

accounts. Those temporary regulations also served as the text of a notice of proposed rulemaking that appeared in the same issue of the *Federal Register* at 50 FR 3351.

Need for Correction

As published, T.D. 8008 included language that was not intended and omitted language that was intended to be included.

Correction of Publication

Accordingly, the publication of Treasury Decision 8008, which was the subject of FR Doc. 85-1817, is corrected as follows:

§ 1.1092(b)-3T [Corrected]

1. On page 3325, in the third column, in *Example (6)* of paragraph (b)(2) of § 1.1092(b)-3T, in the first sentence, the language "non-section 1256 loss" is removed and the language "non-section 1256 gain" is added in its place.

2. On page 3325, in the third column, in *Example (6)* of paragraph (b)(2) of § 1.1092(b)-3T, in the fourth sentence, the language "60 percent long-term capital gain and 40 percent short-term capital gain because it is attributable to the section 1256 position" is removed and the language "60 percent long-term capital loss and 40 percent short-term capital loss because it is attributable to the section 1256 contract" is added in its place.

3. On page 3326, in the third column, in *Example (4)* of paragraph (b)(4) of § 1.1092(b)-3T, in the first sentence, the language "section 1256 contract and non-section 1256 position were entered into on December 1, 1985, and the" is added immediately after the language "except that the" and immediately before the language "section 1256 contract".

4. On page 3327, in the second column, in *Example (3)* (i) of paragraph (b)(5) of § 1.1092(b)-3T, the last sentence is revised to read, "Therefore, the rules of both paragraphs (b)(3) and (b)(4) of this § 1.1092(b)-3T apply."

5. On page 3327, in the second column, in *Example (3)* (ii) of paragraph (b)(5) of § 1.1092(b)-3T, in the second sentence, the word "contract" is added immediately after the language "The section 1256" and immediately before the language "net gain".

6. On page 3327, in the third column, in *Example (3)* (iii) of paragraph (b)(5) of § 1.1092(b)-3T, in the first sentence, the word "position" is added immediately after the language "non-section 1256" and immediately before the language "net gain of \$700".

7. On page 3327, in the third column, in *Example (2)* of paragraph (b)(6) of

§ 1.1092(b)-3T, in the second sentence (one occurrence) and in the fourth sentence (three occurrences), the word "loss" is removed and the word "gain" is added in its place.

8. On page 3328, in the first column, in *Example (4)* of paragraph (b)(6) of § 1.1092(b)-3T, in the fifth sentence, the word "capital" is added immediately after the language "short-term" and immediately before the language "gain attributable".

9. On page 3328, in the first column, in the *Example* in paragraph (7) of § 1.1092(b)-3T, at the end of the first sentence, the language "an identified section 1092(b)(2) mixed straddle" is revised to read "a section 1092(b)(2) identified mixed straddle".

Peter K. Scott,

Director, Legislation and Regulations Division.

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26 CFR Parts 1, 6a, and 602

[T.D. 8023]

Mortgage Credit Certificates

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations relating to the issuance of mortgage credit certificates. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1984. These regulations affect all holders and issuers of mortgage credit certificates. In addition, the text contained in the temporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the *Federal Register*.

DATES: Effective May 8, 1985. These temporary regulations apply to interest paid or accrued after December 31, 1984, on indebtedness incurred after December 31, 1984, and to elections not to issue qualified mortgage bonds after 1983.

FOR FURTHER INFORMATION CONTACT: Mitchell H. Rapaport of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3740).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the issuance of mortgage credit certificates under section 25 of the Internal Revenue Code as amended by section 612 of the Tax Reform Act of 1984 ("the Act") (Pub. L. 98-369; 98 Stat. 905). Further, new §§ 1.25-1T through 1.25-8T are added by this document to Part 1 of Title 26 of the Code of Federal Regulations. The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

Explanation of Provisions

Section 25 authorizes States and political subdivisions ("issuers") to issue mortgage credit certificates ("MCCs") in lieu of qualified mortgage bonds. MCCs entitle qualifying individuals to a credit against the individuals' Federal income tax. The amount of the credit is determined by multiplying the certificate credit rate by the amount of mortgage interest paid or accrued by the taxpayer during the taxpayer's taxable year. An individual claiming the credit under section 25 (a) must reduce the amount of the deduction under section 163 for interest paid or accrued during the calendar year by the amount of the credit allowable under section 25 (a) for such year. An individual claiming the credit may be entitled to additional withholding allowances. See section 3402 (m) and the regulations thereunder.

Mortgage credit certificates may only be issued by those issuers with authority to issue qualified mortgage bonds. An issuer with authority to issue qualified mortgage bonds may convert such authority into authority to issue MCCs by filing an election with the Internal Revenue Service. Section 1.25-4T (c) provides that the election must specify the amount of qualified mortgage bond authority that the issuer elects not to issue (the "nonissued bond amount") in order to issue MCCs. An issuer may revoke the election during the calendar year in which the election is made.

In order for an individual to claim the credit provided by section 25 (a), the MCC must be a "qualified mortgage credit certificate" issued pursuant to a "qualified mortgage credit certificate program". Section 1.25-4T (j) provides examples illustrating the manner in which MCC programs may be operated. The requirements that must be met in order for a certificate to be a qualified MCC issued pursuant to a qualified MCC program are provided in §§ 1.25-3T and 1.25-4T. Generally, these requirements are similar to the

requirements of section 103A, relating to qualified mortgage bonds. Thus, in general, holders must meet the residence requirement, the 3-year requirement, the purchase price requirement, and the new mortgage requirement. Sections 1.25-3T and 1.25-4T provide safe-harbor procedures for meeting several of these requirements. In general, these procedures permit issuers of MCCs to rely on affidavits, signed under penalty of perjury, stating that those requirements are met. With respect to the purchase price requirement and the 3-year requirement, additional information must be provided. See § 1.25-3T (e) (3) and (f) (2).

In addition to the previously stated requirements generally applicable to qualified mortgage bonds, MCCs must satisfy a number of other requirements.

Section 1.25-3T (h) limits the transferability of MCCs. While transfers are not prohibited, the transferee must meet certain requirements as if the certificate were being issued for the first time; in addition, the transferee must assume the transferor's mortgage.

Section 1.25-3T (i) places restrictions on the use of MCCs in connection with mortgages provided from the proceeds of qualified mortgage bonds and qualified veterans' mortgage bonds. The regulations permit issuers to rely on affidavits of the MCC holders in determining whether this requirement is met.

Section 1.25-3T (j) provides that issuers may not limit the use of MCCs to indebtedness incurred from particular lenders. Thus, in general, a holder of an MCC must be free to take the certificate to any lender and use it to obtain any type of mortgage. An exception is provided in § 1.25-3T (j) (2), which permits an issuer to impose limitations on the use of MCCs to indebtedness incurred from particular lenders after demonstrating to the satisfaction of the Commissioner that the proposed limitations will result in significant economic benefits to the MCC holders. The notice of proposed rulemaking specifically requests comments on this provision and requests information on the types of limitations that issuers believe will result in significant economic benefits to MCC holders. It is anticipated that the comments received, together with the experience gained from working with issuers in processing ruling requests in this area, will form a basis for specific guidance in the final regulations on the types of limitations that generally have been found to result in significant economic benefits to MCC holders.

Issuers are permitted to allocate MCCs to particular developments

provided that the developer certifies that the purchase price of the residence is not higher than it would be without the use of an MCC. See § 1.25-3T (k).

The regulations permit great flexibility in the manner in which MCCs may be issued. Issuers must ensure, however, that each of the eligibility requirements has been met. If each of these requirements is not met, the program will not be a qualified MCC program, and each of the holders of a certificate will not be entitled to claim the credit under section 25(a). To ease the harshness of this rule, the regulations provide good faith compliance procedures similar to those contained in the regulations under section 103A. See § 1.25-4T(i).

Section 1.25-4T(h) permits issuers to charge reasonable fees in connection with the processing and issuance of MCCs.

Section 1.25-5T places a limit on the aggregate amount of MCCs that may be issued by an issuer. The failure of an issuer to comply with this requirement will not result in the invalidation of any MCCs. Noncompliance with this requirement will result in a reduction in the qualified mortgage bond State ceiling for the State in which the issuer is located.

Section 1.25-6T prescribes the form that MCCs must take and the information that must be included on the MCC.

Section 1.25-7T requires that an issuer provide public notice of its MCC program at least 90 days prior to the issuance of any MCCs under the program.

Section 1.25-8T imposes reporting requirements on lenders and issuers. Lenders must file an annual report on Form 8329 containing information on mortgages issued in connection with MCCs. Issuers must file similar reports on a quarterly basis. Section 1.25-4T(e), relating to information reports containing information on the use of MCCs, and § 1.25-4T(f), relating to annual policy statements are reserved. These statements and reports are expected to be similar to those that issuers of qualified mortgage bonds are required to file. Numerous comments have been received with respect to the notice of proposed rulemaking published on December 12, 1984, dealing with policy statements and information reporting requirements for mortgage subsidy bonds, and a public hearing has been scheduled for April 30, 1985, with respect to those regulations. The written comments and those comments received at the public hearing will be given full consideration, and it is anticipated that the information reporting requirements

for mortgage subsidy bonds and mortgage credit certificates will be revised. At that time, proposed and temporary regulations relating to annual policy statements and information reports for MCCs will be issued. In addition to the information required with respect to MCCs, it is anticipated that issuers of MCCs will be required to report the exact amount of the fees charged under § 1.25-4T(h)(2)(iii). This information will be studied by the Service to determine whether more specific limitations on fees are desirable.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545-0922.

