(3) *Application of section 811(d).* An additional reserve computation rule applies under section 811(d) for contracts that guarantee certain interest payments beyond the end of the taxable year. Section 811(d) is waived for non-equity-indexed MGCs.

(4) *Periods after the end of the temporary guarantee period.* For periods after the end of the temporary guarantee period, sections 807(c)(3), 807(d)(2)(B), 811(d) and 812(b)(2)(A) are not modified when applied to non-equity-indexed MGCs. None of these sections are affected by the definition of current market rate contained in paragraph (a)(5) of this section once the temporary guarantee period has expired.

(5) *Examples.* The following examples illustrate this paragraph (b):

Example 1. (i) *IC,* a life insurance company as defined in section 816, issues a MGC (the Contract) on August 1 of 1996. The Contract is an annuity contract that gives rise to life insurance reserves, as defined in section 816(b). *IC* is a calendar year taxpayer. The Contract guarantees that interest will be credited at 8 percent per year for the first 8 contract years and 4 percent per year thereafter. During the 8-year temporary guarantee period, the Contract provides for a market value adjustment based on changes in a published bond index and not on the performance of stocks, other equity instruments or equity based derivatives. IC has chosen to avail itself of the provisions of these regulations for 1996 and taxable years thereafter. The 10-year Treasury constant maturity interest rate published for December of 1996 was 6.30 percent. The next shortest maturity published for Treasury constant maturity interest rates is 7 years. As of the end of 1996, the remaining duration of the temporary guarantee period for the Contract was 7 years and 7 months.

(ii) To determine under section 807(d)(2) the end of 1996 reserves for the Contract, *IC* must use a discount interest rate of 6.30 percent for the temporary guarantee period. The interest rate to be used in computing required interest under section 812(b)(2)(A) for 1996 reserves is also 6.30 percent.

(iii) The discount rate applicable to periods outside the 8-year temporary guarantee period is determined under sections 807(c)(3), 807(d)(2)(B), 811(d) and 812(b)(2)(A) without regard to the current market rate.

Example 2. Assume the same facts as in *Example 1* except that it is now the last day of 1998. The remaining duration of the temporary guarantee period under the Contract is now 5 years and 7 months. The 7-year Treasury constant maturity interest rate published for December of 1998 was 4.65 percent. The next shortest duration published for Treasury constant maturity interest rates is 5 years. A discount rate of 4.65 percent is used for the remaining duration of the temporary guarantee period for the purpose of determining a reserve under section 807(d) and for the purpose of determining required interest under section 812(b)(2)(A).

Example 3. Assume the same facts as in *Example 1* except that it is now the last day of 2001. The remaining duration of the temporary guarantee period under the Contract is now 2 years and 7 months. The 3-year Treasury constant maturity interest rate published for December of 2001 was 3.62 percent. The next shortest duration published for Treasury constant maturity interest rates is 2 years. A discount rate of 3.62 percent is used for the remaining duration of the temporary guarantee period for the purpose of determining a reserve under section 807(d) and for the purpose of determining required interest under section 812(b)(2)(A).

(c) *Applicable interest rates for equity-indexed modified guaranteed contracts.* [Reserved.]

(d) *Effective date.* Paragraphs (a), (b) and (d) of this section are effective on May 7, 2003. However, pursuant to section 7805(b)(7), taxpayers may elect to apply those paragraphs retroactively for all taxable years beginning after December 31, 1995, the effective date of section 817A.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: April 25, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–11211 Filed 5–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9057]

RIN 1545–BB39

Guidance Under Section 1502; Amendment of Waiver of Loss Carryovers From Separate Return Limitation Years

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 1502 that permit the amendment of certain elections to waive the loss carryovers of an acquired subsidiary. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**. These regulations apply to corporations filing consolidated returns. This document also provides notice of a public hearing on these temporary and proposed regulations.

DATES: *Effective Date:* These regulations are effective May 7, 2003.

Applicability Date: For dates of applicability, see § 1.1502–20T(i)(3)(viii)(C), § 1.1502–20T(i)(5)(ii), and § 1.1502–32T(b)(4)(vii)(F). The applicability of these sections expires on May 8, 2006.

