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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 707]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 707 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 330,380 cartons during the period from March 4, 1990, through March 10, 1990. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: Regulation 707 (7 CFR part 910) is effective for the period from March 4, 1990, through March 10, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order

that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989-90. The Committee met publicly on February 27, 1990, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specific week. The Committee reports that overall demand for lemons is steady.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became

available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.707 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.707 Lemon Regulation 707.

The quantity of lemons grown in California and Arizona which may be handled during the period from March 4, 1990, through March 10, 1990, is established at 330,380 cartons.

Dated: February 28, 1990.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable
Division.

[FR Doc. 90-4937 Filed 3-1-90; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1945 and 1980

Final Implementation of Farmer Program Loan Provisions of the Disaster Assistance Act of 1989

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) adopts its interim rule published November 22,

1989 (54 FR 48227-48230), as a final rule without change. This action amends FmHA regulations by authorizing special disaster assistance to eligible farmers and ranchers who sustained severe production losses to their 1988 or 1989 crop(s) as a result of natural disasters. This action is necessary to finalize the interim rule, which implemented the provisions of the Disaster Assistance Act of 1989 (Public Law 101-82 (dated August 14, 1989), that was incorporated into existing FmHA regulations.

DATES: Final rule effective March 2, 1990.

FOR FURTHER INFORMATION CONTACT: Mark Falcone, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 475-4019.

SUPPLEMENTARY INFORMATION:

Classification

This action was reviewed under USDA procedures established in Department Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of \$100 million or more.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice, 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans and Farm Operating Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

- 10.404—Emergency Loans.
- 10.406—Farm Operating Loans.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an

Environmental Impact Statement is not required.

Discussion of Final Rule

On November 22, 1989, FmHA published an interim rule amending 7 CFR parts 1945-D and 1980-B in the *Federal Register* (54 FR 48227-48330) with a comment period ending December 22, 1989. The "Disaster Assistance Act of 1989," (Pub. L. 101-82), dated August 14, 1989, amended FmHA's statutory loan making authorities. It was necessary to implement these authorities upon publication to provide immediate assistance to farmers and ranchers who had suffered major crop production losses as a result of natural disasters in 1988 or 1989.

The Act mandates changes in the emergency loan regulations and the guaranteed operating loan regulations. These changes ease the requirements for obtaining assistance under these programs, as did previous changes made as a result of the Disaster Assistance Act of 1988. These changes are fully addressed in the interim rule. These regulations will provide assistance to many needy farmers and ranchers who, without this assistance, are or will be in danger of losing their operations.

Discussion of Comments

One comment letter was received, that being from an FmHA County Supervisor representing the National Association of County Supervisors (NACS). The letter stated the NACS' belief that FmHA should require crop insurance, except when it is not economically feasible or available. The County Supervisor commented that FmHA policy should be consistent. Since the statute waives the crop insurance requirement for eligible applicants who suffered severe crop production losses due to natural disasters in 1988 and/or 1989, the Agency has no choice but to comply with the statute.

List of Subjects

7 CFR Part 1945

Agriculture, Disaster assistance.

7 CFR Part 1980

Agriculture, Loan programs—agriculture.

Therefore, FmHA adopts its interim rule, dated November 22, 1989 (54 FR 48227-48230), as a final rule without change.

Dated: February 13, 1990.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 90-4828 Filed 3-1-90; 8:45 am]

BILLING CODE 3410-07-M

Food Safety and Inspection Service

9 CFR Parts 309 and 310

[Docket No. 87-001F]

RIN 0583-AA58

Sulfonamide and Antibiotic Residues in Young Calves; Certification Requirement

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: FSIS is amending the Federal meat inspection regulations by adding specific language requirements to be included on written certifications under the voluntary certification program for young calves. Such language requirements provide consistency among all certifications whereby producers and subsequent custodians of young calves certify that their animals have not been treated with drugs or have been treated with one or more drugs in accordance with label directions approved by the Food and Drug Administration (FDA) and have been withheld from slaughter for the period(s) of time specified by those label directions. The specific language requirements also advise the certifying parties of the consequences of false statements. The rule amends the definition of certified calf by including any subsequent custodians of calves, along with producers, as parties who must provide certifications with respect to the calves. The rule further requires that all prior certifications be attached to the most recent certification when the calf is presented for slaughter. This action is in accord with a recommendation by the Department's Office of the Inspector General to develop a standard form for the certified calf program.