Drafting Information

The principal author of these temporary regulations is Mitchell H. Rapaport 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 these regulations, on matters of both substance and style.

List of Subjects

26 CFR §§ 1.0-1-1.58-8

Income taxes, Tax liability, Tax rates, Credits.

26 CFR §§ 1-61-1-1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR § 1.6709-1T

Penalties, Mortgage credit certificates.

26 CFR Part 6a

Bonds, Income taxes, Mortgages, Veterans, Foreign investments in United States real property interests.

26 CFR Part 602

OMB Control Numbers, Paperwork Reduction Act.

Amendments to the regulations

The amendments to 26 CFR Part 1, Part 6a, and Part 602 are as follows:

PART 1—[AMENDED]

Paragraph 1. Regulations §§ 1.25-1T through 1.25-8T are issued under the authority contained in 26 U.S.C. 7805 and 26 U.S.C. 25. Regulations § 1.163-6T and § 1.6709-1T are issued under the authority contained in 26 U.S.C. 7805. The authority citation for Part 1 is amended by adding, "§§ 1.25-1T through 1.25-8T also issued under 26 U.S.C. 25".

Par. 2. New §§ 1.25-1T through 1.25-8T are added following § 1.21-1 to read as follows:

§ 1.25-1T Credit for interest paid on certain home mortgages (Temporary).

(a) *In general.* Section 25 permits States and political subdivisions to elect to issue mortgage credit certificates in lieu of qualified mortgage bonds. An individual who holds a qualified mortgage credit certificate (as defined in § 1.25-3T) is entitled to a credit against his Federal income taxes. The amount of the credit depends upon (1) the amount of mortgage interest paid or accrued during the year and (2) the applicable certificate credit rate. See § 1.25-2T. The amount of the deduction under section 163 for interest paid or accrued during any taxable year is reduced by the amount of the credit allowable under section 25 for such year. See § 1.163-6T. The holder of a qualified mortgage credit certificate may be entitled to additional withholding allowances. See section 3402 (m) and the regulations thereunder.

(b) *Definitions.* For purposes of §§ 1.25-2T through 1.25-8T and this section, the following definitions apply:

(1) *Mortgage.* The term "mortgage" includes deeds of trust, conditional sales contracts, pledges, agreements to hold title in escrow, and any other form of owner financing.

(2) *State.* (i) The term "State" includes a possession of the United States and the District of Columbia.

(ii) Mortgage credit certificates issued by or on behalf of any State or political subdivision ("governmental unit") by

constituted authorities empowered to issue such certificates are the certificates of such governmental unit.

(3) *Qualified home improvement loan.* The term "qualified home improvement loan" has the meaning given that term under section 103A (1) (6) and the regulations thereunder.

(4) *Qualified rehabilitation loan.* The term "qualified rehabilitation loan" has the meaning given that term under section 103A (1) (7) (A) and the regulations thereunder.

(5) *Single-family and owner-occupied residences.* The terms "single-family" and "owner-occupied" have the meaning given those terms under section 103A (1) (9) and the regulations thereunder.

(6) *Constitutional home rule city.* The term "constitutional home rule city" means, with respect to any calendar year, any political subdivision of a State which, under a State constitution which was adopted in 1970 and effective on July 1, 1971, had home rule powers on the 1st day of the calendar year.

(7) *Targeted area residence.* The term "targeted area residence" has the meaning given that term under section 103A (k) and the regulations thereunder.

(8) *Acquisition cost.* The term "acquisition cost" has the meaning given that term under section 103A (1) (5) and the regulations thereunder.

(9) *Average area purchase price.* The term "average area purchase price" has the meaning given that term under subparagraphs (2), (3), and (4) of section 103A (f) and the regulations thereunder. For purposes of this paragraph (b) (9), all determinations of average area purchase price shall be made with respect to residences as that term is defined in section 103A and the regulations thereunder.

(10) *Total proceeds.* The "total proceeds" of an issue is the sum of the products determined by multiplying—

(i) The certified indebtedness amount of each mortgage credit certificate issued pursuant to such issue, by

(ii) The certificate credit rate specified in such certificate.

Each qualified mortgage credit certificate program shall be treated as a separate issue of mortgage credit certificates.

(11) *Residence.* The term "residence" includes stock held by a tenant-stockholder in a cooperative housing corporation (as those terms are defined in section 216(b) (1) and (2)). It does not include property such as an appliance, a piece of furniture, a radio, etc., which, under applicable local law, is not a fixture. The term also includes any manufactured home which has a minimum of 400 square feet of living

space and a minimum width in excess of 102 inches and which is of a kind customarily used at a fixed location. The preceding sentence shall not apply for purposes of determining the average area purchase price for single-family residences, nor shall it apply for purposes of determining the State ceiling amount. The term "residence" does not, however, include recreational vehicles, campers, and other similar vehicles.

(12) *Related person.* The term "related person" has the meaning given that term under section 103(b)(6)(C)(i) and § 1.103-10(e)(1).

(13) *Date of issue.* A mortgage credit certificate is considered issued on the date on which a closing agreement is signed with respect to the certified indebtedness amount.

(c) *Affidavits.* For purposes of §§ 1.25-1T through 1.25-8T, an affidavit filed in connection with the requirements of §§ 1.25-1T through 1.25-8T shall be made under penalties of perjury. Applicants for mortgage credit certificates who are required by a lender or the issuer to sign affidavits must be informed that any fraudulent statement will result in (1) the revocation of the individual's mortgage credit certificate, and (2) a \$10,000 penalty under section 6709. Other persons required by a lender or an issuer to provide affidavits must receive similar notice. A person may not rely on an affidavit where that person knows or has reason to know that the information contained in the affidavit is false.

§ 1.25-2T Amount of credit (Temporary).

(a) *In general.* Except as otherwise provided, the amount of the credit allowable for any taxable year to an individual who holds a qualified mortgage credit certificate is equal to the product of the certificate credit rate (as defined in paragraph (b)) and the amount of the interest paid or accrued by the taxpayer during the taxable year on the certified indebtedness amount (as defined in paragraph (c)).

(b) *Certificate credit rate—(1) In general.* For purposes of §§ 1.25-1T through 1.25-8T, the term "certificate credit rate" means the rate specified by the issuer on the mortgage credit certificate. The certificate credit rate shall not be less than 10 percent nor more than 50 percent.

(2) *Limitation in certain States.* (i) In the case of a State which—

(A) Has a State ceiling for the calendar year in which an election is made that exceeds 20 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar

years for single-family owner-occupied residences located within the jurisdiction of such State, or

(B) Issued qualified mortgage bonds in an aggregate amount less than \$150 million for calendar year 1983.

The certificate credit rate for any mortgage credit certificate issued under such program shall not exceed 20 percent unless the issuing authority submits a plan to the Commissioner to ensure that the weighted average of the certificate credit rates in such mortgage credit certificate program does not exceed 20 percent and the Commissioner approves such plan. For purposes of determining the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single-family owner-occupied residences located within the jurisdiction of such State, an issuer may rely upon the amount published by the Treasury Department for such calendar years. An issuer may rely on a different amount from that safe-harbor limitation where the issuer has made a more accurate and comprehensive determination of that amount. The weighted average of the certificate credit rates in a mortgage credit certificate program is determined by dividing the sum of the products obtained by multiplying the certificate credit rate of each certificate by the certified indebtedness amount with respect to that certificate by the sum of the certified indebtedness amounts of the certificates issued. See section 103A(g) and the regulations thereunder for the definition of the term "State ceiling".

(ii) The following example illustrates the application of this paragraph (b) (2):

Example. City Z issues four qualified mortgage credit certificates pursuant to its qualified mortgage credit certificate program. H receives a certificate with a certificate credit rate of 30 percent and a certified indebtedness amount of \$50,000. I receives a certificate with a certificate credit rate of 25 percent and a certified indebtedness amount of \$100,000. J and K each receive certificates with certificate credit rates of 10 percent; their certified indebtedness amounts are \$50,000 and \$100,000, respectively. The weighted average of the certificate credit rates is determined by dividing the sum of the products obtained by multiplying the certificate credit rate of each certificate by the certified indebtedness amount with respect to that certificate $((.3 \times \$50,000) + (.25 \times \$100,000) + (.1 \times \$50,000) + (.1 \times \$100,000))$ by the sum of the certified indebtedness amounts of the certificates issued $(\$50,000 + \$100,000 + \$50,000 + \$100,000)$. Thus, the weighted average of the certificate credit rates is 18.33 percent $(\$55,000/\$300,000)$.

(c) *Certified indebtedness amount—*

(1) *In general.* The term "certified indebtedness amount" means the amount of indebtedness which is—

(i) Incurred by the taxpayer—
(A) To acquire his principal residence, § 1.25-2T(c)(1)(i)

(B) As a qualified home improvement loan, or

(C) As a qualified rehabilitation loan, and

(ii) Specified in the mortgage credit certificate.