FOR FURTHER INFORMATION CONTACT: Alison G. Burns or Jeffrey B. Fienberg (202) 622–7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been previously reviewed and approved by the Office of Management and Budget under control number 1545–1774. Responses to this collection of information are required to obtain a benefit. This collection of information is revised by these regulations. These amended regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the revised collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1774.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble of the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

In 1991, the IRS and Treasury Department promulgated § 1.1502–20 setting forth rules regarding the extent to which a loss recognized by a member

of a consolidated group on the disposition of stock of a subsidiary member of the same group was allowed and the extent to which the basis of subsidiary member stock was required to be reduced prior to its deconsolidation. Section 1.1502–20 provides that a loss recognized by a group member on the disposition of subsidiary member stock is allowable only to the extent it exceeds the sum of ''extraordinary gain dispositions,'' ''positive investment adjustments,'' and ''duplicated loss.'' In addition, it provides that the basis of subsidiary member stock that is deconsolidated is reduced to its value to the extent of the sum of the same amounts immediately prior to its deconsolidation. The duplicated loss amount equals the sum of the aggregated adjusted basis of the assets of the subsidiary (other than any stock and securities that the subsidiary owns in another member), the losses attributable to the subsidiary that are carried forward to the subsidiary's first taxable year following the disposition or deconsolidation, and any deferred deductions of the subsidiary, over the sum of the value of the subsidiary's stock and its liabilities.

Section 1.1502–32(b)(4) provides that, if a subsidiary has a loss carryover from a separate return limitation year when it becomes a member of a consolidated group, the group may make an election to treat all or any portion of the loss carryover as expiring immediately before the subsidiary becomes a member of the consolidated group. This election allows an acquiring group to prevent the loss of stock basis that otherwise would result if the subsidiary's loss carryovers were to expire before the group could absorb them. See § 1.1502–32(b)(2)(iii). Section 1.1502–32(b)(4) further provides that, if the subsidiary was a member of another group immediately before it became a member of the consolidated group, the losses are treated as expiring immediately after the subsidiary ceases to be a member of the prior group. The election described in § 1.1502–32(b)(4) may be made by identifying either the amount of each loss carryover deemed to expire or the amount of each loss carryover deemed not to expire.

If stock of a subsidiary with loss carryovers is sold by one consolidated group to another and the acquiring group waives all or a portion of the subsidiary's loss carryovers pursuant to § 1.1502–32(b)(4), the selling group can exclude the waived loss carryovers from its computation of duplicated loss. In certain cases, the waiver could have the effect of increasing the amount of stock loss allowed on the disposition of subsidiary stock or reducing the basis reduction required on the deconsolidation of subsidiary stock. The IRS and Treasury understand that certain waivers of loss carryovers that were made pursuant to § 1.1502–32(b)(4) were made so as to increase the amount of allowed loss on a disposition of subsidiary stock.

In *Rite Aid Corp.* v. *United States,* 255 F.3d 1357 (Fed. Cir. 2001), the United States Court of Appeals for the Federal Circuit held that the duplicated loss component of § 1.1502–20 was an invalid exercise of regulatory authority. In response to the *Rite Aid* decision, on March 7, 2002, the IRS and Treasury Department filed with the **Federal Register** temporary regulations under sections 337(d) and 1502 governing the determination of a consolidated group's allowable stock loss and basis reduction required on a disposition or deconsolidation of subsidiary member stock. Under the temporary regulations, consolidated groups can compute the allowable loss or the basis reduction required on dispositions and deconsolidations of subsidiary stock before March 7, 2002, and certain dispositions and deconsolidations of subsidiary stock on or after March 7, 2002, by applying § 1.1502–20 in its entirety, by applying the provisions of § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or by applying the provisions of § 1.337(d)–2T. See § 1.1502–20T(i)(2).

The IRS and Treasury Department believe that in certain cases in which a selling group elects to compute the allowable loss or the basis reduction required on a disposition or deconsolidation of subsidiary member stock by applying § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or by applying the provisions of § 1.337(d)–2T, it is appropriate to permit an acquiring group to amend certain prior waivers of loss carryovers. The following paragraphs describe these cases and the amendments that this document makes to §§ 1.1502–20T and 1.1502–32T to allow certain amendments to prior waivers of loss carryovers.