EFFECTIVE DATE: May 31, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. John McCutcheon, Assistant Deputy Administrator, Inspection Management Program, Meat and Poultry Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3697.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this rule is not a "major rule" under Executive Order 12291. This rule would not result in an annual effect on the economy of \$100 million or more; or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

Written certificates are currently required of producers who wish to certify their calves under the voluntary certified calf program. This rule: (1) Requires the addition of specific language and the recording of calf identification numbers on certificates, (2) requires that all subsequent custodians of the calf provide a new certificate if the calf is intended to continue to be certified, and (3) requires that all previous certifications be presented to the inspector with the current certification at the time the calf is presented for slaughter. Use of standard language and recording of animal identification numbers on certifications is expected to have a minimal economic impact on producers as the standard language only replaces current language used by producers. However, use of the language which advises of the consequences of false statements may dissuade some producers from certifying their calves. If a producer is unwilling to sign a certification simply because he or she is aware of the penalties for false statements and thus does not want to subject himself or herself to criminal prosecution, FSIS does not consider this as a significant effect on such producers. Calves from such producers would then be tested under the current testing program which is a current option available to all producers. Producers are currently required to supply the calf's identification number verbally if requested; recording such identification number on the certificate should have a negligible impact on producers.

Because this rule requires that not only the producer but all subsequent custodians complete certifications for a calf to continue to be certified, entities such as auction markets, agents, truckers and similar entities will be affected by this rule. It is expected that a substantial number of these entities

will be small. These new entities will be required to complete a certification for each calf or group of calves using the standard language, record the identification numbers of the calf(ves) on the certification, and present all previous certifications with the new certification to the inspector at the time the calf(ves) is presented for slaughter. Those entities not dissuaded by the statements on the consequences of false statements would be affected administratively. They would be required to execute a certificate each time they became a custodian of an initially certified calf or calves, would be required to record the animals' identification numbers and would be required to maintain the previous certificates and present all certificates to the next custodian or to the inspector at the time the calf(ves) is presented for slaughter. However, it is expected that such new certifiers would gain additional or continuing business as a result of their participation and may even gain a certain percentage of sales of animals depending on the arrangements made with producers and other certifiers. The effect of this rule on small entities has been determined to be not significant for the reasons discussed above.

Paperwork Requirements

This rule: (1) Requires specific, standard language on certifications, including language on the penalties for false statements, (2) requires subsequent custodians as well as producers of calves to "certify" calves, and (3) requires that any subsequent "certifier," as a result of a change in custody, attach a copy of any previous certification when the certified calf is presented for slaughter. These paperwork and recordkeeping requirements have been approved by the Office of Management and Budget (OMB) as control number 0583-0053.

Background

Because of increasing high concentrations of sulfonamide and antibiotic residues in young calves, FSIS published in the Federal Register (49 FR 23602, June 7, 1984) an interim rule, effective June 4, 1984. The interim rule intensified implant testing procedures for detecting violative concentrations of sulfonamides and antibiotics in calves up to 3 weeks in age or 150 pounds in weight. It provided for a voluntary written certification program that allowed less intensive testing on calves that were certified in writing by the producer as not having been treated with such drugs or, if so, that the prescribed withdrawal period had

passed. The interim rule was made final on September 9, 1985, in the August 9, 1985, Federal Register (50 FR 32162).