(2) *Example.* The following example illustrates the application of this paragraph:

Example. On March 1, 1986, State X, pursuant to its qualified mortgage credit certificate program, provides a mortgage credit certificate to B. State X specifies that the maximum amount of the mortgage loan for which B may claim a credit is \$65,000. On March 15, B purchases for \$67,000 a single-family dwelling for use as his principal residence. B obtains from Bank M a mortgage loan for \$60,000. State X, or Bank M acting on behalf of State X, indicates on B's mortgage credit certificate that the certified indebtedness amount of B's loan is \$60,000. B may claim a credit under section 25 (e) based on this amount.

(d) *Limitation on credit—(1)*

Limitation where certificate credit rate exceeds 20 percent. (i) If the certificate credit rate of any mortgage credit certificate exceeds 20 percent, the amount of the credit allowed to the taxpayer by section 25(a)(1) for any year shall not exceed \$2,000. Any amount denied under this paragraph (d)(1) may not be carried forward under section 25(e)(1) and paragraph (d)(2) of this section.

(ii) If two or more persons hold interests in any residence, the limitation of paragraph (d)(1)(i) shall be allocated among such persons in proportion to their respective interests in the residence.

(2) *Carryforward of unused credit.* (i) If the credit allowable under section 25 (a) and § 1.25-2T for any taxable year exceeds the applicable tax limit for that year, the excess (the "unused credit") will be a carryover to each of the 3 succeeding taxable years and, subject to the limitations of paragraph (d)(2) (ii), will be added to the credit allowable by section 25 (a) and § 1.25-2T for that succeeding year.

(ii) The amount of the unused credit for any taxable year (the "unused credit year") which may be taken into account under this paragraph (d) (2) for any subsequent taxable year may not exceed the amount by which the applicable tax limit for that subsequent taxable year exceeds the sum of (A) the amount of the credit allowable under

section 25 (a) and § 1.25-1T for the current taxable year, and (B) the sum of the unused credits which, by reason of this paragraph (d) (2), are carried to that subsequent taxable year and are attributable to taxable years before the unused credit year. Thus, if by reason of this paragraph (d) (2), unused credits from 2 prior taxable years are carried forward to a subsequent taxable year, the unused credit from the earlier of those 2 prior years must be taken into account before the unused credit from the later of those 2 years is taken into account. § 1.25-2T (d) (2) (ii)

(iii) For purposes of this paragraph (d) (2) the term "applicable tax limit" means the limitation imposed by section 26 (a) for the taxable year reduced by the sum of the credits allowable for that year under section 21, relating to expenses for household and dependent care services necessary for gainful employment, section 22, relating to the credit for the elderly and the permanently disabled, section 23, relating to the residential energy credit, and section 24, relating to contributions to candidates for public office. The limitation imposed by section 26 (a) for any taxable year is equal to the taxpayer's tax liability (as defined in section 26 (b)) for that year.

(iv) The following examples illustrate the application of this paragraph (d) (2):

Example (1). (i) B, a calendar year taxpayer, holds a qualified mortgage credit certificate. For 1986 B's applicable tax limit (i.e., tax liability) is \$1,100. The amount of the credit under section 25 (a) and § 1.25-2T for 1986 is \$1,700. For 1986 B is not entitled to any of the credits described in sections 21 through 24. Under § 1.25-2T (d) (2), B's unused credit for 1986 is \$600, and B is entitled to carry forward that amount to the 3 succeeding years.

(ii) For 1987 B's applicable tax limit is \$1,500, the amount of the credit under section 25 (a) and § 1.25-2T is \$1,700, and the unused credit is \$200. For 1988 B's applicable tax limit is \$2,000, the amount of the credit under section 25 (a) and § 1.25-2T is \$1,300, and there is no unused credit. For 1987 and 1988 B is not entitled to any of the credits described in sections 21 through 24. No portion of the unused credit for 1986 may be used in 1987. For 1988 B is entitled to claim a credit of \$2,000 under section 25 (a) and § 1.25-2T, consisting of a \$1,300 credit for 1988, the \$600 unused credit for 1986, and \$100 of the \$200 unused credit for 1987. In addition, B may carry forward the remaining unused credit for 1987 (\$100) to 1989 and 1990.

Example (2). The facts are the same as in Example (1) except that for 1988 B is entitled to a credit of \$400 under section 23. B's applicable tax limit for 1988 is \$1,600 (\$2,000 less \$400). For 1988 B is entitled to claim a credit of \$1,600 under section 25 (a) and § 1.25-2T, consisting of a \$1,300 credit for 1988 and \$300 of the unused credit for 1986. In

addition, B may carry forward the remaining unused credits of \$300 for 1986 to 1989 and of \$200 for 1987 to 1989 and 1990.

§ 1.25-3T Qualified mortgage credit certificate (Temporary).

(a) *Definition of qualified mortgage credit certificate.* For purposes of §§ 1.25-1T through 1.25-8T, the term "qualified mortgage credit certificate" means a certificate that meets all of the requirements of this section.

(b) *Qualified mortgage credit certificate program.* A certificate meets the requirements of this paragraph if it is issued under a qualified mortgage credit certificate program (as defined in § 1.25-4T).

(c) *Required form and information.* A certificate meets the requirements of this paragraph if it is in the form specified in § 1.25-6T and if all the information required by the form is specified on the form.

(d) *Residence requirement—(1) In general.* A certificate meets the requirements of this paragraph only if it is provided in connection with the acquisition, qualified rehabilitation, or qualified home improvement of a residence, that is—

(i) A single-family residence (as defined in § 1.25-1T (b)(5)) which, at the time the financing on the residence is executed or assumed, can reasonably be expected by the issuer to become (or, in the case of a qualified home improvement loan, to continue to be) the principal residence (as defined in section 1034 and the regulations thereunder) of the holder of the certificate within a reasonable time after the financing is executed or assumed, and

(ii) Located within the jurisdiction of the governmental unit issuing the certificate.

See section 103a(d) and the regulations thereunder for further definitions and requirements.

(2) *Certification procedure.* The requirements of this paragraph will be met if the issuer or its agent obtains from the holder of the certificate an affidavit stating his intent to use (or, in the case of a qualified home improvement loan, that he is currently using and intends to continue to use) the residence as his principal residence within a reasonable time (e.g., 60 days) after the mortgage credit certificate is issued and stating that the holder will notify the issuer of the mortgage credit certificate if the residence ceases to be his principal residence. The affidavit must also state facts that are sufficient for the issuer or his agent to determine whether the residence is located within

the jurisdiction of the issuer that issued the mortgage credit certificate.

(e) *3-year requirement—(1) In general.* A certificate meets the requirements of this paragraph only if the holder of the certificate had no present ownership interest in a principal residence at any time during the 3-year period prior to the date on which the mortgage on the residence in connection with which the certificate is provided is executed. For purposes of the preceding sentence, the holder's interest in the residence with respect to which the certificate is being provided shall not be taken into account. See section 103A (e) and the regulations thereunder for further definitions and requirements.

(2) *Exceptions.* Paragraph (e) (1) shall not apply with respect to—

(i) Any certificate provided with respect to a targeted area residence (as defined in § 1.25-1T (b)(7)),

(ii) Any qualified home improvement loan (as defined in § 1.25-1T (b) (3)), and

(iii) Any qualified rehabilitation loan (as defined in § 1.25-1T (b) (4)).

(3) *Certification procedure.* The requirements of paragraph (e) (1) will be met if the issuer or its agent obtains from the holder of the certificate an affidavit stating that he had no present ownership interest in a principal residence at any time during the 3-year period prior to the date of which the certificate is issued and the issuer or its agent obtains from the applicant copies of the applicant's Federal tax returns for the preceding 3 years and examines each statement to determine whether the applicant has claimed a deduction for taxes on property which was the applicant's principal residence pursuant to section 164 (a) (1) or a deduction pursuant to section 163 for interest paid on a mortgage secured by property which was the applicant's principal residence. Where the mortgage is executed during the period between January 1 and February 15 and the applicant has not yet filed his Federal income tax return with the Internal Revenue Service, the issuer may, with respect to such year, rely on an affidavit of the applicant that the applicant is not entitled to claim deductions for taxes or interest on indebtedness with respect to property constituting his principal residence for the preceding calendar year. In the alternative, when applicable, the holder may provide an affidavit stating that one of the exceptions provided in paragraph (e) (2) applies.

(4) *Special rule.* An issuer may submit a plan to the Commissioner for distributing certificates, in an amount not to exceed 10 percent of the proceeds of the issue, to individuals who do not

meet the requirements of this paragraph. Such plan must describe a procedure for ensuring that no more than 10 percent of the proceeds of a such issue will be used to provide certificates to such individuals. If the Commissioner approves the issuer's plan, certificates issued in accordance with the terms of the plan to holders who do not meet the 3-year requirement do not fail to satisfy the requirements of this paragraph.