Prior Waivers of Loss Carryovers Made To Increase Allowable Loss or Reduce Basis Reduction Required

If a selling group elects to compute the allowable loss or the basis reduction required on a disposition or deconsolidation of subsidiary stock by applying the provisions of § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or by applying the provisions of § 1.337(d)–2T, the acquiring group's prior waiver of loss carryovers of the subsidiary or lower-tier corporation of such subsidiary will have no effect on the selling group's allowable loss or the basis reduction required with respect to the disposed of or deconsolidated subsidiary stock. To the extent, therefore, that an acquiring group made an election to waive loss carryovers to increase the allowable loss or to reduce the basis reduction required with respect to the disposed of or deconsolidated subsidiary stock, the IRS and Treasury Department believe that the acquiring group should be permitted to amend such waivers to decrease, to a limited extent, the amounts of loss carryovers deemed to expire.

Accordingly, the regulations contained in this document provide that, if the acquiring group made an election pursuant to § 1.1502–32(b)(4) to waive a subsidiary's loss carryovers, that election increased the amount of the allowable loss or reduced the basis reduction required with respect to the disposed of or deconsolidated subsidiary stock, and the selling group elects to compute the allowable loss or the basis reduction required with respect to the disposed of or deconsolidated subsidiary stock by applying the provisions of § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or by applying the provisions of § 1.337(d)–2T, then the acquiring group may reduce the amount of any loss carryover deemed to expire (or increase the amount of any loss carryover deemed not to expire) as a result of the election made pursuant to § 1.1502–32(b)(4). The aggregate amount of loss carryovers that may be treated as not expiring as a result of such an amendment of a waiver of a loss carryover of the subsidiary the stock of which is disposed of or deconsolidated and any lower-tier corporation of such subsidiary, however, may not exceed the duplicated loss with respect to the disposed of or deconsolidated subsidiary stock. This limitation is intended to ensure that all of the loss carryovers that do not expire as a result of the amendment did, in fact, increase the amount of the allowable loss or reduce the basis reduction required with respect to the disposed of or deconsolidated subsidiary stock. In addition, to enable the acquiring group's use of loss carryovers that are not deemed to expire as a result of such an amendment, these regulations permit a selling group to reapportion separate, subgroup, and consolidated section 382 limitations.

Inadvertent Waivers of Loss Carryovers

A selling group's election to compute the allowable loss or the basis reduction required on a disposition or deconsolidation of subsidiary stock by applying the provisions of § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or by applying the provisions of § 1.337(d)–2T, may result in a reduction of the amount of losses treated as reattributed to the selling group pursuant to an election described in § 1.1502–20(g). To the extent that losses treated as reattributed to the selling group are reduced, the losses of a subsidiary are increased. In this case, if the acquiring group made an election to waive certain loss carryovers of the subsidiary by identifying those losses that were deemed not to expire, it may have inadvertently waived those losses that are treated as losses of the subsidiary as a result of the election by the selling group. The IRS and Treasury Department believe that such acquiring groups should be permitted to make certain amendments of such waivers.

Accordingly, these regulations permit acquiring groups to amend an election made pursuant to § 1.1502–32(b)(4) where the group of which the subsidiary was a member immediately before the acquisition (the prior group) elected to determine the amount of the allowable loss or the basis reduction required with respect to the stock of the subsidiary or a higher-tier corporation of the subsidiary by applying § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or by applying the provisions of § 1.337(d)–2T, the subsidiary's loss carryovers are increased by such election by the prior group, and the acquiring group made an election pursuant to § 1.1502–32(b)(4) by identifying those losses that would be deemed not to expire. In this case, pursuant to these regulations, the acquiring group may amend its election made pursuant to § 1.1502–32(b)(4) to provide that all or a portion of the loss carryovers of the subsidiary that are treated as loss carryovers of the subsidiary as a result of the prior group's election are deemed not to expire.

The regulations contained in this document only permit acquiring groups to reduce the amount of loss carryovers deemed to expire, or increase the amount of loss carryovers deemed not to expire, as a result of an election under § 1.1502–32(b)(4). The regulations, however, do not permit acquiring groups to increase the amount of loss carryovers deemed to expire, or reduce the amount of loss carryovers deemed not to expire, as a result of such an election. The regulations, therefore, permit increases, but not decreases, of the amount of loss carryovers available to acquiring groups.

Limited Extension of Time To Apply Alternative Regime

In addition to the provisions described above, the regulations include a limited extension of time for selling groups to make an election to compute the allowable loss or the basis reduction required on a disposition or deconsolidation of subsidiary stock by applying the provisions of § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or by applying the provisions of § 1.337(d)–2T, if the acquiring group is otherwise eligible to amend an election under § 1.1502–32(b)(4) pursuant to these regulations, but the time period during which the selling group could make its election has or has almost expired.

Additional Adjustments

In promulgating § 1.1502–20T and related provisions, the IRS and Treasury have attempted to ameliorate where possible the situation of groups that relied on the provisions of § 1.1502–20 in prior periods. The IRS and Treasury recognize that the loss disallowance rule in § 1.1502–20 affected the manner in which some transactions were structured. For example, some groups caused subsidiaries to sell their assets rather than engage in stock sales subject to loss disallowance under § 1.1502–20. Alternatively, groups may have engaged in deemed asset sales under § 338(h)(10). The IRS and Treasury believe that transactions cast in the form of actual or deemed asset sales should not be undone, notwithstanding the possible role of § 1.1502–20 in their planning. However, as was the case with the relief provided earlier in § 1.1502–20T and its related amendments, the IRS and Treasury have concluded that relief is appropriate and administrable in the situation that is the subject of these temporary regulations.

Special Analyses

In light of the Federal Circuit's decision in *Rite Aid Corp.* v. *United States,* 255 F.3d 1357 (Fed. Cir. 2001), these temporary regulations are necessary to provide taxpayers with immediate guidance regarding the amendment of certain elections to waive the loss carryovers of an acquired subsidiary. Without such immediate guidance, taxpayers may not be able to avail themselves of the relief provided for in these regulations. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and with a delayed effective date pursuant to 5 U.S.C. 553(d)(1) and (3). For applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to § 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on their impact.

Drafting Information

The principal author of these regulations is Jeffrey B. Fienberg, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–20T also issued under 26 U.S.C. 1502. * * *

Section 1.1502–32T also issued under 26 U.S.C. 1502. * * *

■ **Par. 2.** In § 1.1502–20T paragraph (i)(5) is redesignated as paragraph (i)(6).

■ **Par. 3.** Section 1.1502–20T is amended by adding paragraphs (i)(3)(viii) and (i)(5) to read as follows:

§ 1.1502–20T—Disposition or deconsolidation of subsidiary stock (temporary).

* * * * *

(i) * * *

(3) * * *

(viii) *Apportionment of section 382 limitation in the case of an amendment of an election made pursuant to § 1.1502–32(b)(4).* (A) *In general.* If, in connection with a disposition or deconsolidation of subsidiary stock, the subsidiary the stock of which was disposed of or deconsolidated became a member of another consolidated group (the acquiring group), and, pursuant to § 1.1502–32T(b)(4)(vii), the acquiring group amends an election made pursuant to § 1.1502–32(b)(4) to treat all or a portion of the loss carryovers of

such subsidiary (or a lower-tier corporation of such subsidiary) as expiring for all Federal income tax purposes, then the common parent may reapportion a separate, subgroup, or consolidated section 382 limitation with respect to such subsidiary or lower-tier corporation in a manner consistent with the principles of paragraph (i)(3)(iii)(A) through (D) of this section. Any reapportionment of a section 382 limitation made pursuant to the previous sentence shall have the effects described in paragraph (i)(3)(iii)(D)(*ii*) and (*iii*) of this section. For purposes of this section, a lower-tier corporation is a corporation that was a member of the group of which the subsidiary was a member immediately before becoming a member of the acquiring group and that became a member of the acquiring group as a result of the subsidiary becoming a member of the acquiring group.

(B) *Time and manner of adjustment of apportionment of section 382 limitation.* The common parent must include a statement entitled *Adjustment of Apportionment of Section 382 Limitation in Connection with Amendment of Election under § 1.1502–32(b)(4)* with or as part of any timely filed (including any extensions) original return for a taxable year that includes any date on or before May 7, 2003 or with or as part of an amended return filed before the date the original return for the taxable year that includes May 7, 2003 is due (with regard to extensions). The statement must set forth the name and employer identification number (E.I.N.) of the subsidiary and both the original and the adjusted apportionment of a separate section 382 limitation, a subgroup section 382 limitation, and a consolidated section 382 limitation, as applicable. The requirements of this paragraph (i)(3)(viii)(B) will be treated as satisfied if the information required by this paragraph (i)(3)(viii)(B) is included in the statement required by paragraph (i)(4) of this section rather than in a separate statement.

(C) *Effective date.* This paragraph (i)(3)(viii) is applicable on and after May 7, 2003.

* * * * *

(5) *Special time for filing election in the case of a waiver under § 1.1502–32(b)(4).* (i) *In general.* Notwithstanding the provisions of paragraph (i)(4) of this section, the election to determine allowable loss or basis reduction provided in this paragraph (i) may be made by including the statement required by paragraph (i)(4) of this section with or as part of an original or amended return that is filed on or before June 15, 2003, if—

(A) The group that includes the acquirer of the subsidiary stock made an election pursuant to § 1.1502–32(b)(4) to treat all or a portion of the loss carryovers of the subsidiary (or a lower-tier corporation of such subsidiary) as expiring for all Federal income tax purposes;

(B) The timely filing of an election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) or (ii) of this section would permit the acquiring group to amend its election under § 1.1502–32(b)(4) pursuant to § 1.1502–32T(b)(4)(vii);

(C) June 6, 2003 is after the date the original return of the consolidated group for the taxable year that includes March 7, 2002, is due (including extensions); and

(D) The statement required by paragraph (i)(4) of this section specifies that the filing of the election is permitted under this paragraph (i)(5).

(ii) *Effective date.* This paragraph (i)(5) is applicable on and after May 7, 2003.

* * * * *

■ **Par. 4.** Section 1.1502–32T is amended by adding paragraph (b)(4)(vii) to read as follows:

§ 1.1502–32T—Investment adjustments (temporary).

* * * * *

(b) * * *

(4) * * *

(vii) *Special rules for amending waiver of loss carryovers from separate return limitation year*—(A) *Waivers that increased allowable loss or reduced basis reduction required.* If, in connection with the acquisition of S, the group made an election pursuant to § 1.1502–32(b)(4) to treat all or any portion of S's loss carryovers as expiring, and the prior group elected to determine the amount of the allowable loss or the basis reduction required with respect to the stock of S or a higher-tier corporation of S by applying the provisions described in § 1.1502–20T(i)(2)(i) or (ii), then the group may reduce the amount of any loss carryover deemed to expire (or increase the amount of any loss carryover deemed not to expire) as a result of the election made pursuant to § 1.1502–32(b)(4). The aggregate amount of loss carryovers that may be treated as not expiring as a result of amendments made pursuant to this paragraph (b)(4)(vii)(A) with respect to S and any higher- and lower-tier corporation of S may not exceed the amount described in § 1.1502–20(c)(1)(iii) with respect to the acquired stock (computed without regard to the effect of the group's election or elections pursuant to § 1.1502–32(b)(4), but with regard to the effect of the prior group's election pursuant to § 1.1502–20(g), if any, prior to the application of § 1.1502–20T(i)(3)). For purposes of determining the aggregate amount of loss carryovers that may be treated as not expiring as a result of amendments made pursuant to this paragraph (b)(4)(vii)(A) with respect to S and any higher- and lower-tier corporation of S, the group may rely on a written notification provided by the prior group. Nothing in this paragraph shall be construed as permitting a group to increase the amount of any loss carryover deemed to expire (or reduce the amount of any loss carryover deemed not to expire) as a result of the election made pursuant to § 1.1502–32(b)(4).

(B) *Inadvertent waivers of loss carryovers previously subject to an election described in § 1.1502–20(g).* If, in connection with the acquisition of S, the group made an election pursuant to § 1.1502–32(b)(4) to waive loss carryovers of S by identifying the amount of each loss carryover deemed not to expire, the prior group elected to determine the amount of the allowable loss or the basis reduction required with respect to the stock of S or a higher-tier corporation of S by applying the provisions described in § 1.1502–20T(i)(2)(i) or (ii), and the amount of S's loss carryovers treated as reattributed to the prior group pursuant to the election described in § 1.1502–20(g) is reduced pursuant to § 1.1502–20T(i)(3), then the group may amend its election made pursuant to § 1.1502–32(b)(4) to provide that all or a portion of the loss carryovers of S that are treated as loss carryovers of S as a result of the prior group's election to apply the provisions described in § 1.1502–20T(i)(2)(i) or (ii) are deemed not to expire. This paragraph (b)(4)(vii)(B), however, does not permit a group to reduce the amount of any loss carryover deemed not to expire as a result of the election made pursuant to § 1.1502–32(b)(4).