On January 20, 1987, FSIS published an interim rule, which became effective immediately, implementing modified testing procedures to reflect current marketing and calf management practices (52 FR 2101). Under those rules, the written certifications were signed by the producer verifying that the animal was not treated with drugs or, if so, that prescribed withdrawal periods on the drug's label were followed. Any subsequent custodian of such animal, such as an auction market, normally maintained a record of the producer's certification and, if necessary, made the certification available to the establishment which slaughtered the animal or to the inspector at that establishment. In instances where a positive test result occurred, the inspector would know the identity of the producer to conduct followup testing of subsequent animals presented for slaughter by the producer, and to inform FDA of the positive test result.

Certifications; Proposed Rule

In signing certifications, the individual and any entity which the individual represents is subject to section 407 of the Federal Meat Inspection Act (21 U.S.C. 677), which incorporates criminal penalties under 15 U.S.C. 50 for false statements, and to 18 U.S.C. 1001 for making false statements or writings, and to 18 U.S.C. 3571, which contains alternative fines. Criminal penalties are imposed upon an individual or entity only when there is proof of criminal intent to falsify a certification by such individual or entity. In addition, an individual or entity is held responsible only for the time period covered by the signed certification.

In the past, FSIS has not required specific language on the certifications. As such, a warning of criminal penalties was not included on the certifications. However, in a report issued in September 1986, concerning its audit of the meat and poultry inspection program, the Department's Office of the Inspector General recommended, in part, that FSIS develop a standard form for the certified calf program to warn producers of the consequences of false statements. Therefore, on December 27, 1988, FSIS published a proposed rule (53 FR 52177) to amend the Federal meat inspection regulations by adding specific language requirements on written certifications including language which advises certifiers of the consequences of making false statements on the certification and including identification

of each certified calf; by changing the definition of certified calf and certified group to require that all subsequent custodians of calves provide certification; and by requiring that all previous certifications be presented with the most recent certification to the inspector when the calf is presented for slaughter.

Comments on the Proposed Rule

FSIS received five comments in response to the proposed rule: four from trade associations and one from a law firm. All of the commenters supported the intent of the certification program—to provide a safe and wholesome meat supply; however, only one commenter expressed support without additional comments.

One commenter, while expressing support for the proposal, requested that FSIS expressly provide for the extra-label use of animal drugs and that FSIS clarify that the producer and all other custodians of the calf must execute a separate certificate each time custody of the animal changes. (Extra-label use of drugs refers to the prescribing and/or use of animal drugs contrary to the drugs' label instructions. This includes, but is not limited to, use in species or for indications (disease or other conditions) not listed in the labeling, use at dosage levels higher than those stated in the labeling, and failure to observe the stated withdrawal time.)

The tolerance, or maximum allowable level, of animal drug residues in edible products of food producing animals is established by the Food and Drug Administration which, under section 512 of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 360b), is responsible for approving new animal drugs and enforcing their proper use. The presence of above tolerance residues of an approved new animal drug and the presence of residues resulting from use of an unapproved new animal drug causes the drug to be deemed unsafe under section 512(a)(1) of the FFDCA (21 U.S.C. 360(b)(1)). Food containing such residues is deemed adulterated under section 402(a)(2)(D) of the FFDCA (21 U.S.C. 342(a)(2)(D)). Under section 1(m) (1), (2), or (3) of the Federal Meat Inspection Act (21 U.S.C. 601(m)), any carcass or part thereof containing such residues is deemed adulterated and the carcass or part thereof must be condemned for human food purposes. In regard to the second part of the comment, FSIS believes that the regulation clearly states that the producer and all other subsequent custodians of the calf must execute a separate certificate each time the custody of the certified calf changes.

Three of the commenters expressed concern over the amount of additional paperwork that the proposal would generate. The commenters felt that those persons or entities involved in the marketing of the animal, such as truckers, market operators, and agents, would be unduly penalized with a paperwork burden when those persons or entities have not been the source of the residue. In addition, these commenters felt that such additional paperwork would not increase the effectiveness of the program, would not establish where the drugs were introduced, and might discourage persons from participating in the program.

Although FSIS recognizes that certain persons or entities involved in the marketing of the animals but not directly involved in the production of the animals would be subject to paperwork requirements, FSIS has determined that requiring certifications from each owner and subsequent custodian of the calf until it is presented for slaughter provides the most effective and least disruptive means of tracing back a residue problem to its source.

One commenter requested clarification on whether the Agency or the person certifying provides the certificates. Certificates, which must be executed in writing and which must contain all required language, are provided by the person or entity certifying the calf.

Final Rule

This rule adds specific language to be included in the certifications warning the certifying party that falsification of such certifications is a crime and may result in a fine or imprisonment or both. In addition to the warning, certifications must contain a list of the animals being certified and an identifying number which corresponds to the number displayed on the backtag, eartag, or other identification for those certified animals.

Previously, only producers certified animals. This rule extends the certification program to each subsequent custodian of the animal. That is, each custodian of the animal from birth to presentation for slaughter would have to certify the animal for it to be considered "certified" under this rule. Each "certifier" subsequent to the initial owner is required to present their certification and all previous certification(s) when the calf is presented for slaughter. This information will provide a chain of custody back to the initial owner and will assist FSIS in its efforts to trace back any problem discovered with an

animal to its source. Therefore, the definitions of "certified calf" and "certified group" are amended to apply to "any other subsequent custodian of the animal" as well as to "producers."

This rule also makes an editorial correction to § 309.16 by changing the United States Code reference for title 18 on the certificate from § 3623 to § 3571. Section 3623 was repealed and was reenacted in § 3571.

In addition, this rule makes several editorial changes to §§ 309.16 and 310.21 to clarify the definition of certified calf and certified group.

FSIS is providing an effective date of 90 days from the date the final rule is published. This 90-day period will enable FSIS to inform those who market certified calves of the new requirements.

For the reasons set forth in the preamble, parts 309 and 310 are amended as set forth below.

List of Subjects

9 CFR Part 309

Ante-mortem inspection, Drug residues, Meat inspection.

9 CFR Part 310

Post-mortem inspection, Drug residues, Meat inspection.

PART 309—ANTE-MORTEM INSPECTION

The authority citation for part 309 is revised to read as follows and the authority citation following § 309.16 is removed:

Authority: 21 U.S.C. 601–695; 33 U.S.C. 1254(b); 7 CFR 2.17, 2.55.

2. Section 309.16 is amended by revising paragraphs (d)(1)(ii) and (3) (i) and (ii) to read as follows:

§ 309.16 Livestock suspected of having biological residues.

(d) * * *

(1) * * *

(ii) *Certified calf.* A calf that the producer and all other subsequent custodians of the calf certify in writing has not been treated with any animal drug while in his or her custody or has been treated with one or more drugs in accordance with FDA approved label directions while in his or her custody and has been withheld from slaughter for the period(s) of time specified by those label directions.

(3) *Certified group.* (i) For a calf to be considered certified, the producer and all other subsequent custodians of the calf must certify in writing that while the calf was in his or her custody, the

calf was not treated with animal drugs or was treated with one or more drugs in accordance with FDA approved label directions and was withheld from slaughter for the period(s) of time specified by those label directions. All prior certifications must be presented with the animal at the time of slaughter. The certifications shall contain a list of the calves with accompanying identification numbers, as required by paragraph (d)(3)(ii) of this section, followed by the following language:

I hereby certify that, while in my custody, from _____ to _____ (time period of custody), the above-listed calf or calves have not been treated with drugs, or have been treated with one or more drugs in accordance with FDA approved label directions and have been withheld from slaughter for the period(s) of time specified by those label directions. I certify that, to the best of my knowledge and belief, all information contained herein is true, that the information may be relied upon at the official establishment, and that I understand that any willful falsification of this certification is a felony and may result in a fine of up to \$250,000 for an individual or up to \$500,000 for an organization, or imprisonment for not more than 5 years, or both (21 U.S.C. 677, 18 U.S.C. 1001 and 3571).

Executed on _____
(date of certification)

(signature of certifier)

(typed or printed name and address of certifier)

(business of certifier)

(ii) Each calf must be identified by use of backtag, eartag, or other type of secure identification which displays a number which shall be recorded on all written certifications.