(f) *Purchase price requirement—(1) In general.* A certificate meets the requirements of this paragraph only if the acquisition cost (as defined in § 1.25-1T (b) (8)) of the residence, other than a targeted area residence, in connection with which the certificate is provided does not exceed 110 percent of the average area purchase price (as defined in § 1.25-1T (b) (9)) applicable to that residence. In the case of a targeted area residence (as defined in § 1.251T (b) (7)) the acquisition cost may not exceed 120 percent of the average area purchase price applicable to such residence. See section 1093A (f) and the regulations thereunder for further definitions and requirements. § 1.25-3T (f) (1)

(2) *Certification procedure.* The requirements of paragraph (f)(1) will be met if the issuer or its agent obtains affidavits executed by the seller and the buyer that state these requirements have been met. Such affidavits must include an itemized list of—

(i) Any payments made by the buyer (or a related person) or for the benefit of the buyer,

(ii) If the residence is incomplete, an estimate of the reasonable cost of completing the residence, and

(iii) If the residence is purchased subject to a ground rent, the capitalized value of the ground rent.

The issuer or his agent must examine such affidavits and determine whether, on the basis of information contained therein, the purchase price requirement is met.

(g) *New mortgage requirement—(1) In general.* (i) A certificate meets the requirements of this paragraph only if the certificate is not issued in connection with the acquisition or replacement of an existing mortgage. Except in the case of a qualified home improvement loan, the certificate must be issued to an individual who did not have a mortgage (whether or not paid off) on the residence with respect to which the certificate is issued at any time prior to the execution of the mortgage.

(ii) *Exceptions.* For purposes of this paragraph, a certificate used in connection with the replacement of—

(A) Construction period loans,
(B) Bridge loans or similar temporary initial financing, and

(C) In the case of a qualified rehabilitation loan, an existing mortgage, shall not be treated as being used to acquire or replace an existing mortgage. Generally, temporary initial financing is any financing which has a term of 24 months or less. See section 103A(j)(1) and the regulations thereunder for examples illustrating the application of these requirements.

(2) *Certification procedure.* The requirements of paragraph (g)(1) will be met if the issuer or its agent obtains from the holder of the certificate an affidavit stating that the mortgage being acquired in connection with the certificate will not be used to acquire or replace an existing mortgage (other than one that falls within the exceptions described in paragraph (g)(1)(ii)).

(h) *Transfer of mortgage credit certificates*—(1) *In general.* A certificate meets the requirements of this paragraph only if it is (i) not transferable or (ii) transferable only with the approval of the issuer.

(2) *Transfer procedure.* A certificate that is transferred with the approval of the issuer is a qualified mortgage credit certificate in the hands of the transferee only if each of the following requirements is met:

(i) The transferee assumed liability for the remaining balance of the certified indebtedness amount in connection with the acquisition of the residence from the transferor,

(ii) The issuer issues a new certificate to the transferee, and

(iii) The new certificate meets each of the requirements of paragraphs (d), (e), (f), and (i) of this section based on the facts as they exist at the time of the transfer as if the mortgage credit certificate were being issued for the first time. For example, the purchase price requirement is to be determined by reference to the average area purchase price at the time of the assumption and not when the mortgage credit certificate was originally issued.

(3) *Statement on certificate.* The requirements of paragraph (h)(1) will be met if the mortgage credit certificate states that the certificate may not be transferred or states that the certificate may not be transferred unless the issuer issues a new certificate in place of the original certificate.

(i) *Prohibited mortgages*—(1) *In general.* A certificate meets the requirements of this paragraph only if it is issued in connection with the acquisition of a residence none of the financing of which is provided from the proceeds of—

(i) A qualified mortgage bond (as defined under section 103A(c)(1) and the regulations thereunder), or

(ii) A qualified veterans' mortgage bond (as defined under section 103A(c)(3) and the regulations thereunder).

Thus, for example, if a mortgagor has a mortgage on his principal residence that was obtained from the proceeds of a qualified mortgage bond, a mortgage credit certificate issued to such mortgagor in connection with a qualified home improvement loan with respect to such residence is not a qualified mortgage credit certificate. If, however, the financing provided from the proceeds of the qualified mortgage bond had been paid off in full, the certificate would be a qualified mortgage credit certificate (assuming all the requirements of this paragraph are met).

(2) *Certification procedure.* The requirements of paragraph (i)(1) will be met if the issuer or its agent obtains from the holder of the certificate an affidavit stating that no portion of the financing of the residence in connection with which the certificate is issued is provided from the proceeds of a qualified mortgage bond or a qualified veterans' mortgage bond.

(j) *Particular lenders*—(1) *In general.* Except as otherwise provided in paragraph (j)(2), a certificate meets the requirements of this paragraph only if the certificate is not limited to indebtedness incurred from particular lenders. A certificate is limited to indebtedness from particular lenders if the issuer, directly or indirectly, prohibits the holder of a certificate from obtaining financing from one or more lenders or requires the holder of a certificate to obtain financing from one or more lenders. For purposes of this paragraph, a lender is any person, including an issuer of mortgage credit certificates, that provides financing for the acquisition, qualified rehabilitation, or qualified home improvement of a residence.

(2) *Exception.* A mortgage credit certificate that is limited to indebtedness incurred from particular lenders will not cease to meet the requirements of this paragraph if the Commissioner approves the basis for such limitation. The Commissioner may approve the basis for such limitation if the issuer establishes to the satisfaction of the Commissioner that it will result in a significant economic benefit to the holders of mortgage credit certificates (e.g., substantially lower financing costs) compared to the result without such limitation.

(3) *Taxable bonds.* The requirements of this paragraph do not prevent an

issuer of mortgage credit certificates from issuing mortgage subsidy bonds (other than obligations described in section 103 (a)) the proceeds of which are to be used to provide mortgages to holders of mortgage credit certificates provided that the holders of such certificates are not required to obtain financing from the proceeds of the bond issue. See § 1.25-4T (h) with respect to permissible fees.

(4) *Lists of participating lenders.* The requirements of this paragraph do not prohibit an issuer from maintaining a list of lenders that have stated that they will make loans to qualified holders of mortgage credit certificates, provided that (i) the issuer solicits such statements in a public notice similar to the notice described in § 1.25-7T, (ii) lenders are provided a reasonable period of time in which to express their interest in being included in such a list, and (iii) holders of mortgage credit certificates are not required to obtain financing from the lenders on the list. If an issuer maintains such a list, it must update the list at least annually.

(5) *Certification procedure.* The requirements of this paragraph will be met if (i) the issuer or its agent obtains from the holder of the certificate an affidavit stating that the certificate was not limited to indebtedness incurred from particular lenders or (ii) the issuer obtains a ruling from the Commissioner under paragraph (j) (2).

(6) *Examples.* The following examples illustrate the application of this paragraph:

Example (1). Under its mortgage credit certificate program, County Z distributes all the certificates to be issued to a group of 60 participating lenders. Residents of County Z may obtain mortgage credit certificates only from the participating lenders and only in connection with the acquisition of mortgage financing from that lender or one of the other participating lenders. Certificates issued under this program do not meet the requirements of this paragraph since the certificates are limited to indebtedness incurred from particular lenders. The certificates, therefore, are not qualified mortgage credit certificates.

Example (2). In connection with its mortgage credit certificate program, County Y arranges with Bank P for a line of credit to be used to provide mortgage financing to holders of mortgage credit certificates. County Y, pursuant to paragraph (j) (4), maintains a list of lenders participating in the mortgage credit certificate program. County Y distributes the certificates directly to applicants. Holders of the certificates are not required to obtain mortgage financing through the line of credit or through a lender on the list of participating lenders. Certificates issued pursuant to County Y's program satisfy the requirements of this paragraph.

(k) *Developer certification*—(1) *In general.* A mortgage credit certificate that is allocated by the issuer to any particular development meets the requirements of this paragraph only if the developer provides a certification to the purchaser of the residence and the issuer stating that the purchase price of that residence is not higher than the price would be if the issuer had not allocated mortgage credit certificates to the development. The certification must be made by the developer if a natural person or, if not, by a duly authorized official of the developer.

(2) *Certification procedure.* The requirements of this paragraph will be met if the issuer or its agent obtains from the holder of the certificate and affidavit stating that the has received from the developer the certification described in this paragraph.

(l) *Expiration*—(1) *In general.* A certificate meets the requirements of this paragraph if the certified indebtedness amount is incurred prior to the close of the second calendar year following the calendar year for which the issuer elected not to issue qualified mortgage bonds under § 1.25-4T with respect to that issue of mortgage credit certificates. Thus, for example, if on October 1, 1984, and issuing authority elects under § 1.25-4T not to issue qualified mortgage bonds, a mortgage credit certificate provided under that program does not meet the requirements of this paragraph unless the indebtedness is incurred on or before December 31, 1986.

(2) *Issuer-imposed expiration dates.* An issuer of mortgage credit certificates may provide that a certificate shall expire if the holder of the certificate does not incur certified indebtedness by a date that is prior to the expiration date provided in paragraph (l) (1). A certificate that expires prior to the date provided in paragraph (l) (1) may be reissued provided that the requirements of this paragraph are met.

(m) *Revocation.* A certificate meets the requirements of this paragraph only if it has not been revoked. Thus, the credit provided by section 25 and § 1.25-1T does not apply to interest paid or accrued following the revocation of a certificate. A certificate is treated as revoked when the residence to which the certificate relates ceases to be the holder's principal residence. An issuer may revoke a mortgage credit certificate if the certificate does not meet all the requirements of § 1.25-3T (d), (e), (f), (g), (h), (i), (j), (k), and (n). The certificate is revoked by the issuer's notifying the holder of the certificate and the Internal Revenue Service that the certificate is revoked. The notice to the Internal

Revenue Service shall be made as part of the report required by § 1.25-8T (b) (2).