(C) *Time and manner of amending an election under § 1.1502–32(b)(4).* The amendment of an election made pursuant to § 1.1502–32(b)(4) must be made in a statement entitled *Amendment of Election to Treat Loss Carryover as Expiring Under § 1.1502–32(b)(4) Pursuant to § 1.1502–32T(b)(4)(vii).* The statement must be filed with or as part of any timely filed (including extensions) original return for the taxable year that includes May 7, 2003 or with or as part of an amended return filed before the date the original return for the taxable year that includes May 7, 2003 is due (with regard to extensions). A separate statement shall

be filed for each election made pursuant to § 1.1502–32(b)(4) that is being amended pursuant to this paragraph (b)(4)(vii). For purposes of making this statement, the group may rely on the statements set forth in a written notification provided by the prior group. The statement filed under this paragraph must include the following—

(*1*) The name and employer identification number (E.I.N.) of S;

(*2*) In the case of an amendment made pursuant to paragraph (b)(4)(vii)(A), a statement that the group has received a written notification from the prior group confirming that the group's prior election or elections pursuant to § 1.1502–32(b)(4) had the effect of either increasing the prior group's allowable loss on the disposition of subsidiary stock or reducing the prior group's amount of basis reduction required;

(*3*) The amount of each loss carryover of S deemed to expire (or the amount of loss carryover deemed not to expire) as set forth in the election made pursuant to § 1.1502–32(b)(4);

(*4*) The amended amount of each loss carryover of S deemed to expire (or the amended amount of loss carryover deemed not to expire); and

(*5)* In the case of an amendment made pursuant to paragraph (b)(4)(vii)(A) of this section, a statement that the aggregate amount of loss carryovers of S and any higher- and lower-tier corporation of S that will be treated as not expiring as a result of amendments made pursuant to paragraph (b)(4)(vii)(A) of this section will not exceed the amount described in § 1.1502–20(c)(1)(iii) with respect to the acquired stock (computed without regard to the effect of the group's election or elections pursuant to § 1.1502–32(b)(4), but with regard to the effect of the prior group's election pursuant to § 1.1502–20(g), if any, prior to the application of § 1.1502–20T(i)(3)).

(D) *Items taken into account in open years.* An amendment to an election made pursuant to § 1.1502–32(b)(4) affects the group's items of income, gain, deduction or loss only to the extent that the amendment gives rise, directly or indirectly, to items or amounts that would properly be taken into account in a year for which an assessment of deficiency or a refund for overpayment, as the case may be, is not prevented by any law or rule of law. Under this paragraph, if the year to which a loss previously deemed to expire as a result of an election made pursuant to § 1.1502–32(b)(4) is deemed not to expire as a result of an election made pursuant to this paragraph would have been carried back or carried forward is a year for which a refund of overpayment is prevented by law, then to the extent that the absorption of such loss in such year would have affected the tax treatment of another item (*e.g.*, another loss that was absorbed in such year) that has an effect in a year for which a refund of overpayment is not prevented by any law or rule of law, the amendment to the election made pursuant to § 1.1502–32(b)(4) will affect the treatment of such other item. Therefore, if the absorption of such loss (the first loss) in a year for which a refund of overpayment is prevented by law would have prevented the absorption of another loss (the second loss) in such year and such second loss would have been carried to and used in a year for which a refund of overpayment is not prevented by any law or rule of law (the other year), the amendment of the election makes the second loss available for use in the other year.

(E) *Higher- and lower-tier corporations of S.* A higher-tier corporation of S is a corporation that was a member of the prior group and, as a result of such higher-tier corporation becoming a member of the group, S became a member of the group. A lower-tier corporation of S is a corporation that was a member of the prior group and became a member of the group as a result of S becoming a member of the group.

(F) *Effective date.* This paragraph (b)(4)(vii) is applicable on and after May 7, 2003.

* * * * *

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: April 25, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–11209 Filed 5–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–092–FOR]

West Virginia Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the West Virginia surface coal mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment consists of changes to the Code of West Virginia (W. Va. Code) as contained in Senate Bill 603. The amendment concerns reclamation plan requirements and authorizes the submittal and inclusion of master land use plans for postmining land use in permit application reclamation plans. The amendments are intended to improve the effectiveness of the West Virginia program.

EFFECTIVE DATE: May 7, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158; Internet address: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION

I. Background on the West Virginia Program

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

II. Submission of the Amendment

By letter dated May 21, 2001 (Administrative Record Number WV–1217), the West Virginia Department of Environmental Protection (WVDEP) sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201