PART 310—POST-MORTEM INSPECTION

3. The authority citation for part 310 is revised to read as follows:

Authority: 21 U.S.C. 601-695; 33 U.S.C. 1254(b); 7 CFR 2.17, 2.55.

4. Section 310.21 is amended by revising paragraph (b)(2) to read as follows:

§ 310.21 Carcasses suspected of containing sulfa and antibiotic residues; sampling frequency; disposition of affected carcasses and parts.

(b) * * *

(2) *Certified calf.* A calf that the producer and all other subsequent custodians of the calf certify in writing has not been treated with any animal drug while in his or her custody or has

been treated with one or more drugs in accordance with FDA approved label directions while in his or her custody and has been withheld from slaughter for the period(s) of time specified by those label directions.

* * * * *

Done at Washington, DC, on February 12, 1990.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 90-4642 Filed 03-01-90; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 90-22]

RIN 1550-AA15

Divestiture of Control of Certain Savings Associations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (the "Office") is adopting 12 CFR 567.13, which requires persons or companies that control a savings association, and are subject to some form of capital maintenance obligation with respect to such association, to provide the Office with notice prior to divesting control of the savings association. Under the regulation, acquirors required to provide the Office with notice will be able to complete a proposed divestiture upon paying, or guaranteeing to pay, any amount then due under a capital maintenance obligation.

EFFECTIVE DATE: April 2, 1990.

FOR FURTHER INFORMATION CONTACT:

Kevin A. Corcoran, Associate Chief Counsel for Business Transactions, (202) 906-6962; V. Gerard Comizio, Senior Associate Chief Counsel/Director, (202) 906-6411, Corporate and Securities Division—Legal, or Julie L. Williams, Deputy Chief Counsel for Securities and Corporate Structure, (202) 906-6549; John Robinson, Senior Deputy Director for Supervision Policy (Acting), (202) 331-4587, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. General

For a number of years, the Federal Home Loan Bank Board (the "Board"), the predecessor of the Office, conditioned approval of applications by

companies to acquire control of savings associations or savings and loan holding companies on the acquiror's undertaking to maintain the capital of the subsidiary savings association at or above required levels and to infuse capital into the association if the association's capital fell below the required level. In addition, capital maintenance obligations are currently imposed on individuals seeking to acquire a savings association and have also been imposed on controlling shareholders of *de novo* savings associations.¹

It was the Board's experience that acquirors that are subject to a capital maintenance obligation may attempt various strategies to avoid such an obligation. Such attempts may occur, for example, where an acquiror sees the savings association facing increased capital requirements and/or a deteriorating financial condition and seeks to avoid its obligations by relinquishing control of the association. The problem is particularly acute where the divestiture is to a widely dispersed group of new owners, none of which would be subject to a capital maintenance obligation.²

B. Summary of the Proposal and Final Regulation

The Board proposed the regulation adopted today in Board Resolution No. 89-2329 (August 7, 1989), published at 54 FR 33923 (August 17, 1989). The regulation was proposed as 12 CFR 563.14-2; however, the regulation is being adopted as 12 CFR 567.13 due to the renumbering of certain regulations after the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA")³

¹ Capital maintenance responsibilities are one of two types of obligations that have been imposed on acquirors of savings associations. See 53 FR 31761 (August 19, 1988).

² Although divestiture does not absolve an acquiror from the responsibility of curing capital deficiencies that occurred while the acquiror controlled the savings association (even where the acquiror divests to a new acquiror, who enters into a new capital maintenance obligation), divestiture has, on occasion, raised practical problems with regard to enforcing an agreement. As noted in the proposal, the Board and now, the Office, believe that acquirors that control the practices of their insured subsidiaries and enjoy the benefits of such control, including FDIC insurance of accounts, should support such associations during periods of financial weakness or instability. The obligation to maintain the association's capital during such periods increases an acquiror's incentive to manage the association prudently. In addition, such support promotes the continued viability of the savings association, and helps maintain a safe and sound financial system and promote depositor confidence. 54 FR at 33924.

³ Pub. L. No. 101-73.