(n) *Interest paid to related person*—(1) *In general.* A certificate does not meet the requirements of this paragraph if interest on the certified indebtedness amount is paid to a person who is a related person to the holder of the certificate.

(2) *Certification procedure.* The requirements of this paragraph will be met if the issuer or its agent obtains from the holder of the certificate an affidavit stating that a related person does not have, and is not expected to have, an interest as a creditor in the certified indebtedness amount.

(o) *Fraud.* Notwithstanding any other provision of this section, a mortgage credit certificate does not meet the requirements of this section and, therefore, the certificate is not a qualified mortgage credit certificate for any calendar year, if the holder of the certificate provides a certification or any other information to the lender providing the mortgage or to the issuer of the certificate containing a material misstatement and such misstatement is due to fraud. In determining whether any misstatement is due to fraud, the rules generally applicable to underpayments of tax due to fraud (including rules relating to the statute of limitations) shall apply. See § 1.6709-1T with respect to the penalty for filing negligent or fraudulent statements.

§ 1.25-4T Qualified mortgage credit certificate program (Temporary).

(a) *In general*—(1) *Definition of qualified mortgage credit certificate program.* For purposes of §§ 1.25-1T through 1.25-8T, the term "qualified mortgage credit certificate program" means a program to issue qualified mortgage credit certificates which meets all of the requirements of paragraphs (b) through (i) of this section.

(2) *Requirements are a minimum.* Except as otherwise provided in this section, the requirements of this section are minimum requirements. Issuers may establish more stringent criteria for participation in a qualified mortgage credit certificate program. Thus, for example, an issuer may target 30 percent of the proceeds of an issue of mortgage credit certificates to targeted areas. Further, issuers may establish additional eligibility criteria for participation in a qualified mortgage credit certificate program. Thus, for example, issuers may impose an income limitation designed to ensure that only those individuals who could not otherwise purchase a residence will benefit from the credit.

(3) Except as otherwise provided in this section and § 1.25-3T, issuers may

use mortgage credit certificates in connection with other Federal, State, and local programs provided that such use complies with the requirements of § 1.25-3T(j). Thus, for example, a mortgage credit certificate may be issued in connection with the qualified rehabilitation of a residence part of the cost of which will be paid from the proceeds of a State grant.

(b) *Establishment of program.* A program meets the requirements of this paragraph only if it is established by a State or political subdivision thereof for any calendar year for which it has the authority to issue qualified mortgage bonds.

(c) *Election not to issue qualified mortgage bonds*—(1) *In general.* A program meets the requirements of this paragraph only if the issuer elects, in the time and manner specified in this paragraph, not to issue an amount of qualified mortgage bonds that it may otherwise issue during the calendar year under section 103A and the regulations thereunder.

(2) *Manner of making election.* On or before the earlier of the date of distribution of mortgage credit certificates under a program or December 31, 1987, the issuer must file an election not to issue an amount of qualified mortgage bonds. The election (and the certification (or affidavit) described in paragraph (d)) shall be filed with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255. The election should be titled "Mortgage Credit Certificate Election" and must include—

(i) The name, address, and TIN of the issuer,

(ii) The issuer's applicable limit, as defined in section 103A (g) and the regulations thereunder,

(iii) The aggregate amount of qualified mortgage bonds issued by the issuing authority during the calendar year,

(iv) The amount of the issuer's applicable limit that it has surrendered to other issuers during the calendar year,

(v) The date and amount of any previous elections under this paragraph for the calendar year, and

(vi) The amount of qualified mortgage bonds that the issuer elects not to issue.

(3) *Revocation of election.* Any election made under this paragraph may be revoked, in whole or in part, at any time during the calendar year in which the election was made. The revocation, however, may not be made with respect to any part of the nonissued bond amount that has been used to issue mortgage credit certificates pursuant to the election. The revocation shall be

filed with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255. The revocation should be titled "Revocation of Mortgage Credit Certificate Election" and must include—

- (i) The name, address, and TIN of the issuer,
- (ii) The nonissued bond amount as originally elected, and
- (iii) The portion of the nonissued bond amount with respect to which the election is being revoked.

(4) *Special rule.* If at the time that an issuer makes an election under this paragraph it does not know its applicable limit, the issuer may elect not to use all of its remaining authority to issue qualified mortgage bonds; this form of election will be treated as meeting the requirements of paragraph (c)(2) if, prior to the later of the end of the calendar year and December 31, 1985, the issuer amends its election so as to indicate the exact amount of qualified mortgage bond authority that it elected not to issue.

(5) *Limitation on nonissued bond amount.* The amount of qualified mortgage bonds which an issuer elects not to issue may not exceed the issuer's applicable limit (as determined under section 103A (g) and the regulations thereunder). For example, a governmental unit that, pursuant to section 103A (g)(3), may issue \$10 million of qualified mortgage bonds that elects to trade in \$11 million in qualified mortgage bond authority has not met the requirements of this paragraph, and mortgage credit certificates issued pursuant to such election are not qualified mortgage credit certificates.

(d) *State certification requirement—*
(1) *In general.* A program meets the requirements of this paragraph only if the State official designated by law (or, where there is no State official, the Governor) certifies, based on facts and circumstances as of the date on which the certification is requested, following a request for such certification, that the issue meets the requirements of section 103A(g) (relating to volume limitation) and the regulations thereunder. A copy of the State certification must be attached to the issuer's election not to issue qualified mortgage bonds, except that, in the case of elections made during calendar year 1984, the certification may be filed with the Service prior to July 8, 1985 provided that mortgage credit certificates may not be distributed until the certification is filed. In the case of any constitutional home rule city, the certification shall be made by the chief executive officer of the city.

(2) *Certification procedure.* The official making the certification

described in this paragraph (d) need not perform an independent investigation to determine whether the issuer has met the requirements of section 103A(g). In determining the aggregate amount of qualified mortgage bonds previously issued by that issuer during the calendar year the official may rely on copies of prior elections under paragraph (c) of this section made by the issuer for that year, together with an affidavit executed by an official of the issuer who is responsible for issuing bonds stating that the issuer has not, to date, issued any other issues of qualified mortgage bonds during the calendar year and stating the amount, if any, of the issuer's applicable limit that it has surrendered to other issuers during the calendar year; for any calendar year prior to 1985, the official may rely on an affidavit executed by a duly authorized official of the issuer who states the aggregate amount of qualified mortgage bonds issued by the issuer during the year. In determining the aggregate amount of qualified mortgage bonds that the issuer has previously elected not to issue during that calendar year, the official may rely on copies of any elections not to issue qualified mortgage bonds filed by the issuer for that calendar year, together with an affidavit executed by an official of the issuer responsible for issuing mortgage credit certificates stating that the issuer has not, to date, made any other elections not to issue qualified mortgage bonds. If, based on such information, the certifying official determines that the issuer has not, as of the date on which the certification is provided, exceeded its applicable limit for the year, the official may certify that the issue meets the requirements of section 103A(g). The fact that the certification described in this paragraph (d) is provided does not ensure that the issuer has met the requirements of section 103A(g) and the regulations thereunder, nor does it preclude the application of the penalty for over-issuance of mortgage credit certificates if such over-issuance actually occurs. See § 1.25-5T.

(3) *Special rule.* If within 30 days after the issuer files a proper request for the certification described in this paragraph (d) the issuer has not received from the State official designated by law (or, if there is no State official, the Governor) certification that the issue meets the requirements of section 103A(g) or, in the alternative, a statement that the issue does not meet such requirements, the issuer may submit, in lieu of the certification required by this paragraph (d), an affidavit executed by an officer of the issuer responsible for issuing

mortgage credit certificates stating that—

(i) The issue meets the requirements of section 103A(g) and the regulations thereunder,

(ii) At least 30 days before the execution of the affidavit the issuer filed a proper request for the certification described in this paragraph (d), and

(iii) The State official designated by law (or, if there is no State official, the Governor) has not provided the certification described in this paragraph (d) or a statement that the issue does not meet such requirements.

For purposes of this paragraph, a request for certification is proper if the request includes the reports and affidavits described in paragraph (d)(2).

(e) *Information reporting requirement—*(1) *Annual report.*

[Reserved]

(f) *Policy statement requirement.*

[Reserved]

(g) *Targeted areas requirement—*(1) *In general.* A program meets the requirements of this paragraph only if—

(i) The portion of the total proceeds of the issue specified in paragraph (g)(2) is made available to provide mortgage credit certificates in connection with owner financing of targeted area residents for at least 1 year after the date on which mortgage credit certificates are first made available with respect to targeted area residences, and

(ii) The issuer attempts with reasonable diligence to place such proceeds with qualified persons.

Mortgage credit certificates are considered first made available with respect to targeted area residences on the date on which the issuer first begins to accept applications for mortgage credit certificates provided under that issue.

(2) *Specified portion.* (i) The specified portion of the total proceeds of an issue is the lesser of—

- (A) 20 percent of the total proceeds, or
- (B) 8 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single-family, owner-occupied residences in targeted areas within the jurisdiction of the issuing authority.

For purposes of computing the required portion of the total proceeds specified in paragraph (g)(2)(i)(B) where such provision is applicable, an issuer may rely upon the safe-harbor formula provided in the regulations under section 103A(h).

(ii) See § 1.25-1T(b)(10)(ii) for the definition of "total proceeds".

