employee is also a family member.

Material participation, if other than by full-time employment, means a regular process of consultation and inspection with active involvement in making management decisions. Advancing funds or assuming financial responsibility for the business operation are also required. Maintaining one's principal place of residence on the premises in the case of a farm or hotel is a factor in determining the degree of participation.

With corporations and partnerships, activities in the management and operation of the real estate component of the business as a whole are central. Merely holding corporate offices or being a partner in name and financial risk only is not sufficient participation. This is true even where an inactive partner returns his or her distributive share as earnings from self-employment and pays social security taxes on it. Finally, activities which are not contemplated by the required arrangement are not considered in determining whether material participation occurs.

Method of Valuing Farm Real Property Under Section 2032A(e)(7)

Section 2032A(e)(7) provides a special method for valuing qualified real property used for farming purposes. This method requires the executor to locate tracts of comparable real property

which are rented solely for cash. A 5-year average of gross cash rentals from comparable real property, minus State and local real estate taxes, is then capitalized by the average annual effective interest rate charged by Federal land banks on new agricultural loans to farmers and ranchers. These regulations provide the definitions and other information necessary for valuing property according to this method.

If the section 2032A(e)(7) formula valuation method is used, the executor must document to the Internal Revenue Service the actual comparable property and cash rentals upon which the executor relies. If no such rentals are found, the executor may still value the farm real property based upon its current use under the provisions of section 2032A(e)(8).

The rules for valuing real property under section 2032A(e)(7) provided in these regulations apply only to estates where the specially valued real property is directly owned by the decedent. Regulations will be published at a later date detailing the applicability of this valuation method to property owned indirectly through a trust, a partnership, or a corporation.

Election of Use Valuation

The executor must elect special use valuation by attaching a notice of election to a timely filed estate tax return. Normally, this election is irrevocable; however, elections which are timely made on or before August 30, 1980, may be revoked during the 6-month period following that date (or any lesser period remaining before expiration of the statute of limitations). A revocation is to be accompanied by payment of any additional estate tax found due, plus interest.

An agreement signed by all parties with an interest in the property subject to the special use valuation election is also required under section 2032A. This agreement must accompany the notice of election.

Section 20.2032A-8 defines a person with an interest in the property to include all persons in being as of the date of death of the decedent who receive any vested or contingent interest in the property, who receive a power of appointment over the property, who are beneficiaries of a gift over in default of exercise of any such power, or who, under applicable state law, have any legal right which could affect the ultimate disposition of the property.

Alternate Extension of Time for Payment of Estate Tax

Section 6166 allows an executor to elect to defer payment of a percentage

of the total estate tax, including the amount of certain deficiencies. The maximum percentage of tax which may be deferred corresponds to the percentage of the adjusted gross estate which is comprised of a closely held business interest (as defined in section 6166(b)(1)). Normally, the election is made at the time the estate tax return is filed; however, an election may subsequently be made to pay certain deficiencies in installments. Additionally, where the executor is uncertain as to whether the estate needs to defer payment of tax, a protective election may be made when the estate tax return is filed. If a protective election is made, the final election is to be made within 60 days after final values causing the estate to qualify are determined (or agreed to following examination of a return.)

Special Lien for Deferred Amount of Estate Tax

Section 6324A allows the executor of a decedent's estate to elect a lien in favor of the United States in lieu of bond or personal liability if an election under section 6166 or section 6166A is made. The election under section 6324A will not be effective unless all parties having an interest in the property subject to the lien sign an agreement in which they consent to the creation of the lien. The agreement must be filed with the notice of election of the lien. The election may be filed at any time prior to payment of the full amount of the estate tax.

Additional Considerations

These regulations are needed in order to provide guidance to the public as well as to government employees responsible for implementation of sections 1402(a), 2032A, 6166, and 6324A of the Code. Considering both the direct and indirect effects of these regulations, it is believed that they satisfactorily implement section 10(b) of the Act of August 7, 1974 (Public Law 93-368), and sections 2003(a) and 2004 (a) and (d) of the Tax Reform Act of 1976. Evaluation of the effectiveness of the regulations after issuance will be based upon comments received from offices within the Internal Revenue Service and the Treasury Department, from other government agencies and from members of the public.

Public Comments

Seventy-three comments were received in response to the four notices of proposed rulemaking. Two comments urged attributing activities of employees, but not agents, to owners for purposes of meeting both the social security and use valuation material participation

requirements. This suggestion was rejected because employees are agents of their employer.

Several comments urged an express statement that use valuation under section 2032A is available even if farming is the only potential use for the real property. Sections 20.2032A-3(a) and 20.2032A-8(a) were changed to reflect this position once the Treasury learned that section 2032A(e)(7) produces land values below even a true current use value and that inequities would result between suburban and strictly rural farms if the limitation were retained. Section 20.2032A-3(b) was changed to clarify that directly owned real property which is passively leased to the decedent's active closely held business (under section 6166(b)(1)) can be qualified property despite the passive lease. A new paragraph (b)(2) was added to § 20.2032A-3 to clarify the treatment of farm buildings as specially valued property under section 2032A.

Section 20.2032A-3(c) was changed in response to the comments to clarify that material participation must occur during periods totalling at least 5 calendar years before and after death and to provide rules under section 2032A(c) for property in which the heirs receive undivided or successive interests. In response to a commentator's question, § 20.2032A-3(c) now also states that simultaneous activities of multiple family members cannot be aggregated to find material participation. Rather, the activities of at least one family member, viewed alone, must constitute material participation at any given time. A statement was also added to clarify that no exception to the material participation requirements is made for periods when real property is owned by the decedent's estate. A new paragraph (d) was added to § 20.2032A-3 to answer questions raised by commentators about property acquired less than 5 years before death and real property, ownership of which is changed from direct to indirect in a nontaxable transfer under section 351 or 721 of the Code during that 5-year period. Proposed § 20.2032A-3(d) on activities required for material participation was renumbered § 20.2032A-3(e) and was modified to state that furnishing of farm equipment by a lessor is not a requirement. The same section now contains an expanded discussion of the relationship of material participation under sections 2032A and 1402(a)(1). Briefly stated, the rule is that payment of self-employment taxes alone is not conclusive as to the presence of material participation. However, when self-employment taxes have not been paid,

material participation is presumed not to have occurred unless the executor supplies proof that such participation did in fact occur and demonstrates to the Internal Revenue Service why no such taxes were paid. In addition, any such taxes (plus interest and penalties) determined to be due must be paid.

A new sentence was added to paragraph (e) to reiterate that retention of a farm manager will not automatically disqualify a farm from special use valuation. Clarifying language was also added to that paragraph concerning activities necessary for material participation during nonproducing seasons.

Timber growers requested an explanation of the application of section 2032A to timber farms. A new example (7) has been added to § 20.2032A-3(g) in response to these comments. The example applies the material participation rules to a timber farm.

On September 10, 1979, the definition of gross cash rental contained in the originally published § 20.2032A-4(b) was withdrawn and repropounded. The repropounded section requires executors to rely on actual tracts of comparable property rented solely for cash in valuing farm real property under section 2032A(e)(7). That proposal also specified that state-wide averages of rentals and appraisals cannot be used to value property under section 2032(e)(7). After consideration of all oral and written comments, the Treasury believes that there is no statutory basis for changing the rule as proposed in the *Federal Register* for September 10, 1979 (44 FR 52696). Therefore, the final regulations adopt the position proposed on September 10, 1979. If comparable property rented solely for cash is not demonstrated by the executor for all specially valued property, all such property must be valued under section 2032A(e)(8).

Proposed § 20.2032A-8(a) required special use valuation elections to be made on a timely filed estate tax return. Several comments suggested accepting elections first made upon examination of a return. The requested suggestion was not adopted because of statutory restrictions. Several commentators asked that the final regulations include a rule on elections to specially value less than all qualified real property. A new § 20.2032A-8(a)(2) is added to the regulations permitting such partial elections, provided property sufficient to satisfy the statutory thresholds of section 2032A(b)(1) (B) and (C) is specially valued. Paragraph (a)(2) was also modified in response to the public comments to require a statement that specially valued property was owned at

least 5 years before the date of the decedent's death rather than the date of acquisition. Further, the request for identification of periods of no material participation and use for farming purposes was restricted to the 8 years preceding the death.