(h) *Fees*—(1) *In general.* A program meets the requirements of this paragraph only if each applicant is required to pay, directly or indirectly, no fee other than those fees permitted under this paragraph.

(2) *Permissible fees.* Applicants may be required to pay the following fees provided that they are reasonable:

(i) Points, origination fees, servicing fees, and other fees in amounts that are customarily charged with respect to mortgages not provided in connection with mortgage credit certificates,

(ii) Application fees, survey fees, credit report fees, insurance fees, or similar settlement or financing costs to the extent such amounts do not exceed the amounts charged in the area in cases where mortgages are not provided in connection with mortgage credit certificates. For example, amounts charged for FHA, VA, or similar private mortgage insurance on an individual's mortgage are permissible so long as such amounts do not exceed the amounts charged in the area with respect to a similar mortgage that is not provided in connection with a mortgage credit certificate, and

(iii) Other fees that, taking into account all the facts and circumstances, are reasonably necessary to cover any administrative costs incurred by the issuer or its agent in issuing mortgage credit certificates.

(i) *Qualified mortgage credit certificate.* A program meets the requirements of this paragraph only if each mortgage credit certificate issued under the program meets each of the requirements of paragraphs (c) through (o) of § 1.25-3T.

(j) *Good faith compliance efforts*—(1) *Eligibility requirements.* (i) A program under which each of the mortgage credit certificates issued does not meet each of the requirements of paragraphs (c) through (o) of § 1.25-3T shall be treated as meeting the requirements of paragraph (i) of this section if each of the requirements of this paragraph (j)(1) is satisfied. A mortgage credit certificate program meets the requirements of this paragraph (j)(1) only if each of the following provisions is met:

(A) The issuer in good faith attempted to issue mortgage credit certificates only to individuals meeting each of the requirements of paragraphs (c) through (o) of § 1.25-3T. Good faith requires that agreements with lenders and agents and other relevant instruments contain restrictions that permit the approval of mortgage credit certificates only in accordance with the requirements of paragraphs (c) through (o) of § 1.25-3T. In addition, the issuer must establish reasonable procedures to ensure

compliance with those requirements. Reasonable procedures include reasonable investigations by the issuer to determine whether individuals satisfy the requirements of paragraphs (c) through (o) of § 1.25-3T.

(B) 95 percent or more of the total proceeds of the issue were devoted to individuals with respect to whom, at the time that the certificate was issued, all the requirements of paragraphs (c) through (o) of § 1.25-3T were met. If a holder of a mortgage credit certificate fails to meet more than one of these requirements, the amount of the certificate (*i.e.*, the certificate credit rate multiplied by the certified indebtedness amount) issued to that individual will be taken into account only once in determining whether the 95-percent requirement is met. However, all of the defects in that individual's certificate must be corrected pursuant to paragraph (j)(1)(i)(C).

(C) Any failure to meet the requirements of paragraphs (c) through (o) of § 1.25-3T is corrected within a reasonable period after that failure is discovered. For example, if an individual fails to meet one or more of such requirements those failures can be corrected by revoking that individual's certificate.

(ii) *Examples.* The following examples illustrate the application of this paragraph (j)(1):

Example (1). County X only distributes mortgage credit certificates to individuals who have contracted to purchase a principal residence. County X requires that applicants for mortgage credit certificates present the following information:

(i) An affidavit stating that the applicant intends to use the residence in connection with which the mortgage credit certificate is issued as his principal residence within a reasonable time after the certificate is issued by County X, that the applicant will notify the County if the residence ceases to be his principal residence, and facts that are sufficient for County X to determine whether the residence is located within the jurisdiction of County X,

(ii) An affidavit stating that the applicant had no present ownership interest in a principal residence at any time during the 3-year period prior to the date on which the certificate is issued,

(iii) Copies of the applicant's Federal tax returns for the preceding 3 years,

(iv) Affidavits from the seller of the residence with respect to which the certificate is issued and the applicant stating the purchase price of the residence, including an itemized list of (A) payments made by or for the benefit of the applicant, (B) if the residence is incomplete, an estimate of the reasonable cost of completing the residence, and (C) if the residence is subject to a ground rent, the capitalized value of the ground rent,

(v) An affidavit executed by the applicant stating that the mortgage being acquired in

connection with the certificate will not be used to acquire or replace an existing mortgage,

(vi) An affidavit executed by the applicant stating that no portion of the financing for the residence in connection with which the certificate is issued is provided from the proceeds of a qualified mortgage bond or qualified veterans' mortgage bond and that no portion of the mortgage for the residence is provided by a person related to the applicant (as defined in § 1.25-3T(n)),

(vii) An affidavit executed by the applicant stating that the certificate was not limited to indebtedness incurred from particular lenders, and

(viii) In the case of a mortgage credit certificate allocated for use in connection with a particular development, and affidavit executed by the applicant stating that the applicant received from the developer a certification stating that the price of the residence with respect to which the certificate was issued is no higher than it would be without the use of a mortgage credit certificate.

County X examines the information submitted by the applicant to determine whether the requirements of paragraphs (c), (d), (e), (f), (g), (i), (j), (k), and (n) of § 1.25-3T are met. County X determines that the certificate has not expired. The mortgage credit certificates issued by County X are in the form prescribed by § 1.25-6T and County X provides all the required information and statements. After determining that the applicant meets all these requirements County X issues a mortgage credit certificate to the applicant. This procedure for issuing mortgage credit certificates is sufficient evidence of the good faith of County X to meet the requirements of § 1.25-4T(j)(1)(i)(A).

Example (2). County W distributes preliminary mortgage credit certificates to individuals who have not entered into contracts to purchase a principal residence. County W issues preliminary certificates in the form prescribed by § 1.25-6T to those applicants that have submitted statements that they (i) intend to purchase a single-family residence located within the jurisdiction of County W which they will occupy as a principal residence, (ii) have had no present ownership interest in a principal residence within the preceding 3-year period, and (iii) will not use the certificate in connection with the acquisition or replacement of an existing mortgage. The certificates contain a maximum purchase price, the certificate credit rate, and a statement that the certificate will expire if the applicant does not enter into a closing agreement with respect to a loan within 6 months from the date of preliminary issuance. Holders of these certificates may apply for a mortgage loan from any lender. When the holder of the certificate applies for a loan the lender requires that he submit the following:

(i) An affidavit stating that the applicant intends to use the residence in connection with which the mortgage credit certificate is issued as his principal residence within a reasonable time after the certificate is issued by County W, that the applicant will notify

the County if the residence ceases to be his principal residence, and facts that are sufficient for County W to determine whether the residence is located within the jurisdiction of County W.

(ii) An affidavit stating that the applicant had no present ownership interest in a principal residence at any time during the 3-year period prior to the date on which the certificate is issued.

(iii) Copies of the applicant's Federal tax returns for the preceding 3 years.

(iv) Affidavits from the seller of the residence with respect to which the certificate is issued and the applicant stating the purchase price of the residence, including an itemized list of (A) payments made by or for the benefit of the applicant, (B) if the residence is incomplete, an estimate of the reasonable cost of completing the residence, and (C) if the residence is subject to a ground rent, the capitalized value of the ground rent.

(v) An affidavit executed by the applicant stating that the mortgage being acquired in connection with the certificate will not be used to acquire or replace an existing mortgage.

(vi) An affidavit executed by the applicant stating that no portion of the financing for the residence in connection with which the certificate is issued is provided from the proceeds of a qualified mortgage bond or qualified veterans' mortgage bond and that no portion of the mortgage for the residence is provided by a person related to the applicant (as defined in § 1.25-3T(n)).

(vii) An affidavit executed by the applicant stating that the certificate was not limited to indebtedness incurred from particular lenders, and

(viii) In the case of a mortgage credit certificate allocated for use in connection with a particular development, an affidavit executed by the applicant stating that the applicant received from the developer a certification stating that the price of the residence with respect to which the certificate was issued is no higher than it would be without the use of a mortgage credit certificate.

The lender then submits those affidavits, together with its statement as to the amount of the indebtedness incurred, to County W. After determining that the requirements of paragraphs (c), (d), (e), (f), (g), (i), (j), (k) and (n) of § 1.25-3T are met and determining that the certificate has not expired, County W completes the mortgage credit certificate. This procedure for issuing mortgage credit certificates is sufficient evidence of the good faith of County W to meet the requirements of § 1.25-4T(j)(1)(i)(A).

(2) *Program requirements.* (i) A mortgage credit certificate program which fails to meet one or more of the requirements of paragraphs (b) through (h) of this section shall be treated as meeting such requirements if the requirements of this paragraph (j)(2) are satisfied. A mortgage credit certificate program meets the requirements of this paragraph (j)(2) only if each of the following provisions is met:

(A) The issuer in good faith attempted to meet all of the requirements of

paragraphs (b) through (h) of this section. This good faith requirement will be met if all reasonable steps are taken by the issuer to ensure that the program complies with these requirements.

(B) Any failure to meet such requirements is due to inadvertent error, e.g., mathematical error, after taking reasonable steps to comply with such requirements.

(ii) The following example illustrate the application of this paragraph (j)(2):

Example. City X issues an issue of mortgage credit certificates. However, despite taking all reasonable steps to determine accurately the size of the applicable limit, as provided in section 103A(g)(3) and the regulations thereunder, the limit is exceeded because the amount of the mortgages, originated in the area during the past 3 years is incorrectly computed as a result of mathematical error. Such facts are sufficient evidence of the good faith of the issuer to meet the requirements of paragraph (j)(2).

§ 1.25-5T Limitation on aggregate amount of mortgage credit certificates (Temporary).

(a) *In general.* If the aggregate amount of qualified mortgage credit certificates (as defined in paragraph (b)) issued by an issuer under a qualified mortgage credit certificate program exceeds 20 percent of the nonissued bond amount (as defined in paragraph (c)), the provisions of paragraph (d) shall apply.

(b) *Aggregate amount of mortgage credit certificates.*—(1) *In general.* The aggregate amount of qualified mortgage credit certificates issued under a qualified mortgage credit certificate program is the sum of the products determined by multiplying—

(i) The certified indebtedness amount of each qualified mortgage credit certificate issued under that program, by

(ii) The certificate credit rate with respect to such certificate.

(2) *Examples.* The following examples illustrate the application of this paragraph (b):

Example (1). For 1986 City Q has a nonissued bond amount of \$100 million. After making a proper election, Q issues 2,000 qualified mortgage credit certificates each with a certificate credit rate of 20 percent and a certified indebtedness amount of \$50,000. The aggregate amount of qualified mortgage credit certificates is \$20 million (2,000 x (.2 x \$50,000)). Since this amount does not exceed 20 percent of the nonissued bond amount (.2 x \$100 million = \$20 million), Q has complied with the limitation on the aggregate amount of mortgage credit certificates, provided that it does not issue any additional certificates.

Example (2). The facts are the same as in example (1) except that instead of issuing all its certificates at the 20 percent rate, Q issues (i) qualified mortgage credit certificates with a certificate credit rate of 10 percent and an

aggregate principal amount of \$25 million, (ii) qualified mortgage credit certificates with a certificate credit rate of 40 percent and an aggregate principal amount of \$25 million, and (iii) qualified mortgage credit certificates with a certificate credit rate of 30 percent and an aggregate principal amount of \$25 million. The aggregate amount of qualified mortgage credit certificates is \$20 million ((10 percent of \$25 million) plus (40 percent of \$25 million) plus (30 percent of \$25 million)). Q has complied with the limitation on the aggregate amount of qualified mortgage credit certificates, provided that it does not issue any additional certificates pursuant to the same program.

(c) *Nonissued bond amount.* The term "nonissued bond amount" means, with respect to any qualified mortgage credit certificate program, the amount of qualified mortgage bonds (as defined in section 103A(c)(1) and the regulations thereunder) which the issuer is otherwise authorized to issue and elects not to issue under section 25(c)(2) and § 1.25-4T(b). The amount of qualified mortgage bonds which an issuing authority is authorized to issue is determined under section 103A(g) and the regulations thereunder; such determination shall take into account any prior elections by the issuer not to issue qualified mortgage bonds, the amount of any reduction in the State ceiling under paragraph (d) of this section, and the aggregate amount of qualified mortgage bonds issued by the issuer prior to its election not to issue qualified mortgage bonds.

(d) *Noncompliance with limitation on aggregate amount of mortgage credit certificates.*—(1) *In general.* If the provisions of this paragraph apply, the State ceiling under section 103A(g)(4) and the regulations thereunder for the calendar year following the calendar year in which the Commissioner determines the correction amount for the State in which the issuer which exceeded the limitation on the aggregate amount of mortgage credit certificates is located shall be reduced by 1.25 times the correction amount with respect to such failure.

(2) *Correction amount.* (i) The term "correction amount" means an amount equal to the excess credit amount divided by .20.

(ii) The term "excess credit amount" means the excess of—

(A) The credit amount for any mortgage credit certificate program, over

(B) The amount which would have been the credit amount for such program had such program met the requirements of section 25(d)(2) and paragraph (a) of this section.

(iii) The term "credit amount" means the sum of the products determined by multiplying—

(A) The certified indebtedness amount of each qualified mortgage credit certificate issued under the program, by

(B) The certificate credit rate with respect to such certificate.

(3) *Example.* The following example illustrates the application of this paragraph:

Example. For 1987 City R has a nonissued bond amount of \$100 million. City R issues all of its mortgage credit certificates with a certificate credit rate of 20 percent. City R issues certificates with an aggregate certified indebtedness amount of \$120 million. The aggregate amount of mortgage credit certificates issued by City R is \$24 million, which exceeds 20 percent of the nonissued bond amount. The State ceiling for the calendar year following the calendar year in which the Commissioner determines the correction amount is reduced by \$25 million (the correction amount multiplied by 1.25). The correction amount is determined as follows: The credit amount is \$24 million ($.2 \times \120 million); the amount which would have been the credit amount for the program had it met the requirements of section 25(d)(2) is \$20 million ($.2 \times \100 million); the excess credit amount is \$4 million ($\24 million— $\$20$ million); therefore, the correction amount is \$20 million ($\4 million/.2).

(4) *Cross references.* See section 103A(g)(4) and the regulations thereunder with respect to the reduction of the applicable State ceiling.

§ 1.25-6T Form of qualified mortgage credit certificate (Temporary).

(a) *In general.* Qualified mortgage credit certificates are to be issued on the form prescribed by the Internal Revenue Service. If no form is prescribed by the Internal Revenue Service, or if the form prescribed by the Internal Revenue Service is not readily available, the issuer may use its own form provided that such form contains the information required by this section. Each mortgage credit certificate must be issued in a form such that there are at least three copies of the form. One copy of the certificate shall be retained by the issuer; one copy shall be retained by the lender; and one copy shall be forwarded to the State official who issued the certification required by § 1.25-4T(d), unless that State official has stated in writing that he does not want to receive such copies.

(b) *Required information.* Each qualified mortgage credit certificate must include the following information:

(1) The name, address, and TIN of the issuer.

(2) The date of the issuer's election not to issue qualified mortgage bonds

pursuant to which the certificate is being issued.

(3) The number assigned to the certificate.

(4) The name, address, and TIN of the holder of the certificate.

(5) The certificate credit rate.

(6) The certified indebtedness amount.

(7) The acquisition cost of the residence being acquired in connection with the certificate.

(8) The average area purchase price applicable to the residence.

(9) Whether the certificate meets the requirements of § 1.25-3T(d), relating to residence requirement.

(10) Whether the certificate meets the requirements of § 1.25-3T(e), relating to 3-year requirement.

(11) Whether the certificate meets the requirements of § 1.25-3T(g), relating to new mortgage requirement.

(12) Whether the certificate meets the requirements of § 1.25-3T(i), relating to prohibited mortgages.

(13) Whether the certificate meets the requirements of § 1.25-3T(j), relating to particular lenders.

(14) Whether the certificate meets the requirements of § 1.25-3T(k), relating to allocations to particular developments.

(15) Whether the certificate meets the requirements of § 1.25-3T(n), relating to interest paid to related persons.

(16) Whether the residence in connection with which the certificate is issued is a targeted area residence.

(17) The date on which a closing agreement is signed with respect to the certified indebtedness amount.

(18) The expiration date of the certificate.

(19) A statement that the certificate is not transferable or a statement that the certificate may be transferred only if the issuer issues a new certificate, and

(20) A statement, signed under penalties of perjury by an authorized official of the issuer or its agent, that such person has made the determinations specified in paragraph (b) (9) through (16).

§ 1.25-7T Public notice (Temporary).

(a) *In general.* At least 90 days prior to the issuance of any mortgage credit certificate under a qualified mortgage credit certificate program, the issuer shall provide reasonable public notice of—

(1) The eligibility requirements for such certificate.

(2) The methods by which such certificates are to be issued, and

(3) The other information required by this section.

(b) *Reasonable public notice—(1) In general.* Reasonable public notice means published notice which is

reasonably designed to inform individuals who would be eligible to receive mortgage credit certificates of the proposed issuance. Reasonable public notice may be provided through newspapers of general circulation.

(2) *Contents of notice.* The public notice required by paragraph (a) must include a brief description of the principal residence requirement, 3-year requirement, purchase price requirement, and new mortgage requirement. The notice must also provide a brief description of the methods by which the certificates are to be issued and the address and telephone number for obtaining further information.

§ 1.25-8T Reporting requirements (Temporary).

(a) *Lender—(1) In general.* Each person who makes a loan that is a certified indebtedness amount with respect to any mortgage credit certificate must file the report described in paragraph (a)(2) and must retain on its books and records the information described in paragraph (a)(3). The report described in paragraph (a)(2) is an annual report and must be filed on or before January 31 of the year following the calendar year to which the report relates. See section 6709(c) and the regulations thereunder for the applicable penalties with respect to failure to file reports.

(2) *Information required.* The report shall be submitted on Form 8329 and shall contain the information required therein. A separate Form 8329 shall be filed for each issue of mortgage credit certificates with respect to which the lender made mortgage loans during the preceding calendar year. Thus, for example, if during 1986 Bank M makes three mortgage loans which are certified indebtedness amounts with respect to State Z's January 15, 1986, issue of mortgage credit certificates, and two mortgage loans which are certified indebtedness amounts with respect to State Z's April 15, 1986, issue of mortgage credit certificates, and fifty mortgage loans which are certified indebtedness amounts with respect to County X's December 31, 1985, issue of mortgage credit certificates, Bank M must file three separate reports for calendar year 1986. The lender must submit the Form 8329 with the information required therein, including—

(i) The name, address, and TIN of the issuer of the mortgage credit certificates.