Section 20.2032A-8(b) was changed in response to the comments to make clear that protective elections can be made even if tax is initially due and the estate qualifies based upon returned values.

A witness at the public hearing asked that final regulations include a statement on the duties of the agent designated in the agreement to the section 2032A election. Section 20.2032A-8(c) was amended to specify that the agent must have satisfactory evidence of authority to act for the parties to the agreement required under section 2032A (a)(1)(B) and (d)(2) and to indicate the agent's duties. The requirement that certain creditors sign the agreement, contained in proposed § 20.2032A-8(c)(2), was deleted.

Proposed § 20.6166-1(d) was amended to delete any implied limitations on the circumstances in which a protective election can be made. The new rule is consistent with that for protective elections under section 2032A.

Proposed § 20.6324A-1 was rewritten as a cross-reference to new § 301.6324A-1 with the substantive rules contained in proposed § 20.6324A-1 being adopted as § 301.6324A-1. This change was made to achieve consistency with other regulations on liens for taxes.

Drafting Information

The principal author of these regulations is H.B. Hartley of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, amendments to the regulations (26 CFR Parts 1, 20, and 301), are hereby adopted as set forth below:

PART I—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1980

§ 1.1402(a) [Deleted]

Paragraph 1. Section 1.1402(a) is deleted.

Par. 2. Section 1.1402(a)-4 is amended by revising paragraph (b)(5) and by

revising examples (5) and (6) in paragraph (b)(6) to read as follows:

§ 1.1402(a)-4. Rentals from real estate.

(b) *Special rule for "includible farm rental income"*—***

(5) *Employees or agents.* An agreement entered into by an employee or agent of an owner or tenant and another person is considered to be an arrangement entered into by the owner or tenant for purposes of satisfying the requirement set forth in paragraph (b)(2) that the income must be derived under an arrangement between the owner or tenant and another person. For purposes of determining whether the arrangement satisfies the requirement set forth in paragraph (b)(3) that the parties contemplate that the owner or tenant will materially participate in the production or management of production of a commodity, services which will be performed by an employee or agent of the owner or tenant are not considered to be services which the arrangement contemplates will be performed by the owner or tenant. Services actually performed by such employee or agent are not considered services performed by the owner or tenant in determining the extent to which the owner or tenant has participated in the production or management of production of a commodity. For taxable years beginning before January 1, 1974, contemplated or actual services of an agent or an employee of the owner or tenant are deemed to be contemplated or actual services of the owner or tenant under paragraphs (b)(3) and (b)(4) of this section.

(6) *Examples.* ***

Example (5). I owned a farm several miles from the town in which he lived. He rented the farm to J under an arrangement which contemplated I's material participation in the management of production of wheat. I furnished one-half of the seed and fertilizer and all the farm equipment and livestock. He employed K to perform all the services in advising, consulting, and inspecting contemplated by the arrangement. I is not materially participating in the management of production of wheat by J. The work done by I's employee, K, is not attributable to I in determining the extent of I's participation. I's rental income from the arrangement is, therefore, not to be included in computing his net earnings from self-employment. For taxable years beginning before January 1, 1974, however, I's rental income would be includible in those earnings.

Example (6). L, a calendar-year taxpayer, appointed M as his agent to rent his fully equipped farm for 1974. M entered into a rental arrangement with N under which M was to direct the planting of crops, inspect them weekly during the growing season, and

consult with N on any problems that might arise in connection with irrigation, etc., while N furnished all the labor needed to grow and harvest the crops. M did in fact fulfill its responsibilities under the arrangement. Although the arrangement entered into by M and N is considered to have been made by L, M's services are not attributable to L, and L's furnishing of a fully equipped farm is insufficient by itself to constitute material participation in the production of the crops. Accordingly, L's rental income from the arrangement is not included in his net earnings from self-employment for that year. For taxable years beginning before January 1, 1974, however, L's rental income would be includible in those earnings.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1980

Par. 3. The following new sections are added following § 20.2032-1:

§ 20.2032A-3. Material participation requirements for valuation of certain farm and closely-held business real property.

(a) *In general.* Under section 2032A, an executor may, for estate tax purposes, make a special election concerning valuation of qualified real property (as defined in section 2032A(b)) used as a farm for farming purposes or in another trade or business. If this election is made, the property will be valued on the basis of its value for its qualified use in farming or the other trade or business, rather than its fair market value determined on the basis of highest and best use (irrespective of whether its highest and best use is the use in farming or other business). For the special valuation rules of section 2032A to apply, the deceased owner and/or a member of the owner's family (as defined in section 2032A(e)(2)) must materially participate in the operation of the farm or other business. Whether the required material participation occurs is a factual determination, and the types of activities and financial risks which will support such a finding will vary with the mode of ownership of both the property itself and of any business in which it is used. Passively collecting rents, salaries, draws, dividends, or other income from the farm or other business is not sufficient for material participation, nor is merely advancing capital and reviewing a crop plan or other business proposal and financial reports each season or business year.

(b) *Types of qualified property.*—(1) *In general.* Real property valued under section 2032A must pass from the decedent to a qualified heir or be acquired from the decedent by a qualified heir. The real property may be owned directly or may be owned

indirectly through ownership of an interest in a corporation, a partnership, or a trust. However, real property is considered to be qualified real property only if a qualified heir receives or acquires a present interest in the property (determined under section 2503) from the decedent. Where the ownership is indirect, however, the decedent's interest in the business must, in addition to meeting the tests for qualification under section 2032A, qualify under the tests of section 6166(b)(1) as an interest in a closely-held business on the date of the decedent's death and for sufficient other time (combined with periods of direct ownership) to equal at least 5 years of the 8 year period preceding the death. All specially valued property must be used in a trade or business. Directly owned real property that is leased by a decedent to a separate closely held business is considered to be qualified real property, but only if the separate business qualifies as a closely held business under section 6166(b)(1) with respect to the decedent on the date of his or her death and for sufficient other time (combined with periods during which the property was operated as a proprietorship) to equal at least 5 years of the 8 year period preceding the death. For example, real property owned by the decedent and leased to a farming corporation or partnership owned and operated entirely by the decedent and fewer than 15 members of the decedent's family is eligible for special use valuation. Under section 2032A, the term trade or business applies only to an active business such as a manufacturing, mercantile, or service enterprise, or to the raising of agricultural or horticultural commodities, as distinguished from passive investment activities. The mere passive rental of property will not qualify. The decedent must own an equity interest in the farm operation. A trade or business is not necessarily present even though an office and regular hours are maintained for management of income producing assets, as the term "business" is not as broad under section 2032A as under section 162. Additionally, no trade or business is present in the case of activities not engaged in for profit. See section 183.

(2) *Structures and other real property improvements.* Qualified real property includes residential buildings and other structures and real property improvements occupied or used on a regular basis by the owner or lessee of real property (or by employees of the owner or lessee) for the purpose of operating the farm or other closely held

business. A farm residence occupied by the decedent owner of the specially valued property is considered to be occupied for the purpose of operating the farm even though a family member (not the decedent) was the person materially participating in the operation of the farm as required under section 2032A (b) (1) (C).

(c) *Period material participation must last. The required participation must last—*

(1) For periods totalling 5 years or more during the 8 years immediately preceding the date of the decedent's death; and

(2) For periods totalling 5 years or more during any 8 year period ending after the date of the decedent's death (up to a maximum of 15 years after decedent's death, when the additional estate tax provisions of section 2032A(c) cease to apply).

In determining whether the material participation requirement is satisfied, no exception is made for periods during which real property is held by the decedent's estate. Additionally, contemporaneous material participation by 2 or more family members during a period totalling a year will not result in that year being counted as 2 or more years for purposes of satisfying the requirements of this paragraph (c). Death of a qualified heir (as defined in section 2032A(e)(1)) before the requisite time has passed ends any material participation requirement for that heir's portion of the property as to the original decedent's estate if the heir received a separate, joint or other undivided property interest from the decedent. If qualified heirs receive successive interests in specially valued property (e.g. life estate and remainder interests) from the decedent, the material participation requirement does not end with respect to any part of the property until the death of the last qualified heir (or, if earlier, the expiration of 15 years from the date of the decedent's death). The requirements of section 2032A will fully apply to an heir's estate if an election under this section is made for the same property by the heir's executor. In general, to determine whether the required participation has occurred, brief periods (e.g., periods of 30 days or less) during which there was no material participation may be disregarded. This is so only if these periods were both preceded and followed by substantial periods (e.g. periods of more than 120 days) in which there was uninterrupted material participation. See paragraph (e)(1) of this section which provides a special rule for periods when little or no

activity is necessary to manage fully a farm.

(d) *Period property must be owned by decedent and family members.* Only real property which is actually owned by any combination of the decedent, members of the decedent's family, and qualified closely held businesses for periods totalling at least 5 of the 8 years preceding the date of decedent's death may be valued under section 2032A. For example, replacement property acquired in like-kind exchange under section 1031 is considered to be owned only from the date on which the replacement property is actually acquired. On the other hand, replacement property acquired as a result of an involuntary conversion in a transfer that would meet the requirements of section 2032A(h) if it occurred after the date of the decedent's death is considered to have been owned from the date in which the involuntarily converted property was acquired. Property transferred from a proprietorship to a corporation or a partnership during the 8-year period ending on the date of the decedent's death is considered to be continuously owned to the extent of the decedent's equity interest in the corporation or partnership if, (1) the transfer meets the requirements of section 351 or 721, respectively, and (2) the decedent's interest in the corporation or partnership meets the requirements for indirectly held property contained in paragraph (b)(1) of this section. Likewise, property transferred to a trust is considered to be continuously owned if the beneficial ownership of the trust property is such that the requirements of section 6166(b)(1)(C) would be so satisfied if the property were owned by a corporation and all beneficiaries having vested interests in the trust were shareholders in the corporation. Any periods following the transfer during which the interest in the corporation, partnership, or trust does not meet the requirements of section 6166(b)(1) may not be counted for purposes of satisfying the ownership requirements of this paragraph (d).

(e) *Required activities—(1) In general.* Actual employment of the decedent (or of a member of the decedent's family) on a substantially full-time basis (35 hours a week or more) or to any lesser extent necessary personally to manage fully the farm or business in which the real property to be valued under section 2032A is used constitutes material participation. For example, many farming operations require only seasonal activity. Material participation is present as long as all necessary functions are performed even though little or no actual activity occurs during

nonproducing seasons. In the absence of this direct involvement in the farm or other business, the activities of either the decedent or family members must meet the standards prescribed in this paragraph and those prescribed in the regulations issued under section 1402(a)(1). Therefore, if the participant (or participants) is self-employed with respect to the farm or other trade or business, his or her income from the farm or other business must be earned income for purposes of the tax on self-employment income before the participant is considered to be materially participating under section 2032A. Payment of the self-employment tax is not conclusive as to the presence of material participation. If no self-employment taxes have been paid, however, material participation is presumed not to have occurred unless the executor demonstrates to the satisfaction of the Internal Revenue Service that material participation did in fact occur and informs the Service of the reason no such tax was paid. In addition, all such taxes (including interest and penalties) determined to be due must be paid. In determining whether the material participation requirement is satisfied, the activities of each participant are viewed separately from the activities of all other participants, and at any given time, the activities of at least one participant must be material. If the involvement is less than full-time, it must be pursuant to an arrangement providing for actual participation in the production or management of production where the land is used by any nonfamily member, or any trust or business entity, in farming or another business. The arrangement may be oral or written, but must be formalized in some manner capable of proof. Activities not contemplated by the arrangement will not support a finding of material participation under section 2032A, and activities of any agent or employee other than a family member may not be considered in determining the presence of material participation. Activities of family members are considered only if the family relationship existed at the time the activities occurred.

(2) *Factors considered.* No single factor is determinative of the presence of material participation, but physical work and participation in management decisions are the principal factors to be considered. As a minimum, the decedent and/or a family member must regularly advise or consult with the other managing party on the operation of the business. While they need not make all final management decisions alone, the

decedent and/or family members must participate in making a substantial number of these decisions. Additionally, production activities on the land should be inspected regularly by the family participant, and funds should be advanced and financial responsibility assumed for a substantial portion of the expense involved in the operation of the farm or other business in which the real property is used. In the case of a farm, the furnishing by the owner or other family members of a substantial portion of the machinery, implements, and livestock used in the production activities is an important factor to consider in finding material participation. With farms, hotels, or apartment buildings, the operation of which qualifies as a trade or business, the participating decedent or heir's maintaining his or her principal place of residence on the premises is a factor to consider in determining whether the overall participation is material. Retention of a professional farm manager will not by itself prevent satisfaction of the material participation requirement by the decedent and family members. However, the decedent and/or a family member must personally materially participate under the terms of arrangement with the professional farm manager to satisfy this requirement.

(f) *Special rules for corporations, partnerships, and trusts*—(1) *Required arrangement*. With indirectly owned property as with property that is directly owned, there must be an arrangement calling for material participation in the business by the decedent owner or a family member. Where the real property is indirectly owned, however, even full-time involvement must be pursuant to an arrangement between the entity and the decedent or family member specifying the services to be performed. Holding an office in which certain material functions are inherent may constitute the necessary arrangement for material participation. Where property is owned by a trust, the arrangement will generally be found in one or more of four situations. First, the arrangement may result from appointment as a trustee. Second, the arrangement may result from an employer-employee relationship in which the participant is employed by a qualified closely held business owned by the trust in a position requiring his or her material participation in its activities. Third, the participants may enter into a contract with the trustees to manage, or take part in managing, the real property for the trust. Fourth, where the trust agreement expressly grants the management rights to the beneficial

owner, that grant is sufficient to constitute the arrangement required under this section.

(2) *Required activities*. The same participation standards apply under section 2032A where property is owned by a qualified closely held business as where the property is directly owned. In the case of a corporation, a partnership, or a trust where the participating decedent and/or family members are employees and thereby not subject to self-employment income taxes, they are to be viewed as if they were self-employed, and their activities must be activities that would subject them to self-employment income taxes were they so. Where property is owned by a corporation, a partnership or a trust, participation in the management and operation of the real property itself as a component of the closely held business is the determinative factor. Nominally holding positions as a corporate officer or director and receiving a salary therefrom or merely being listed as a partner and sharing in profits and losses will not alone support a finding of material participation. This is so even though, as partners, the participants pay self-employment income taxes on their distributive shares of partnership earnings under § 1.1402(a)-2. Further, it is especially true for corporate directors in states where the board of directors need not be an actively functioning entity or need only act informally. Corporate offices held by an owner are, however, factors to be considered with all other relevant facts in judging the degree of participation. When real property is directly owned and is leased to a corporation or partnership in which the decedent owns an interest which qualified as an interest in a trade or business within the meaning of section 6166(b)(1), the presence of material participation is determined by looking at the activities of the participant with regard to the property in whatever capacity rendered. During any periods when qualified real property is held by an estate, material participation is to be determined in the same manner as if the property were owned by a trust.

(g) *Examples*. The rules for determining material participation may be illustrated by the following examples. Additional illustrations may be found in examples (1) through (6) in § 1.1402(a)-4.

Example (1). A, the decedent, actively operated his 100-acre farm on a full-time basis for 20 years. He then leased it to B for the 10 years immediately preceding his death. By the terms of the lease, A was to consult with B on where crops were to be planted, to supervise marketing of the crop, and to share equally with B in expenses and earnings. A was present on the farm each spring for

consultation; however, once planting was completed, he left for his retirement cottage where he remained until late summer, at which time he returned to the farm to supervise the marketing operation. A at all times maintained the farm home in which he had lived for the time he had owned the farm and lived there when at the farm. In light of his activities, assumption of risks, and valuable knowledge of proper techniques for the particular land gained over 20 years of full-time farming on the land involved, A is deemed to have materially participated in the farming business.

Example (2). D is the 70-year old widow of farmer C. She lives on a farm for which special valuation has been elected and has lived there for 20 years. D leases the land to E under an arrangement calling for her participation in the operation of the farm. D annually raises a vegetable garden, chickens, and hogs. She also inspects the tobacco fields (which produce approximately 50 percent of farm income) weekly and informs E if she finds any work that needs to be done. D and E share expenses and income equally. Other decisions such as what fields to plant and when to plant and harvest crops are left to E, but D does occasionally make suggestions. During the harvest season, D prepares and serves meals for all temporary farm help. D is deemed to participate materially in the farm operations based on her farm residence and her involvement with the main money crop.

Example (3). Assume that D in example (2) moved to a nursing home 1 year after her husband's death. E completely operated the farm for her for 6 years following her move. If E is not a member of D's family, material participation ceases when D moves; however, if E is a member of D's family, E's material participation will prevent disqualification even if D owns the property. Further, upon D's death, the section 2032A valuation could be elected for her estate if E were a member of her family and the other requirements of section 203A were satisfied.

Example (4). F, a qualified heir, owned a specially valued farm. He contracted with G to manage the farm for him as F, a lawyer, lived and worked 15 miles away in a nearby town. F supplied all machinery and equipment and assumed financial responsibility for the expenses of the farm operation. The contract specified that G was to submit a crop plan and a list of expenses and earnings for F's approval. It also called for F to inspect the farm regularly and to approve all expenditures over \$100. In practice, F visited the farm weekly during the growing season to inspect and discuss operations. He actively participated in making important management decisions such as what fields to plant or pasture and how to utilize the subsidy program. F is deemed to have materially participated in the farm operation as his personal involvement amounted to more than managing an investment. Had F not regularly inspected the farm and participated in management decisions, however, he would not be considered to be materially participating. This would be true even though F did assume financial responsibility for the operation and did review annual crop plans.

Example (5). Decedent I owned 90 percent of all outstanding stock of X Corporation, a

qualified closely-held business which owns real property to be specially valued. I held no formal position in the corporation and there was no arrangement for him to participate in daily business operations. I regularly spent several hours each day at the corporate offices and made decisions on many routine matters. I is not deemed to have materially participated in the X Corporation despite his activity because there was no arrangement requiring him to act in the manner in which he did.

Example (6). Decedent J was a senior partner in the law firm of X, Y, and Z, which is a qualified closely held business owning the building in which its offices are located. J ceased to practice law actively 5 years before his death in 1977; however, he remained a full partner and annually received a share of firm profits. J is not deemed to have materially participated under section 2032A even though he still may have reported his distributive share of partnership income for self-employment income tax purposes if the payments were not made pursuant to any retirement agreement. This is so because J does not meet the requirement of actual personal material participation.

Example (7). K, the decedent, owned a tree farm. He contracted with L, a professional forester, to manage the property for him as K, a doctor, lived and worked in a town 50 miles away. The activities of L are not considered in determining whether K materially participated in the tree farm operation. During the 5 years preceding K's death, there was no need for frequent inspections of the property or consultation concerning it, inasmuch as most of the land had been reforested and the trees were in the beginning stages of their growing cycle. However, once every year, L submitted for K's approval a proposed plan for the management of the property over the next year. K actively participated in making important management decisions, such as where and whether a pre-commercial thinning should be conducted, whether the timber was adequately protected from fire and disease, whether fire lines needed to be plowed around the new trees, and whether boundary lines were properly maintained around the property. K inspected the property at least twice every year and assumed financial responsibility for the expenses of the tree farm. K also reported his income from the tree farm as earned income for purposes of the tax on self-employment income. Over a period of several years, K had harvested and marketed timber from certain tracts of the tree farm and had supervised replanting of the areas where trees were removed. K's history of harvesting, marketing, and replanting of trees showed him to be in the business of tree farming rather than merely passively investing in timber land. If the history of K's tree farm did not show such an active business operation, however, the tree farm would not qualify for special use valuation. In light of all these facts, K is deemed to have materially participated in the farm as his personal involvement amounted to more than managing an investment.

Example (8). Decedent M died on January 1, 1978, owning a farm for which special use valuation under section 2032A has been

elected. M owned the farm real property for 15 years before his death. During the 4 years preceding M's death (January 1, 1974 through December 31, 1977), the farm was rented to N, a non-family member, and neither M nor any member of his family materially participated in the farming operation. From January 1, 1970, until December 31, 1973, both M and his daughter, O, materially participated in the farming operation. The material participation requirement of section 2032A (b) (1) (C) (ii) is not satisfied because material participation did not occur for periods aggregating at least 5 different years of the 8 years preceding M's death.

§ 20.2032A-4 Method of valuing farm real property.

(a) *In general.* Unless the executor of the decedent's estate elects otherwise under section 2032A (e) (7) (B) (ii) or fails to document comparable rented farm property meeting the requirements of this section, the value of the property which is used for farming purposes and which is subject to an election under section 2032A is determined by—

(1) Subtracting the average annual state and local real estate taxes on actual tracts of comparable real property in the same locality from the average annual gross cash rental for that same comparable property, and

(2) Dividing the result so obtained by the average annual effective interest rate charged on new Federal land bank loans.

The computation of each average annual amount is to be based on the 5 most recent calendar years ending before the date of the decedent's death.

(b) *Gross cash rental.*—(1) *Generally.* Gross cash rental is the total amount of cash received for the use of actual tracts of comparable farm real property in the same locality as the property being specially valued during the period of one calendar year. This amount is not diminished by the amount of any expenses or liabilities associated with the farm operation or the lease. *See*, paragraph (d) of this section for a definition of comparable property and rules for property on which buildings or other improvements are located and farms including multiple property types. Only rentals from tracts of comparable farm property which are rented solely for an amount of cash which is not contingent upon production are acceptable for use in valuing real property under section 2032A (e) (7). The rentals considered must result from an arm's-length transaction as defined in this section. Additionally, rentals received under leases which provide for payment solely in cash are not acceptable as accurate measures of cash rental value if involvement by the lessor (or a member of the lessor's family who

is other than a lessee) in the management or operation of the farm to an extent which amounts to material participation under the rules of section 2032A is contemplated or actually occurs. In general, therefore, rentals for any property which qualifies for special use valuation cannot be used to compute gross cash rentals under this section because the total amount received by the lessor does not reflect the true cash rental value of the real property.

(2) *Special rules.*—(i) *Documentation required of executor.* The executor must identify to the Internal Revenue Service actual comparable property for all specially valued property and cash rentals from that property if the decedent's real property is valued under section 2032A (e) (7). If the executor does not identify such property and cash rentals, all specially valued real property must be valued under the rules of section 2032A (e) (8) if special use valuation has been elected. *See*, however, § 20.2032A-8 (d) for a special rule for estates electing section 2032A treatment on or before August 30, 1980.

(ii) *Arm's-length transaction required.* Only those cash rentals which result from a lease entered into in an arm's-length transaction are acceptable under section 2032A (e) (7). For these purposes, lands leased from the Federal government, or any state or local government, which are leased for less than the amount that would be demanded by a private individual leasing for profit are not leased in an arm's-length transaction. Additionally, leases between family members (as defined in section 2032A (e) (2)) which do not provide a return on the property commensurate with that received under leases between unrelated parties in the locality are not acceptable under this section.

(iii) *In-kind rents, statements of appraised rental value, and area averages.* Rents which are paid wholly or partly in kind (e.g., crop shares) may not be used to determine the value of real property under section 2032A (e) (7). Likewise, appraisals or other statements regarding rental value as well as area-wide averages of rentals (i.e., those compiled by the United States Department of Agriculture) may not be used under section 2032A (e) (7) because they are not true measures of the actual cash rental value of comparable property in the same locality as the specially valued property.

(iv) *Period for which comparable real property must have been rented solely for cash.* Comparable real property rented solely for cash must be identified for each of the five calendar years

preceding the year of the decedent's death if section 2032A (e) (7) is used to value the decedent's real property. Rentals from the same tract of comparable property need not be used for each of these 5 years, however, provided an actual tract of property meeting the requirements of this section is identified for each year.

(v) *Leases under which rental of personal property is included.* No adjustment to the rents actually received by the lessor is made for the use of any farm equipment or other personal property the use of which is included under a lease for comparable real property unless the lease specifies the amount of the total rental attributable to the personal property and that amount is reasonable under the circumstances.

(c) *State and local real estate taxes.* For purposes of the farm valuation formula under section 2032A (e) (7) state and local taxes are taxes which are assessed by a state or local government and which are allowable deductions under section 164. However, only those taxes on the comparable real property from which cash rentals are determined may be used in the formula valuation.

(d) *Comparable real property defined.* Comparable real property must be situated in the same locality as the specially valued property. This requirement is not to be viewed in terms of mileage or political divisions alone, but rather is to be judged according to generally accepted real property valuation rules. The determination of properties which are comparable is a factual one and must be based on numerous factors, no one of which is determinative. It will, therefore, frequently be necessary to value farm property in segments where there are different uses or land characteristics included in the specially valued farm. For example, if section 2032A (e) (7) is used, rented property on which comparable buildings or improvements are located must be identified for specially valued property on which buildings or other real property improvements are located. In cases involving multiple areas or land characteristics, actual comparable property for each segment must be used, and the rentals and taxes from all such properties combined (using generally accepted real property valuation rules) for use in the valuation formula given in this section. However, any premium or discount resulting from the presence of multiple uses or other characteristics in one farm is also to be reflected. All factors generally considered in real estate valuation are to be considered in

determining comparability under section 2032A. While not intended as an exclusive list, the following factors are among those to be considered in determining comparability—

(1) Similarity of soil as determined by any objective means, including an official soil survey reflected in a soil productivity index;

(2) Whether the crops grown are such as would deplete the soil in a similar manner;

(3) The types of soil conservation techniques that have been practiced on the two properties;

(4) Whether the two properties are subject to flooding;

(5) The slope of the land;

(6) In the case of livestock operations, the carrying capacity of the land;

(7) Where the land is timbered, whether the timber is comparable to that on the subject property;

(8) Whether the property as a whole is unified or whether it is segmented, and where segmented, the availability of the means necessary for movement among the different segments;

(9) The number, types, and conditions of all buildings and other fixed improvements located on the properties and their location as it affects efficient management and use of property and value per se; and

(10) Availability of, and type of, transportation facilities in terms of costs and of proximity of the properties to local markets.

(e) *Effective interest rate defined—(1) Generally.* The annual effective interest rate on new Federal land bank loans is the average billing rate charged on new agricultural loans to farmers and ranchers in the farm credit district in which the real property to be valued under section 2032A is located, adjusted as provided in paragraph (e) (2) of this section. This rate is to be a single rate for each district covering the period of one calendar year and is to be computed to the nearest one-hundredth of one percent. In the event that the district billing rates of interest on such new agricultural loans change during a year, the rate for that year is to be weighted to reflect the portion of the year during which each such rate was charged. If a district's billing rate on such new agricultural loans varies according to the amount of the loan, the rate applicable to a loan in an amount resulting from dividing the total dollar amount of such loans closed during the year by the total number of the loans closed is to be used under section 2032A. Applicable rates may be obtained from the district director of internal revenue.

(2) *Adjustment to billing rate of interest.* The billing rate of interest determined under this paragraph is to be adjusted to reflect the increased cost of borrowing resulting from the required purchase of land bank association stock. For section 2032A purposes, the rate of required stock investment is the average of the percentages of the face amount of new agricultural loans to farmers and ranchers required to be invested in such stock by the applicable district bank during the year. If this percentage changes during a year, the average is to be adjusted to reflect the period when each percentage requirement was effective. The percentage is viewed as a reduction in the loan proceeds actually received from the amount upon which interest is charged.

(3) *Example.* The determination of the effective interest rate for any year may be illustrated as follows:

Example. District X of the Federal land bank system charged an 8 percent billed interest rate on new agricultural loans for 8 months of the year, 1976, and an 8.75 percent rate for 4 months of the year. The average billing rate was, therefore, 8.25 percent $[(1.08 \times 8/12) + (1.0875 \times 4/12) = 1.0825]$. The district required stock equal to 5 percent of the face amount of the loan to be purchased as a precondition to receiving a loan. Thus, the borrower only received 95 percent of the funds upon which he paid interest. The applicable annual interest rate for 1976 of 8.68 percent is computed as follows:
 $8.25 \text{ percent} \times 1.00 \text{ (total loan amount)} = 8.25 \text{ percent (billed interest rate) divided by } 0.95 \text{ (percent of loan proceeds received by borrower)} = 8.68 \text{ percent (effective interest rate for 1976).}$

§ 20.2032A-8 Election and agreement to have certain property valued under section 2032A for estate tax purposes.

(a) *Election of special use valuation T1—(1) In general.* An election under section 2032A is made as prescribed in paragraph (a)(3) of this section and on Form 706, United States Estate Tax Return. Once made, this election is irrevocable; however, see paragraph (d) of this section for a special rule for estates for which elections are made on or before August 30, 1980. Under section 2032A(a)(2), special use valuation may not reduce the value of the decedent's estate by more than \$500,000. This election is available only if, at the time of death, the decedent was a citizen or resident of the United States.

(2) *Elections to specially value less than all qualified real property included in an estate.* An election under section 2032A need not include all real property included in an estate which is eligible for special use valuation, but sufficient property to satisfy the threshold

requirements of section 2032A(b)(1)(B) must be specially valued under the election. If joint or undivided interests (e.g. interests as joint tenants or tenants in common) in the same property are received from a decedent by qualified heirs, an election with respect to one heir's joint or undivided interest need not include any other heir's interest in the same property if the electing heir's interest plus other property to be specially valued satisfy the requirements of section 2032A (b) (1) (B). If successive interests (e.g. life estates and remainder interests) are created by a decedent in otherwise qualified property, an election under section 2032A is available only with respect to that property (or portion thereof) in which qualified heirs of the decedent receive all of the successive interests, and such an election must include the interests of all of those heirs. For example, if a surviving spouse receives a life estate in otherwise qualified property and the spouse's brother receives a remainder interest in fee, no part of the property may be valued pursuant to an election under section 2032A. Where successive interests in specially valued property are created, remainder interests are treated as being received by qualified heirs only if (i) a qualified heir receives a present interest in that real property, (ii) all preceding interests in the property are vested absolutely in qualified heirs, and (iii) such remainder interests are not contingent upon surviving an alternate taker who is not a member of the decedent's family or are not vested subject to divestment in favor of a nonfamily member. For the definition of present interest, see section 2503 and the regulations thereunder.

(3) *Time and manner of making election.* An election under this section is made by attaching to a timely filed estate tax return the agreement described in paragraph (c)(1) of this section and a notice of election which contains the following information:

(i) The decedent's name and taxpayer identification number as they appear on the estate tax return;

(ii) The relevant qualified use;

(iii) The items of real property shown on the estate tax return to be specially valued pursuant to the election (identified by schedule and item number);

(iv) The fair market value of the real property to be specially valued under section 2032A and its value based on its qualified use (both values determined without regard to the adjustments provided by section 2032A (b) (3) (B));

(v) The adjusted value (as defined in section 2032A (b) (3) (B)) of all real

property which is used in a qualified use and which passes from the decedent to a qualified heir and the adjusted value of all real property to be specially valued;

(vi) The items of personal property shown on the estate tax return that pass from the decedent to a qualified heir and are used in a qualified use under section 2032A (identified by schedule and item number) and the total value of such personal property adjusted as provided under section 2032A (b) (3) (B);

(vii) The adjusted value of the gross estate, as defined in section 2032A (b) (3) (A);

(viii) The method used in determining the special value based on use;

(ix) Copies of written appraisals of the fair market value of the real property;

(x) A statement that the decedent and/or a member of his or her family has owned all specially valued real property for at least 5 years of the 8 years immediately preceding the date of the decedent's death;

(xi) Any periods during the 8-year period preceding the date of the decedent's death during which the decedent or a member of his or her family did not own the property, use it in a qualified use, or materially participate in the operation of the farm or other business within the meaning of section 2032A (e) (6);

(xii) The name, address, taxpayer identification number, and relationship to the decedent of each person taking an interest in each item of specially valued property, and the value of the property interests passing to each such person based on both fair market value and qualified use;

(xiii) Affidavits describing the activities constituting material participation and the identity of the material participant or participants; and

(xiv) A legal description of the specially valued property.

If neither an election nor a protective election is timely made, special use valuation is not available to the estate. See sections 2032A (d) (1), 6075 (a), and 6081 (a).

(b) *Protective election.* A protective election may be made to specially value qualified real property. The availability of special use valuation pursuant to this election is contingent upon values as finally determined (or agreed to following examination of a return) meeting the requirements of section 2032A. A protective election does not, however, extend the time for payment of any amount of tax. Rules for such extensions are contained in sections 6161, 6163, 6166, and 6166A. The protective election is to be made by a notice of election filed with a timely

estate tax return stating that a protective election under section 2032A is being made pending final determination of values. This notice is to include the following information:

(1) The decedent's name and taxpayer identification number as they appear on the estate tax return;

(2) The relevant qualified use; and

(3) The items of real and personal property shown on the estate tax return which are used in a qualified use, and which pass to qualified heirs (identified by schedule and item number).

If it is found that the estate qualifies for special use valuation based upon values as finally determined (or agreed to following examination of a return), an additional notice of election must be filed within 60 days after the date of such determination. This notice must set forth the information required under paragraph (a)(3) of this section and is to be attached, together with the agreement described in paragraph (c)(1) of this section, to an amended estate tax return. The new return is to be filed with the Internal Revenue Service office where the original return was filed.

(c) *Agreement to special valuation by persons with an interest in property—(1) In general.* The agreement required under section 2032A (a)(1)(B) and (d)(2) must be executed by all parties who have any interest in the property being valued based on its qualified use as of the date of the decedent's death. In the case of a qualified heir, the agreement must express consent to personal liability under section 2032A(c) in the event of certain early dispositions of the property or early cessation of the qualified use. See section 2032A(c)(6). In the case of parties (other than qualified heirs) with interests in the property, the agreement must express consent to collection of any additional estate tax imposed under section 2032A(c) from the qualified property. The agreement is to be in a form that is binding on all parties having an interest in the property. It must designate an agent with satisfactory evidence of authority to act for the parties to the agreement in all dealings with the Internal Revenue Service on matters arising under section 2032A and must indicate the address of that agent.

(2) *Persons having an interest in designated property.* An interest in property is an interest which, as of the date of the decedent's death, can be asserted under applicable local law so as to affect the disposition of the specially valued property by the estate. Any person in being at the death of the decedent who has any such interest in the property, whether present or future,

or vested or contingent, must enter into the agreement. Included among such persons are owners of remainder and executory interests, the holders of general or special powers of appointment, beneficiaries of a gift over in default of exercise of any such power, co-tenants, joint tenants and holders of other undivided interests when the decedent held only a joint or undivided interest in the property or when only an undivided interest is specially valued, and trustees of trusts holding any interest in the property. An heir who has the power under local law to caveat (challenge) a will and thereby affect disposition of the property is not, however, considered to be a person with an interest in property under section 2032A solely by reason of that right. Likewise, creditors of an estate are not such persons solely by reason of their status as creditors.

(3) *Consent on behalf of interested party.* If any person required to enter into the agreement provided for by paragraph (c)(1) either desires that an agent act for him or her or cannot legally bind himself or herself due to infancy or other incompetency, or to death before the election under section 2032A is timely exercised, a representative authorized under local law to bind such person in an agreement of this nature is permitted to sign the agreement on his or her behalf.

(4) *Duties of agent designated in agreement.* The Internal Revenue Service will contact the agent designated in the agreement under paragraph (c)(1) on all matters relating to continued qualification under section 2032A of the specially valued real property and on all matters relating to the special lien arising under section 6324B. It is the duty of the agent as attorney-in-fact for the parties with interests in the specially valued property to furnish the Service with any requested information and to notify the Service of any disposition or cessation of qualified use of any part of the property.

(d) *Special rule for estates for which elections under section 2032A are made on or before August 30, 1980.* An election to specially value real property under section 2032A that is made on or before August 30, 1980, may be revoked. To revoke an election, the executor must file a notice of revocation with the Internal Revenue Service office where the original estate tax return was filed on or before January 31, 1981 (or if earlier, the date on which the period of limitation for assessment expires). This notice of revocation must contain the decedent's name, date of death, and

taxpayer identification number, and is to be accompanied by remittance of any additional amount of estate tax and interest determined to be due as a result of valuation of the qualified property based upon its fair market value. Elections that are made on or before August 30, 1980, that do not comply with this section as proposed on July 13, 1978 (43 FR 30070), and amended on December 21, 1978 (43 FR 59517), must be conformed to this final regulation by means of an amended return before the original estate tax return can be finally accepted by the Internal Revenue Service.

§ 20.6081-1 [Amended]

Par. 4. The third sentence of paragraph (c) of § 20.6081-1 is amended by striking out the first word and inserting in lieu thereof "Except as provided in § 20.2032A-8(d) and § 20.6166-1(h), the".

§ 20.6166 [Deleted]

Par. 5. Section 20.6166 is deleted.

66 20.6166-1, 20.6166-2, 20.6166-3 and 20.6166-4 Redesignated as 66 20.6166A-1, 20.6166A-2, 20.6166A-3, and 20.6166A-4.

Par. 6. Sections 20.6166-1, 20.6166-2, 20.6166-3, and 20.6166-4 are redesignated §§ 20.6166A-1, 20.6166A-2, 20.6166A-3, and 20.6166A-4 respectively.

Par. 7. The following new section is added following § 20.6165-1:

§ 20.6166-1 Election of alternate extension of time for payment of estate tax where estate consists largely of interest in closely held business.

(a) *In general.* Section 6166 allows an executor to elect to extend payment of part or all of the portion of the estate tax which is attributable to a closely held business interest (as defined in section 6166(b)(1)). If it is made at the time the estate tax return is filed, the election is applicable both to the tax originally determined to be due and to certain deficiencies. If no election is made when the estate tax return is filed, up to the full amount of certain later deficiencies (but not any tax originally determined to be due) may be paid in installments.

(b) *Time and manner of election.* The election provided under section 6166(a) is made by attaching to a timely filed estate tax return a notice of election containing the following information:

(1) The decedent's name and taxpayer identification number as they appear on the estate tax return;

(2) The amount of tax which is to be paid in installments;

(3) The date selected for payment of the first installment;

(4) The number of annual installments, including the first installment, in which the tax is to be paid;

(5) The properties shown on the estate tax return which constitute the closely held business interest (identified by schedule and item number); and

(6) The facts which formed the basis for the executor's conclusion that the estate qualifies for payment of the estate tax in installments.

In the absence of a statement in the notice of election as to the amount of tax to be paid in installments, the date selected for payment of the first installment, or the number of installments, the election is presumed to be for the maximum amount so payable and for payment thereof in 10 equal installments, the first of which is due on the date which is 5 years after the date prescribed in section 6151 (a) for payment of estate tax.

(c) *Treatment of certain deficiencies—(1) No election before assessment of deficiency.* Where a deficiency is assessed and no election, including a protective election, has been made under section 6166 (a) to pay any tax in installments, the executor may elect under section 6166 (h) to pay the portion of the deficiency attributable to the closely held business interest in installments. However, this is true only if the estate qualifies under section 6166 based upon values as finally determined (or agreed to following examination of a return). Such an election is exercised by filing a notice of election with the Internal Revenue Service office where the estate tax return was filed. The notice of election must be filed within 60 days after issuance of notice and demand for payment of the deficiency, and it must contain the same information as is required under paragraph (b) of this section. The notice of election is to be accompanied by payment of the amount of tax and interest, the date for payment of which has arrived as determined under paragraphs (e) and (f) of this section, plus any amount of unpaid tax and interest which is not attributable to the closely held business interest and which is not eligible for further extension (or currently extended) under another section (other than section 6166A).

(2) *Election made with estate tax return.* If the executor makes an election under section 6166 (a) (other than a protective election) at the time the estate tax return is filed and a deficiency is later assessed, the portion of the deficiency which is attributable to the closely held business interest (but not any accrued interest thereon) will be prorated to the installments payable

pursuant to the original section 6166 (a) election. Any part of the deficiency prorated to an installment, the date for payment of which has arrived, is due upon notice and demand. Interest for any such period, including the deferral period, is payable upon notice and demand.

(3) *Portion of deficiency attributable to closely held business interest.* Only that portion of any deficiency which is attributable to a closely held business interest may be paid in installments under section 6166. The amount of any deficiency which is so attributable is the difference between the amount of tax which the executor has previously elected to pay in installments under section 6166 and the maximum amount of tax which the executor could have elected to pay in installments on the basis of a return which reflects the adjustments that resulted in the deficiency.

(d) *Protective election.* A protective election may be made to defer payment of any portion of tax remaining unpaid at the time values are finally determined (or agreed to following examination of a return) and any deficiencies attributable to the closely held business interest (within the meaning of paragraph (c)(3) of this section). Extension of tax payments pursuant to this election is contingent upon final values meeting the requirements of section 6166. A protective election does not, however, extend the time for payment of any amount of tax. Rules for such extensions are contained in sections 6161, 6163, and 6166A. A protective election is made by filing a notice of election with a timely filed estate tax return stating that the election is being made. Within 60 days after values are finally determined (or agreed to following examination of a return), a final notice of election which sets forth the information required under paragraph (b) of this section must be filed with the Internal Revenue Service office where the original estate tax return was filed. That notice of final election is to be accompanied by payment of any amount of previously unpaid tax and interest, the date for payment of which has arrived as determined under paragraphs (e) and (f) of this section, plus any amount of unpaid tax and interest which is not attributable to the closely held business interest and which is not eligible for further extension (or currently extended) under another section (other than section 6166A).

(e) *Special rules—(1) Effect of deficiencies and protective elections upon payment.* Upon election to extend the time for payment of a deficiency or

upon final determination of values following a protective election, the executor must prorate the tax or deficiency attributable to the closely held business interest among all installments. All amounts attributed to installments which would have been due had the election been made at the time the tax was due to be paid under section 6151 (a) and all accrued interest must be paid at the time the election is made.

(2) *Determination of date for payment of first installment.* The executor may defer payment of tax (but not interest) for any period up to 5 years from the date determined under section 6151 (a) for payment of the estate tax. The date chosen for payment of the first installment of tax is not required to be on an annual anniversary of the original due date of the tax; however, it must be the date within any month which corresponds to the day of the month determined under section 6151 (a).

(f) *Rule for computing interest.* Section 6601 (j) provides a special 4 percent interest rate for the amount of tax (including deficiencies) which is to be paid in installments under section 6166. This special interest rate applies only to that amount of tax which is to be paid in installments and which does not exceed the limitation of section 6601 (j) (2). Where payment of a greater amount of tax than is subject to section 6601 (j) (2) is extended under section 6166, each installment is deemed to be comprised of both tax subject to the 4 percent interest rate and tax subject to the rate otherwise prescribed by section 6621. The percentage of any installment subject to the special 4 percent rate is equal to the percentage of the total tax payable in installments which is subject to the 4 percent rate. Where an election is made under the provisions of paragraphs (b) or (c) (1) of this section, the 4 percent rate applies from the date on which the estate tax was originally due to be paid. If only a protective election is made, section 6601 (j) applies to the amount which is to be paid in installments, limited to the amount of any deficiency, from the due date for payment of estate tax. After the date upon which the section 6166 election is made final, section 6601 (j) applies to the entire amount to be paid in installments.

(g) *Relation of sections 6166 and 6166A.* No election may be made under section 6166 if an election under section 6166A applies with respect to an estate. For example, no election can be made under section 6166 (h) where an executor has made an election under section 6166A. If an election is timely made under either section 6166 or

section 6166A, however, a protective election can be made under the other section at the same time. If the executor then files a timely notice of final election under the section protectively elected and pays any amounts determined to be due currently following final determination of (or agreement as to) estate tax values, the original election under the other provision will be deemed never to have applied to the estate.

(h) *Special rule for estates for which elections under section 6166 are made on or before August 30, 1980.* An election to extend payment of estate tax under section 6166 that is made on or before August 30, 1980, may be revoked. To revoke an election, the executor must file a notice of revocation with the Internal Revenue Service office where the original estate tax return was filed on or before January 31, 1981 (or if earlier, the date on which the period of limitation on assessment expires). This notice of revocation must contain the decedent's name, date of death, and taxpayer identification number, and is to be accompanied by remittance of any additional amount of estate tax and interest determined to be due.

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

Example (1)—(i). Based upon values shown on decedent A's timely filed estate tax return, 60 percent of the value of A's adjusted gross estate consisted of a farm which was a closely held business within the meaning of section 6166. A's executor, B, made a protective election under section 6166 when he filed A's estate tax return. B also applied for an extension of time under section 6161 to pay \$15,000 of the \$30,000 of estate tax shown due on the return. The requested extension was granted and was renewed at the end of 1 year. Eighteen months after the return was filed and after examination of A's estate tax return, the value of the farm was found to constitute 67 percent of the adjusted gross estate. B entered into an agreement consenting to the values as established on examination and to a deficiency of \$5,000. B then filed a final notice of election under section 6166, choosing a 5-year deferral followed by 10 annual installment payments and thereby terminated his extension under section 6161 because that amount of tax was then included under the section 6166 election. B could have extended payment of 67 percent of the total estate tax, or \$23,450. \$23,450 is eligible for installment payments under section 6166 and the section 6166 election is considered to be for that amount. B is considered to have prepaid \$3,450 of tax since only \$20,000 of tax remained unpaid. The \$3,450 is attributed to the first installment of \$2,345 and to \$1,105 of the second installment which would have been payable under the section 6166 election.

(ii) Had B been granted an extension of time under section 6161 to pay \$20,000 of tax,

\$25,000 would remain unpaid when the final section 6166 election is made. Payment of the full \$23,450 (67 percent) of tax which is attributable to the closely held business interest is included under the section 6166 election. The balance of unpaid tax (\$1,550) is due upon expiration of the estate's section 6161 extension.

(iii) Assume the facts under example (1) (i). B must pay all unpaid accrued interest with his notice of final election. Since only 18 months have passed, no installments of tax are due. Interest on the \$5,000 deficiency is computed at 4 percent per annum for the entire 18 months, and interest for 12 months of that period is currently due to be paid. Interest for the remaining 6 months is due at the next succeeding date for payment of interest. Interest on the \$15,000 of tax extended under section 6161 is computed at the rate determined under section 6621 until the date of the final section 6166 election and is due upon termination of the section 6161 extension. After that date, the interest on the \$15,000 will also accrue at 4 percent per annum.

Example (2). Assume the facts as in example (1), except B initially made an election under section 6166A and made no protective election under section 6166. Following final determination of values, B is not permitted to make any election under section 6166; however, had B protectively elected section 6166 at the time he made the section 6166A election, he could have terminated the section 6166A election and finally elected under section 6166. In such a case, the full \$23,450 of tax attributable to the farm would have been eligible for extension under section 6166. The 4 percent interest rate would apply to the \$5,000 deficiency from the original due date of the tax, and, as with the extension under section 6161, it would apply to the amounts extended under section 6166A only from the date on which the election under section 6166 was finalized.

Example (3). C died in 1977. His estate owes Federal estate taxes of \$750,000, \$500,000 of which is attributable to a closely held business interest. Payment of the \$500,000 was extended under section 6166. A 5-year deferral followed by 10 annual installment payments was chosen by C's executor. Under paragraph (f) of this section, only 63.16 percent of each installment will be subject to the special 4 percent interest rate and the remainder will be subject to the rate determined under section 6621. The same rule applies in computing interest for the 5 years during which payment of tax is deferred. (This is so because the 4 percent interest rate applies only to a maximum of \$345,800 of tax less the \$30,000 of credit allowable under section 2010(a) rather than to the entire \$500,000 extended amount).

Par 8. The following new section is added following § 20.6324-1:

§ 20.6324A-1 Election of and agreement to special lien for estate tax deferred under section 6166 or 6166A.

For regulations concerning the election of and agreement to the special lien for estate tax deferred under section 6166 or 6166A, see § 301.6324A-1 of this

Chapter (Regulations on Procedure and Administration).

PART 301—PROCEDURE AND ADMINISTRATION

Par. 9. The following new section is added following § 301.6324-1:

§ 301.6324A-1 Election of and agreement to special lien for estate tax deferred under section 6166 or 6166A.

(a) *Election of lien.* If payment of a portion of the estate tax is deferred under section 6166 or 6166A, an executor of a decedent's estate who seeks to be discharged from personal liability may elect a lien in favor of the United States in lieu of the bonds required by sections 2204 and 6165. This election is made by applying to the Internal Revenue Service office where the estate tax return is filed at any time prior to payment of the full amount of estate tax and interest due. The application is to be a notice of election requesting the special lien provided by section 6324A and is to be accompanied by the agreement described in paragraph (b) (1) of this section.

(b) *Agreement to lien—(1) In general.* A lien under this section will not arise unless all parties having any interest in all property designated in the notice of election as property to which the lien is to attach sign an agreement in which they consent to the creation of the lien. (Property so designated need not be property included in the decedent's estate.) The agreement is to be attached to the notice in which the lien under section 6324A is elected. It must be in a form that is binding on all parties having any interest on the property and must contain the following:

(i) The decedent's name and taxpayer identification number as they appear on the estate tax return;

(ii) The amount of the lien;

(iii) The fair market value of the property to be subject to the lien as of the date of the decedent's death and the date of the election under this section;

(iv) The amount, as of the date of the decedent's death and the date of the election, of all encumbrances on the property, including mortgages and any lien under section 6324B;

(v) A clear description of the property which is to be subject to the lien, and in the case of property other than land, a statement of its estimated remaining useful life; and

(vi) Designation of an agent (including the agent's address) for the beneficiaries of the estate and the consenting parties to the lien for all dealings with the Internal Revenue Service on matters arising under section 6166 or 6166A, or under section 6324A.

(2) *Persons having an interest in designated property.* An interest in property is any interest which as of the date of the election can be asserted under applicable local law so as to affect the disposition of any property designated in the agreement required under this section. Any person in being at the date of the election who has any such interest in the property, whether present or future, or vested or contingent, must enter into the agreement. Included among such persons are owners of remainder and executory interests, the holders of general or special powers of appointment, beneficiaries of a gift over in default of exercise of any such power, co-tenants, joint tenants, and holders of other undivided interests when the decedent held a joint or undivided interest in the property, and trustees of trusts holding any interest in the property. An heir who has the power under local law to caveat (challenge) a will and thereby affect disposition of the property is not, however, considered to be a person with an interest in property under section 6324A solely by reason of that right. Likewise, creditors of an estate are not such persons solely by reason of their status as creditors.

(3) *Consent on behalf of interested party.* If any person required to enter into the agreement provided for by this paragraph either desires that an agent act for him or her or cannot legally bind himself or herself due to infancy or other incompetency, a representative authorized under local law to bind the interested party in an agreement of this nature is permitted to sign the agreement on his or her behalf.

(4) *Duties of agent designated in agreement.* The Internal Revenue Service will contact the agent designated in the agreement under paragraph (b)(1) on all matters relating to continued qualification of the estate under section 6166 or 6166A and on all matters relating to the special lien arising under section 6324A. It is the duty of the agent as attorney-in-fact for the parties with interests in the property subject to the lien under section 6324A to furnish the Service with any requested information and to notify the Service of any event giving rise to acceleration of the deferred amount of tax.

(c) *Partial substitution of bond for lien.* If the amount of unpaid estate tax plus interest exceeds the value (determined for purposes of section 6324A(b)(2)) of property listed in the agreement under paragraph (b) of this section, the Internal Revenue Service may condition the release from personal

liability upon the executor's submitting an agreement listing additional property or furnishing an acceptable bond in the amount of such excess.

(d) *Relation of sections 6324A and 2204.* The lien under section 6324A is deemed to be a bond under section 2204 for purposes of determining an executor's release from personal liability. If an election has been made under section 6324A, the executor may not substitute a bond pursuant to section 2204 in lieu of that lien. If a bond has been supplied under section 2204, however, the executor may, by filing a proper notice of election and agreement, substitute a lien under section 6324A for any part or all of such bond.

(e) *Relation of sections 6324A and 6324.* If there is a lien under this section on any property with respect to an estate, that lien is in lieu of the lien provided by section 6324 on such property with respect to the same estate.

(f) *Section 6324A lien to be in lieu of bond under section 6165.* The lien under section 6324A is in lieu of any bond otherwise required under section 6165 with respect to tax to be paid in installments under section 6166 or section 6166A.

(g) *Special rule for estates for which elections under section 6324A are made on or before August 30, 1980.* If a lien is elected under section 6324A on or before August 30, 1980, the original election may be revoked. To revoke an election, the executor must file a notice of revocation containing the decedent's name, date of death, and taxpayer identification number with the Internal Revenue Service office where the original estate tax return for the decedent was filed. The notice must be filed on or before January 31, 1981 (or if earlier, the date on which the period of limitation for assessment expires).

This Treasury decision is issued under the authority contained in sections 2032A and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1856, 68A Stat. 917, 26 U.S.C. 2032A, 7805).

Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: July 18, 1980.

Emil M. Sunley,
Acting Assistant Secretary of the Treasury.

[FR Doc. 80-23028 Filed 7-28-80; 3:16 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 78-86]

Drawbridge Operation Regulations; Coalbank Slough and Willamette River, Oreg.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Southern Pacific Transportation Company, the Coast Guard is changing the regulations governing the operation of the Southern Pacific Railroad Drawbridge across Coalbank Slough, mile 0.1, and the Southern Pacific Railroad drawbridges across the Willamette River at Albany, mile 119.6, and Salem, mile 84.3, to permit the draws to remain closed to navigation. This change is being made because no requests have been made to open the bridge across Coalbank Slough since 1974; for the bridge across the Willamette River at Albany since 1971; and for the bridge across the Willamette River at Salem since 1970. This action will relieve the bridge owner of the burden of maintaining the machinery and of having a person available to open the draw.

EFFECTIVE DATE: This amendment is effective on August 31, 1980.

FOR FURTHER INFORMATION CONTACT: Frank L. Teuton, Jr., Chief, Drawbridge Regulations Branch (G-NBR/TP14), Room 1414, Transpoint Building, 2100 Second Street, SW., Washington, D.C. 20593 (202-426-0942).

SUPPLEMENTARY INFORMATION: On March 12, 1979, the Coast Guard Published a proposed rule (44 FR 13543) concerning this amendment. The Commander, Thirteenth Coast Guard District, also published these proposals as a Public Notice date March 14, 1979. Interested persons were given until April 12, 1979 to submit comments.

Drafting Information

The principal persons involved in drafting this rule are: Frank L. Teuton, Jr., Project Manager, Office of Navigation, and Coleman Sachs, Project Attorney, Office of the Chief Counsel.

Discussion of Comments

Five comments were received. Two had no objection to the proposal. One

had no objection to temporarily closing the bridge at Coalbank Slough, provided it should become operable within a reasonable time if navigational needs require it. The other two objected to any closure of the Coalbank Slough bridge because of future plans for development. In view of the lack of marine traffic and the stated willingness of the owner of the bridges to return them, individually or collectively, to operable condition within six months after notification to take such action, the Coast Guard believes this change will not unduly restrict navigation.

A review of existing regulations undertaken in the preparation of this amendment revealed that paragraphs (f)(2) and (f)(15) of § 117.759b impose different operating requirements on the same bridge. Paragraph (f)(2) is being deleted as part of this rulemaking. This matter was neglected at the time the regulations for the affected bridge were revised through the addition of paragraph (f)(15). As this is merely an editorial change, it is being accomplished without prior notice or opportunity for public comment.

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by:

1. Revising § 117.755(a) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.755 Willamette River, Oreg.; bridges above Oregon City, Oreg.

(a) Southern Pacific Transportation Co. Drawbridge at Salem. The draw need not open for the passage of vessels. However, the draw shall be returned to an operable condition within six months after notification from the Commandant, U.S. Coast Guard, to take such action.

2. Revising § 117.759b(f)(1), (2) and (6) to read as follows:

§ 117.759b Drawbridges across navigable waters in Oregon where constant attendance is not required.

(f) ***

(1) Southern Pacific Transportation Co. drawbridge across Coalbank Slough. The draw need not open for the passage of vessels. However, the draw shall be returned to an operable condition within six months after notification from the