(ii) The date on which the election not to issue qualified mortgage bonds with

respect to that mortgage credit certificate was made.

(iii) The name, address, and TIN of the lender, and

(iv) The sum of the products determined by multiplying—

(A) The certified indebtedness amount of each mortgage credit certificate issued under such program, by

(B) The certificate credit rate with respect to such certificate.

(3) *Recordkeeping requirements.* Each person who makes a loan that is a certified indebtedness amount with respect to any mortgage credit certificate must retain the information specified in this paragraph (a)(3) on its books and records for 6 years following the year in which the loan was made.

With respect to each loan the lender must retain the following information:

(i) The name, address, and TIN of each holder of a qualified mortgage credit certificate with respect to which a loan is made,

(ii) The name, address, and TIN of the issuer of such certificate, and

(iii) The date the loan for the certified indebtedness amount is closed, the certified indebtedness amount, and the certificate credit rate of such certificate.

(b) *Issuers—(1) In general.* Each issuer of mortgage credit certificates shall file the report described in paragraph (b)(2).

(2) *Quarterly reports.* (i) Each issuer which elects to issue mortgage credit certificates shall file reports on Form 8330. These reports shall be filed on a quarterly basis, beginning with the quarter in which the election is made, and are due on the following dates:

April 30 (for the quarter ending March 31), July 31 (for the quarter ending June 30), October 31 (for the quarter ending September 30), and January 31 (for the quarter ending December 31). For elections made prior to May 8, 1985, the first report need not be filed until July 31, 1985. An issuer shall file a separate report for each issue of mortgage credit certificates. In the quarter in which the last qualified mortgage credit certificate that may be issued under a program is issued, the issuer must state that fact on the report to be filed for that quarter; the issuer is not required to file any subsequent reports with respect to that program. See section 6709 (c) for the penalties with respect to failure to file a report.

(ii) The report shall be submitted on Form 8330 and shall contain the information required therein, including—

(A) The name, address, and TIN of the issuer of the mortgage credit certificates,

(B) The date of the issuer's election not to issue qualified mortgage bonds with respect to the mortgage credit

certificate program and the nonissued bond amount of the program,

(C) The sum of the products determined by multiplying—

(1) The certified indebtedness amount of each qualified mortgage credit certificate issued under that program during the calendar quarter, by

(2) The certificate credit rate with respect to such certificate, and

(D) A listing of the name, address, and TIN of each holder of a qualified mortgage credit certificate which has been revoked during the calendar quarter.

(c) *Extensions of time for filing reports.* The Commissioner may grant an extension of time for the filing of a report required by this section if there is reasonable cause for the failure to file such report in a timely fashion.

(d) *Place for filing.* The reports required by this section are to be filed at the Internal Revenue Service Center, Philadelphia, Pennsylvania 19225.

(e) *Cross reference.* See section 6709 and the regulations thereunder with respect to the penalty for failure to file a report required by this section.

Par. 3. New § 1.163-6T is inserted after § 1.163-5T to read as follows:

§ 1.163-6T Reduction of deduction where section 25 credit taken (Temporary).

(a) *In general.* The amount of the deduction under section 163 for interest paid or accrued during any taxable year on a certified indebtedness amount with respect to a mortgage credit certificate which has been issued under section 25 shall be reduced by the amount of the credit allowable with respect to such interest under section 25 (determined without regard to section 26).

(b) *Cross reference.* See §§ 1.25-1T through 1.25-8T with respect to rules relating to mortgage credit certificates.

Par. 4. New § 1.6709-1T is inserted after § 1.6696-1 to read as follows:

§ 1.6709-1T Penalties with respect to mortgage credit certificates (Temporary).

(a) *Material misstatement—(1) Negligence.* If any person makes a material misstatement in any affidavit or other statement under a penalty of perjury made with respect to the issuance of a mortgage credit certificate and such misstatement is due to the negligence of that person, that person shall pay a penalty of \$1,000 for each mortgage credit certificate with respect to which that misstatement was made.

(2) *Fraud.* If a misstatement described in subparagraph (1) is due to fraud on the part of the person making the misstatement, that person shall pay a penalty of \$10,000 for each mortgage credit certificate with respect to which

the fraudulent misstatement was made. The penalty imposed by this paragraph (a)(2) is in addition to any criminal penalty.

(b) *Reports.* (1) Any person required by § 1.25-8T to file a report with respect to any mortgage credit certificate who fails to file the report at the time and in the manner required by § 1.25-8T shall pay a penalty of \$200 for each mortgage credit certificate with respect to which that failure occurred. The preceding sentence shall not apply if it is shown that such failure is due to reasonable cause and not to willful neglect.

(2) In the case of any report required under § 1.25-8T(b), the aggregate amount of the penalty imposed by this paragraph shall not exceed \$2,000.

PART 6a—[AMENDED]

Par. 5. The authority citation for Part 6a is revised to read:

Authority: Sec. 7805, Internal Revenue Code of 1954, 68A stat. 917 (26 U.S.C. 7805) unless otherwise noted.

Par. 6. Section 6a.103A-2 is amended by revising paragraph (g)(1), by revising the first sentence of paragraph (g)(6)(i), and adding a new paragraph (g)(6)(v). These added and revised provisions read as follows:

§ 6a.103A-2 Qualified mortgage bond.

(g) *Limitation on aggregate amount of qualified mortgage bonds issued during any calendar year—(1) In general.* An issue meets the requirements of this section only if the aggregate amount of bonds issued pursuant thereto, when added to the sum of (i) the aggregate amount of qualified mortgage bonds previously issued by the issuing authority during the calendar year and (ii) the amount of qualified mortgage bonds which the issuing authority previously elected not to issue under section 25(c)(2)(A)(ii) and the regulations thereunder during the calendar year, does not exceed the applicable limit ("market limitation") for such authority for such calendar year.

(6) *State ceiling.* (i) Except as provided in paragraph (g)(6)(v), the State ceiling applicable to any State for any calendar year shall be the greater of—

(A) 9 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single-family, owner-occupied residences located within the jurisdiction of such State, or

(B) \$200,000,000. * * *

(v) *Reduction in State ceiling.* If for any calendar year an issuer of mortgage credit certificates, as defined in section 25 and the regulations thereunder, fails to meet the requirements of section 25(d)(2) and the regulations thereunder, relating to the limit on the aggregate amount of mortgage credit certificates that may be issued, the applicable State ceiling under paragraph (g)(6)(i) of this section for the State in which the program operates will be reduced by 1.25 times the correction amount (as defined in section 25(f)(2) and the regulations thereunder) with respect to that failure for the calendar year following the calendar year in which the Commissioner determines the correction amount with respect to that failure.

* * * * *

PART 602—[AMENDED]

Par. 7. The authority citation for Part 602 continues to read:

Authority: Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917 (26 U.S.C. 7805).

Par. 8. Section 602.101(c) is amended by inserting in the appropriate places in the table, "§§ 1.25-IT thru 1.25-8T . . . 1545-0922".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: April 22, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85-11017 Filed 5-3-85; 2:59 pm]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

Notice of Extension of Deadline for Submission of Program Amendment to the New Mexico Permanent Program

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

ACTION: Final rule.

SUMMARY: OSM is announcing its decision to further extend the deadline for New Mexico to (1) promulgate rules governing the training, examination and

certification of blasters, and (2) develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation.

On March 5, 1984, New Mexico requested an extension of time for the development of a blaster certification program. On May 14, 1984, OSM announced its decision to extend New Mexico's deadline to March 4, 1985 (49 FR 20287). On February 6, 1985, New Mexico requested an additional one-year extension to submit a blaster training program and examination. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulation provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State an additional one-year extension of time to submit a proposed blaster certification program.

EFFECTIVE DATE: May 8, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, NW., Albuquerque, New Mexico 87102; Telephone (505) 766-1486.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of New Mexico's program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On March 5, 1984, New Mexico advised OSM that it would be unable to meet the March 4, 1984 deadline and requested a one-year extension to develop and adopt a blaster certification program. On May 14, 1984, OSM granted New Mexico an extension to March 4, 1985 (49 FR 20287).

On February 6, 1985, the Director of New Mexico Energy and Mineral Department advised OSM that the State would require another one-year extension of time to submit its blaster training and examination program. He stated that the New Mexico Blasting Regulations need to be rewritten and approved by the Coal Surface Mining Commission. In addition, the Director stated that the State must develop a Blaster's Examination for certification of blasters and develop a budget for the blaster training, examination and certification program. An additional one-year extension was requested.

In the March 18, 1985 *Federal Register* (50 FR 10793), OSM proposed an additional one-year extension for New Mexico to submit to OSM a proposed blaster training program. Public comment on this proposal was sought for 30 days ending April 17, 1985. No comments were submitted to OSM during the comment period.

Director's Determination

In accordance with the State's request, the Director has decided to extend the deadline for New Mexico to submit a proposed blaster training program until March 4, 1985. This extension will allow the Director of the New Mexico Energy and Minerals Department to develop and adopt an adequate blaster certification and training program consistent with Federal requirements.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and Regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements