ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to implementing a provision of the Tax reform Act of 1984 permitting the reissuance of mortgage credit certificates.

DATES: The public hearing originally scheduled for May 22, 1996, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Evangelista C. Lee of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190 (not a toll free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed amendments to the Income Tax Regulations under section 25 of the Internal Revenue Code. A notice of public hearing appearing in the Federal Register on Friday, April 5, 1996 (61 FR 15204), announced that a public hearing would be held on Wednesday, May 22, 1996, beginning at 10:00 a.m., in the Commissioners Conference Room, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, D.C. 20224.

The public hearing scheduled for Wednesday, May 22, 1996, is cancelled.

Michael L. Slaughter,

Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–11778 Filed 5–10–96; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 301

[PS–43–95]

RIN 1545–AT91

Simplification of Entity Classification Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would replace the existing regulations for classifying certain business organizations with an elective regime. These proposed regulations simplify the existing classification rules.

DATES: Written comments and requests to speak (with outlines of oral comments) at a public hearing scheduled for August 21, 1996, at 10 a.m. must be submitted by August 12, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (PS–43–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (PS–43–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Armando Gomez, (202) 622–3050; concerning foreign organizations, Ronald M. Gootzeit or William H. Morris, (202) 622–3880; concerning submissions and the hearing, Evangelista Lee (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by July 12, 1996.

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

The collections of information are required by §§ 301.6109–1(b)(2)(vi) and 301.7701–3(c). This information is required by the IRS to ensure the proper classification of business organizations and to ensure compliance with the proposed regulations. The likely respondents are businesses and other for-profit organizations, including small businesses.

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

The burden of the collection of information required by § 301.6109–1 will be reflected in Forms SS–4 and W–7. The burden of the collection of information required by § 301.7701–3(c) will be reflected in such form as is prescribed by the Commissioner for purposes of making the election described in this regulation.

Introduction

This document proposes to revise §§ 301.7701–1 through 301.7701–3 of the Procedure and Administration Regulations (26 CFR part 301) to clarify which organizations are classified as corporations automatically under the Internal Revenue Code (Code) and to provide a simple elective regime for classifying other business organizations. This document also proposes conforming changes to §§ 1.581–1, 1.581–2, and 1.761–1 of the Income Tax Regulations (26 CFR part 1), and to §§ 301.6109–1, 301.7701–4, 301.7701–6, and 301.7701–7 of the Procedure and Administration Regulations (26 CFR part 301).

Background

On April 3, 1995, Notice 95–14, relating to classification of business organizations under section 7701, was published in the Internal Revenue Bulletin (1995–1 C.B. 297). A notice of public hearing was published in the Federal Register on May 10, 1995 (60 FR 24813). Written comments were received and a public hearing was held on July 20, 1995. After consideration of the comments, the Treasury Department and the IRS propose to replace the existing classification regulations with a simplified regime that is elective for certain business organizations.

Explanation of Provisions

I. Introduction

Section 7701(a)(2) of the Code defines a partnership to include a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and that is not a trust or estate or a corporation. Section 7701(a)(3) defines a corporation to include associations, joint-stock companies, and insurance companies.

The existing regulations for classifying business organizations as associations (which are taxable as corporations under section 7701(a)(3)) or as partnerships under section 7701(a)(2) are based on the historical differences under local law between partnerships and corporations. However, many states have revised their statutes to provide that partnerships and other unincorporated organizations may possess characteristics that traditionally have been associated with corporations, thereby narrowing considerably the traditional distinctions between

corporations and partnerships under local law. For example, some partnership statutes now provide that no partner is unconditionally liable for all of the debts of the partnership. Similarly, almost all states have enacted statutes allowing the formation of limited liability companies. These entities provide protection from liability to all members but may qualify as partnerships for federal tax purposes under the existing regulations. See, e.g., Rev. Rul. 88–76 (1988–2 C.B. 360).

One consequence of the increased flexibility under local law in forming a partnership or other unincorporated business organization is that taxpayers generally can achieve partnership tax classification for a nonpublicly traded organization that, in all meaningful respects, is virtually indistinguishable from a corporation. To accomplish this, however, taxpayers and the IRS must expend considerable resources on classification issues. For example, since the issuance of Rev. Rul. 88–76, the IRS has issued seventeen revenue rulings analyzing individual state limited liability company statutes, and has issued several revenue procedures and numerous letter rulings relating to classification of various business organizations. Meanwhile, small business organizations may lack the resources and expertise to achieve the tax classification they want under the current classification regulations.

Reacting to the fact that publicly traded entities could easily qualify as partnerships, in 1987 Congress enacted section 7704 to require most publicly traded partnerships to be taxable as corporations. Thus, even if an organization could be classified as a partnership under the current regulations, it will nevertheless be classified as a corporation in most cases if its ownership interests are publicly traded.

In light of these developments, Treasury and the IRS believe that it is appropriate to replace the increasingly formalistic rules under the current regulations with a much simpler approach that generally is elective. To further simplify this area, the proposed regulations provide similar rules for organizations that have a single owner.

With respect to foreign organizations, Notice 95–14 (1995–1 C.B. 297) observed that, while the distinctions are similarly formalistic, the classification process under the current regulations involves even more complexities and requires greater resources than does the classification process for domestic organizations. For example, the classification of a foreign organization involves not only a review of organizational documents, but also a thorough understanding of the controlling foreign law. Accordingly, the simplified system provided under the proposed regulations extends to foreign organizations as well, with certain modifications explained below.

In light of the increased flexibility under an elective regime for the creation of organizations classified as partnerships, the Treasury Department and the IRS will continue to monitor carefully the uses of partnerships in the international context and will issue appropriate substantive guidance when partnerships are used to achieve results that are inconsistent with the policies and rules of particular Code provisions or of U.S. tax treaties.

To accomplish the changes described above, the proposed regulations would replace §§ 301.7701–1, 301.7701–2, and 301.7701–3 with new regulations. In addition, conforming amendments would be made to §§ 1.581–1, 1.581–2, 1.761–1, 301.6109–1, 301.7701–4, 301.7701–6, and 301.7701–7.

II. General Classification Rules

A. Business Entities

Proposed § 301.7701–1 provides an overview of the rules applicable in determining an organization's classification for federal tax purposes. The first step in the classification process is to determine whether there is a separate entity for federal tax purposes (which is a matter of federal tax law). The proposed regulations explain that certain joint undertakings that are not entities under local law may nonetheless constitute separate entities for federal tax purposes; on the other hand, not all entities formed under local law are recognized as separate entities for federal tax purposes. For example, individuals who own property as tenants in common may create a separate entity for federal tax purposes if the individuals actively carry on a trade, business, financial operation, or venture and divide the profits therefrom. On the other hand, an organization wholly owned by a State is not recognized as a separate entity for federal tax purposes if it is an integral part of the State. Similarly, tribes incorporated under section 17 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 477, or under section 3 of the Oklahoma Indian Welfare Act, as amended, 25 U.S.C. 503, are not recognized as separate entities for federal tax purposes. See Rev. Rul. 94–16 (1994–1 C.B. 19); Rev. Rul. 94–65 (1994–2 C.B. 14). Also, the proposed regulations retain the rule under the current regulations that a qualified cost sharing arrangement described in § 1.482–7 is not a partnership for federal tax purposes.

An organization that is recognized as a separate entity for federal tax purposes is either a trust or a business entity (unless a provision of the Code expressly provides for special treatment, such as the Real Estate Mortgage Investment Conduit (REMIC) rules, see section 860A(a)). The proposed regulations provide that trusts generally do not have associates or an objective to carry on business for profit. While these proposed regulations restate the distinction between trusts and business entities, the determination of whether an organization is classified as a trust for federal tax purposes is intended to remain the same as under current law.

Proposed § 301.7701–2 specifies those business entities that automatically are classified as corporations for federal tax purposes. Any other business entity that is recognized for federal tax purposes may choose its classification under the rules of proposed § 301.7701–3. Those rules provide that a business entity with at least two members can be classified as either a partnership or an association, and that a business entity with a single member can be classified as an association or can be disregarded as an entity separate from its owner.

B. Corporations

The proposed regulations clarify that business entities that are classified as corporations for federal tax purposes include corporations denominated as such under applicable law, as well as associations, joint-stock companies, insurance companies, organizations that conduct certain banking activities, organizations wholly owned by a State, organizations that are taxable as corporations under a provision of the Code other than section 7701(a)(3), and certain organizations formed under the laws of a foreign jurisdiction or a U.S. possession, territory, or commonwealth. Each of these categories is described briefly below.

The proposed regulations define corporation to include any business entity recognized for federal tax purposes that is organized under a Federal or State statute, or under a statute of a federally recognized Indian tribe, that describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic. Such entities include governmentally chartered corporations, as well as business corporations. See, e.g., 12 U.S.C. 21 et seq. (national banking associations), 20 U.S.C. 1087–2 (Student Loan Marketing Association),

and 36 U.S.C. 1101 (private corporations established under federal law).

The proposed regulations define an association by reference to § 301.7701–3. As discussed in detail below, that section permits certain business entities to choose whether to be classified as an association or as a partnership (or, if the entity has a single owner, as a non-entity).

The proposed regulations define a joint-stock company as a business entity organized under a State statute that describes or refers to the entity as a joint-stock company or joint-stock association. These entities typically have a fixed capital stock divided into shares represented by certificates transferable only upon the books of the company, manage their affairs by a board of directors and executive officers, and conduct their business in the general form and mode of procedure of a corporation. See *Burk-Waggoner Oil Assoc.* v. *Hopkins*, 269 U.S. 110, 113 (1925).

The proposed regulations define an insurance company as a business entity that is taxable as an insurance company under subchapter L, chapter 1 of the Code.

Under the proposed regulations, a state-chartered bank is classified as a corporation if any of the bank's deposits are insured under the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811 *et seq.*, or a similar federal statute. This rule reflects Congress requirement that these organizations be incorporated to be eligible for federal deposit insurance, see 12 U.S.C. 1813(a)(2), and provides comparable tax treatment to state-chartered banks and national banks chartered under the National Bank Act, 12 U.S.C. 21 *et seq.* (which characterizes national banks as corporations, see 12 U.S.C. 24). It also is consistent with Congress historical treatment of banks as corporations, as reflected in section 581 of the Code, which requires a bank to be incorporated for purposes of subchapter H of chapter 1. Under this rule, however, an unincorporated organization that conducts banking activities but that does not have federal deposit insurance, may, under proposed § 301.7701–3, choose not to be an association for federal tax purposes; in that case, however, the organization is not a bank within the meaning of section 581, and thus is not eligible for treatment under subchapter H.

The proposed regulations also classify as corporations organizations that are recognized for federal tax purposes if they are wholly owned by a State, or any political subdivision thereof. Organizations wholly owned by a State that are not an integral part of the State must be recognized for federal tax purposes and scrutinized under section 115 (which excludes from gross income any income derived from the exercise of any essential governmental function and accruing to a State or any political subdivision thereof, or the District of Columbia). Accordingly, the proposed regulations classify any such organization as a corporation. Nevertheless, under section 115, the organization's income may not be subject to federal income tax.

The proposed regulations define corporation to include any business entity that is taxable as a corporation under another provision of the Code. For example, a business entity that is publicly traded within the meaning of section 7704 (and not within the exception in section 7704(c)), is taxable as a corporation. Similarly, a business entity that is a taxable mortgage pool under section 7701(i) is taxable as a corporation.

Finally, the proposed regulations classify as corporations certain foreign business entities (including entities organized in U.S. possessions, territories, and commonwealths) that are listed in the regulations. Notice 95–14 observed that current law does not automatically classify any foreign entity as a corporation by reference to the juridical status or designation of that entity under local law. That is, current law does not identify the foreign analogue to the incorporated state law entity that is always classified as a corporation for federal tax purposes, even though section 7701(a)(3) makes no distinction between domestic and foreign entities. Rather, since the issuance of Rev. Rul. 88–8 (1988–1 C.B. 403), all foreign entities have been classified based on the characteristics set forth in §§ 301.7701–2 and 301.7701–3 of the current regulations. Nevertheless, under this approach, those foreign entities that are equivalent to state law corporations are virtually always classified as corporations.

To ensure the corporate classification of these foreign entities, the proposed regulations include a list of foreign business entities that always will be classified as corporations. Several commentators supported inclusion of a list of foreign business entities that either would be treated as corporations per se or that would continue to be classified under the current regulations. The Treasury Department and the IRS believe that classifying the business entities on the list as corporations in all cases is consistent with the goal of simplifying the entity classification area. The organizations listed are limited liability entities, such as the British Public Limited Company, the French Societe Anonyme, and the German Aktiengesellschaft. The Treasury Department and the IRS invite comments on the composition of the list.

Under a special grandfather rule, however, an entity described in this list will nevertheless be classified as a partnership under the proposed regulations if: (1) The entity was in existence and claimed to be a partnership on May 8, 1996 and for all prior periods, (2) that classification was relevant to any person for federal tax purposes at any time during the period that includes May 8, 1996, (3) the entity had a reasonable basis (within the meaning of section 6662) for claiming partnership classification, and (4) neither the entity nor any member has been notified in writing on or before May 8, 1996 that the classification of the entity is under examination (in which case the entity's classification will be determined in the examination).

When these regulations become final, and current § 301.7701–2 (on which Rev. Rul. 88–8 is based) is superseded, Rev. Rul. 88–8 will be obsolete.

C. Other Business Entities

The proposed regulations define the term partnership to include any business entity that has at least two members and that is not classified as a corporation.

Some commentators requested clarification of the effect of these elective classification rules on an organization's ability to elect to be excluded from subchapter K under section 761. The proposed regulations do not change the existing requirements for the election provided in § 1.761–2. Accordingly, an organization that is classified as a partnership under the proposed regulations may elect to be excluded from subchapter K, if it qualifies under § 1.761–2.

Many commentators requested guidance concerning the classification of an unincorporated business entity with a single owner. Some commentators suggested that these entities be treated as sole proprietorships, while others suggested partnership classification. Because a fundamental characteristic of a partnership is the presence of associates, an entity with a single owner cannot conduct business as a partnership. However, the proposed regulations permit a business entity with a single owner that is not required to be classified as a corporation to elect to be classified as an association or to have the organization disregarded as an

entity separate from its owner (in which case the business activity is treated for federal tax purposes in the same manner as if it were conducted as a sole proprietorship, branch, or division of the organization's owner).

III. Elective Classification of Certain Entities

A. In General

Proposed § 301.7701–3 sets forth rules permitting a business entity that is not required to be classified as a corporation (referred to in the regulation as an *eligible entity*) to elect its classification for federal tax purposes. An eligible entity that has at least two members may elect to be classified as an association or a partnership, and an eligible entity with a single owner may elect to be classified as an association or to be disregarded as an entity separate from its owner.

B. Default Classification

The proposed regulations are designed to provide most eligible entities with the classification they would choose without requiring them to file an election. Thus, the proposed regulations provide default classification rules that aim to match expectations. An eligible entity that wants the default classification need not file an election.

1. Domestic eligible entities. Notice 95–14 suggested partnership default for domestic eligible entities. The comments supported this rule, and the proposed regulations adopt it. Thus, a newly formed domestic eligible entity will be classified as a partnership if it has two or more members unless an election is filed to classify the entity as an association; no affirmative action need be taken by the entity to ensure partnership classification. Similarly, if that entity has a single member, it will not be treated as an entity separate from its owner for federal tax purposes unless an election is filed to classify the organization as an association.

2. Foreign eligible entities. Notice 95–14 suggested association default for foreign eligible entities. The Notice indicated that while domestic eligible entities typically are formed with an intent to obtain partnership classification, the preferred classification of foreign eligible entities is less predictable. For example, the Notice expressed concern that because partnership default could subject some foreign entities to compliance requirements and excise tax liability under section 1491, an entity should not be classified as a partnership inadvertently. On the other hand, as some commentators indicated, association default might not match the expectations of a foreign eligible entity.

In response to these comments, the proposed regulations provide a default rule that should match expectations more closely. The Treasury Department and IRS believe that if any of an organization's members has personal liability for the debts of the organization, the expectation is that the organization will be classified as a partnership. Accordingly, the proposed regulations provide that if one or more of an eligible entity's members have unlimited liability, the entity will be classified as a partnership if it has two or more members, or it will be disregarded as a separate entity if it has a single owner. Only if all of the entity's members have limited liability will the entity's default classification be association.

For purposes of this rule, a member of a foreign entity has limited liability only if, based solely on the controlling statute or law pursuant to which the entity is organized, the member's personal liability for the debts of or claims against the entity is specifically limited (for example, to the amount of the member's unpaid capital contribution or to the amount of a statutorily limited guarantee). If protection from personal liability is optional under the applicable law, the entity's organizational documents will determine which option applies. The determination whether there is limited liability for purposes of the default rule is intended to be simpler and more straightforward than under current law, to ensure that the default classification is readily apparent. Thus, the limited liability inquiry generally will focus solely on controlling statutes as interpreted by judicial or administrative review. As a result, a member's ability to satisfy creditors' claims would not be relevant. If taxpayers remain uncertain whether there is limited liability in a particular case, they may file an election to secure the desired classification.

3. Existing eligible entities. Commentators suggested that special rules should be provided for eligible entities formed prior to the effective date of the regulations. These commentators were concerned that some existing eligible entities would be required to file classification elections immediately to prevent their classification from being changed under a default rule. Under the proposed regulations, eligible entities existing prior to the effective date of the regulations that choose to retain their current classification would not be required to file an election. Rather, those entities would retain the classification claimed under the existing regulations (except that, if an eligible entity with a single owner claimed to be a partnership under the current regulations, the entity would be disregarded as an entity separate from its owner under this default rule). A foreign entity is considered such an existing entity only if its classification immediately prior to the effective date of these regulations is relevant to any person for federal tax purposes; other foreign entities formed prior to the effective date of these regulations would be considered new entities at the time that their federal tax classification became relevant and, therefore, would be required to file a classification election or be classified under the general default rule described above.

Furthermore, under a transition rule discussed below, the IRS generally will not challenge an existing entity's claimed classification for periods to which the existing regulations apply if the entity had a reasonable basis for the claimed classification.

C. Elections

1. In general. An eligible entity that does not want the classification provided by the applicable default provision, or that wants to change its classification, may file an election to obtain the chosen classification. Some commentators suggested that the election be made with Form SS–4 (Application for Employer Identification Number); others suggested that the election be made with the filing of the entity's first tax return.

An eligible entity may elect its classification by filing an election with the appropriate service center. The proposed regulations would require that the election specify the name, address, and taxpayer identifying number of the entity, the chosen classification, whether the election results in a change in classification, and whether the entity is a domestic or foreign entity. It is anticipated that the Commissioner will prescribe a form for this purpose, in which case elections must be made on such form. The election will be effective on a date specified on the election if that date is not more than 75 days prior to the date on which the election is filed, or on the date filed if no such date is specified on the election. In addition to the original election, a business entity that makes an election shall file a copy of its election with its federal tax return for the year in which the election is effective. If the entity is not required to file a return, the Commissioner will require direct or indirect owners of the

entity to include copies of the election with their federal tax returns.

Notice 95–14 suggested that all the members of an electing eligible entity would be required to consent unanimously to a classification election. Most commentators stated that, although an indication of unanimity may be appropriate, a requirement that each member sign the election could cause significant administrative difficulties. In response to these comments, the proposed regulations require that an election be signed by: (1) Each member of the entity, or (2) any officer, manager, or owner who is authorized to make the election and who represents to having such authorization under penalties of perjury.

An electing eligible entity also would be required to provide its Employer Identification Number (EIN) on the election form. To reduce taxpayers' paperwork burdens when an existing entity elects to change its classification, the proposed regulations provide that if the entity already has an EIN, it will retain it even though it elects to change its tax classification. Any organization without an EIN at the time it files its election, including an organization that had not previously been treated as a separate entity for federal tax purposes, must apply for an EIN on Form SS–4 when it files its election. If a new single-member entity elects to be disregarded as an entity separate from its owner, then the taxpayer identifying number of its owner must be displayed on the election. The proposed regulations amend § 301.6109–1 to reflect these requirements.

2. Special rule for exempt organizations. A special rule is provided for eligible entities that have been determined to be, or claim to be, exempt from taxation under section 501(a). A substantial majority of exempt organizations (including those employee plans that qualify under section 401(a)) will not be eligible entities, either because they are properly classified as trusts for federal tax purposes or because they are not-for-profit corporations. However, for those exempt organizations that are eligible entities, the business entity classification that is consistent with the claim for exemption is association (taxable as a corporation). Accordingly, the proposed regulations provide that a claim or determination of exempt status by an eligible entity is treated as an election to be classified as an association. Such elections will take effect on the first day for which exemption is claimed or determined to apply, regardless of when the claim or determination is made, and will remain in effect unless an election is made to change that classification after the date that either the claim is withdrawn or rejected or the determination is revoked.

3. Limits on changes in classification by election. Notice 95–14 requested comments on whether the regulations should restrict elections to change an entity's classification. To varying degrees, commentators supported such a restriction. Under the proposed regulations, an eligible entity that makes an election to change its classification cannot change its classification by election again during the sixty months succeeding the effective date of the election. However, an existing entity that elects to change its classification as of the effective date of the proposed regulations may elect to change again within the first sixty months following the effective date.

The sixty month limitation only applies to a change in classification by election. Thus, if a new eligible entity elects out of its default classification effective from its inception, that election is not a change in the entity's classification. Furthermore, the limitation does not apply if the organization's business actually is transferred to another entity. For example, an organization could liquidate into its parent, terminate and reform as another entity (e.g., by merger), or contribute its business to another organization without restriction.

Taxpayers are reminded that a change in classification, no matter how achieved, will have certain tax consequences that must be reported. For example, if an organization classified as an association elects to be classified as a partnership, the organization and its owners must recognize gain, if any, under the rules applicable to liquidations of corporations.

D. Certain Partnership Terminations

Under section 708(b)(1)(B), a partnership is considered terminated if within a twelve month period there is a sale or exchange of fifty percent or more of the total interests in partnership capital and profits. Under this rule, a termination is treated as a liquidation of the existing partnership and the formation of a new partnership. Accordingly, if an existing partnership terminates under section 708(b)(1)(B), the newly created entity will be classified as a partnership (but could elect to change its classification thereafter).

IV. Effective Date and Transition Rules

The regulations are proposed to apply generally for periods beginning on or after the date the final regulations are published in the Federal Register. Sections 301.7701–1 through 301.7701–3 will continue to apply until these regulations are effective.

In addition, the IRS will not challenge the classification of an existing eligible entity, or an existing entity described in the list of foreign entities that are classified as corporations under the proposed regulations, for periods to which the current regulations apply if: (1) The entity had a reasonable basis (within the meaning of section 6662) for its claimed classification, (2) the entity claimed that same classification in all prior years, and (3) neither the entity nor any member has been notified in writing on or before May 8, 1996 that the classification of the entity is under examination (in which case the entity's classification will be determined in the examination).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, August 21, 1996, at 10 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by August 12, 1996 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by August 12, 1996.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Armando Gomez of the Office of Assistant Chief Counsel (Passthroughs and Special Industries) and Ronald M. Gootzeit and William H. Morris of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.581–1 is revised to read as follows:

§ 1.581–1 Tax on banks.

(a) For an institution to be a bank for purposes of section 581, it must be a corporation for federal tax purposes. See § 301.7701–2(b) of this chapter for the definition of corporation.

(b) This section applies to taxable years beginning on or after the date that final regulations are published in the Federal Register.

§ 1.581–2 [Amended]

Par. 3. In § 1.581–2, paragraph (a) is amended by removing the first sentence.

Par. 4. In § 1.761–1, paragraph (a) is revised to read as follows:

§ 1.761–1 Terms defined.

(a) *Partnership.* The term *partnership* means a partnership as determined under §§ 301.7701–1, 301.7701–2, and 301.7701–3.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority citation for part 301 continues to read in part as follows:

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

Par. 6. Section 301.6109–1, as proposed to be amended in project number INTL–0024–94, published on June 8, 1995, at 60 FR 30214, and INTL–062–90, INTL–0032–93, INTL–52–86, and INTL–52–94, published on April 22, 1996, at 61 FR 17666, is amended as follows:

1. Paragraph (b)(2)(v) is amended by removing the language ''.'' at the end of the paragraph, and replacing it with the language ''; and''.

2. Paragraph (b)(2)(vi) is added.

3. The text of paragraph (d)(2) is redesignated as paragraph (d)(2)(i).

4. A paragraph heading is added for newly designated paragraph (d)(2)(i).

5. Paragraph (d)(2)(ii) is added.

The revisions and additions read as follows:

§ 301.6109–1 Identifying numbers.

* * * * *

(b) * * *

(2) * * *

(vi) A foreign person that makes an election under § 301.7701–3(c).

* * * * *

(d) * * *

(2) *Employer identification number*—(i) *In general.* * * *

(ii) *Special rule for entities electing to change their federal tax classification under § 301.7701–3(c).* Any entity that has an employer identification number and then elects under § 301.7701–3(c) to change its federal tax classification will retain that employer identification number.

* * * * *

Par. 7. Sections 301.7701–1, 301.7701–2, and 301.7701–3 are revised to read as follows:

§ 301.7701–1 Classification of organizations for federal tax purposes.

(a) *Organizations for federal tax purposes*—(1) *In general.* The Internal Revenue Code prescribes the classification of various organizations for federal tax purposes. Whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.

(2) *Certain joint undertakings give rise to entities for federal tax purposes.* A joint venture or other contractual arrangement may create a separate entity for federal tax purposes if the participants carry on a trade, business, financial operation, or venture and divide the profits therefrom. For example, a separate entity exists for federal tax purposes if co-owners of an apartment building lease space and in addition provide services to the occupants either directly or through an agent. Nevertheless, a joint undertaking merely to share expenses does not create a separate entity for federal tax purposes. For example, if two or more persons jointly construct a ditch merely to drain surface water from their properties, they have not created a separate entity for federal tax purposes. Similarly, mere co-ownership of property that is maintained, kept in repair, and rented or leased does not constitute a separate entity for federal tax purposes. For example, if an individual owner, or tenants in common, of farm property lease it to a farmer for a cash rental or a share of the crops, they do not necessarily create a separate entity for federal tax purposes.

(3) *Certain local law entities not recognized.* An entity formed under local law is not always recognized as a separate entity for federal tax purposes. For example, an organization wholly owned by a State is not recognized as a separate entity for federal tax purposes if it is an integral part of the State. Similarly, tribes incorporated under section 17 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 477, or under section 3 of the Oklahoma Indian Welfare Act, as amended, 25 U.S.C. 503, are not recognized as separate entities for federal tax purposes.

(4) *Single owner organizations.* Under §§ 301.7701–2 and 301.7701–3, certain organizations that have a single owner can choose to be recognized or disregarded as entities separate from their owners.

(b) *Classification of organizations.* The classification of organizations that are recognized as separate entities is determined under §§ 301.7701–2, 301.7701–3, and 301.7701–4 (unless a provision of the Internal Revenue Code provides for special treatment of that organization). For the classification of organizations as trusts, see § 301.7701–4. That section provides that trusts generally do not have associates or an objective to carry on business for profit. Sections 301.7701–2 and 301.7701–3 provide rules for classifying organizations that are not classified as trusts.

(c) *Qualified cost sharing arrangements.* See § 301.7701–3(e) as contained in 26 CFR Part 301 as revised as of April 1, 1996.

(d) *Domestic and foreign entities.* For purposes of this section and

§§ 301.7701–2 and 301.7701–3, an entity is a domestic entity if it is created or organized in the United States or under the law of the United States or of any State; an entity is foreign if it is not domestic. See sections 7701(a)(4) and (a)(5).

(e) *State.* For purposes of this section and § 301.7701–2, the term *State* includes the District of Columbia.

(f) *Effective date.* The rules of this section apply to periods beginning on or after the date that final regulations are published in the Federal Register.

§ 301.7701–2 Business entities; definitions.

(a) *Business entities.* For purposes of this section and § 301.7701–3, a *business entity* is any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701–3) that is not properly classified as a trust under § 301.7701–4 (or otherwise subject to special treatment under the Internal Revenue Code). A business entity with two or more members is classified for federal tax purposes as either a corporation or a partnership. A business entity with only one owner is classified as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner.

(b) *Corporations.* For federal tax purposes, the term *corporation* means—

(1) A business entity organized under a Federal or State statute, or under a statute of a federally recognized Indian tribe, if the statute describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic;

(2) An association (as determined under § 301.7701–3);

(3) A business entity organized under a State statute, if the statute describes or refers to the entity as a joint-stock company or joint-stock association;

(4) A business entity that is taxable as an insurance company under subchapter L, chapter 1 of the Internal Revenue Code;

(5) A State-chartered business entity conducting banking activities, if any of its deposits are insured under the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811 *et seq.*, or a similar federal statute;

(6) A business entity wholly owned by a State or any political subdivision thereof;

(7) A business entity that is taxable as a corporation under a provision of the Internal Revenue Code other than section 7701(a)(3); and

(8) Except as provided in paragraph (d) of this section, the following business entities formed in the following jurisdictions:

American Samoa, Corporation
Argentina, Sociedad Anonima
Aruba, Naamloze Vennootschap
Australia, Public Limited Company
Austria, Aktiengesellschaft
Barbados, Limited Company
Belize, Public Limited Company
Belgium, Societe Anonyme or Naamloze Vennootschap
Bolivia, Sociedad Anonima
Brazil, Sociedade Anonima
Canada, Corporation
Chile, Sociedad Anonima
People's Republic of China, Company Limited by Shares
Republic of China (Taiwan), Company Limited by Shares
Colombia, Sociedad Anonima
Costa Rica, Sociedad Anonima
Cyprus, Public Limited Company
Czech Republic, Akciova Spolecnost
Denmark, Aktieselskab
Ecuador, Sociedad Anonima or Compania Anonima
El Salvador, Sociedad Anonima
Egypt, Sharikat Al-Mossahamah
Finland, Osakeyhtio/Aktiebolag
France, Societe Anonyme
Germany, Aktiengesellschaft
Greece, Anonymos Etairia
Guam, Corporation
Guatemala, Sociedad Anonima
Guyana, Public Limited Company
Honduras, Sociedad Anonima
Hong Kong, Public Limited Company
Hungary, Reszvenytarsasag
Iceland, Hlutafelag
India, Public Limited Company
Indonesia, Perseroan Terbatas
Ireland, Public Limited Company
Israel, Public Limited Company
Italy, Societa per Azioni
Jamaica, Public Limited Company
Japan, Kabushiki Kaisha
Kazakstan, Ashyk Aktsionerlik Kogham
Republic of Korea, Chusik Hoesa
Liberia, Corporation
Luxembourg, Societe Anonyme
Malaysia, Berhad
Malta, Partnership *Anonyme*
Mexico, Sociedad Anonima
Morocco, Societe Anonyme
Netherlands, Naamloze Vennootschap
Netherlands Antilles, Naamloze Vennootschap
New Zealand, Limited Company
Nicaragua, Compania Anonima
Nigeria, Public Limited Company
Northern Mariana Islands, Corporation
Norway, Aksjeselskap
Pakistan, Public Limited Company
Panama, Sociedad Anonima
Paraguay, Sociedad Anonima
Peru, Sociedad Anonima
Philippines, Stock Corporation
Poland, Spolka Akcyjna
Portugal, Sociedade Anonima
Puerto Rico, Corporation
Romania, Societe pe Actiuni
Russia, Otkrytoye Aktsionernoy Obshchestvo
Saudi Arabia, Sharikat Al-Mossahamah
Singapore, Public Limited Company
Slovak Republic, Akciova Spolocnost
South Africa, Public Limited Company
Spain, Sociedad Anonima
Surinam, Naamloze Vennootschap
Sweden, Aktiebolag
Switzerland, Aktiengesellschaft or Societe Anonyme
Thailand, Borisat Chamkad (Machachon)
Trinidad & Tobago, Public Limited Company
Turkey, Anonim Sirket
Tunisia, Societe Anonyme
Ukraine, Aktsionerne Tovaristvo Vidkritogo Tipu
United Kingdom, Public Limited Company
United States Virgin Islands, Corporation
Uruguay, Sociedad Anonima
Venezuela, Sociedad Anonima or Compania Anonima

(c) *Other business entities.* For federal tax purposes—

(1) The term *partnership* means a business entity that is not a corporation under paragraph (b) of this section and that has at least two members; and

(2) A business entity that has a single owner and is not a corporation under paragraph (b) of this section is disregarded as an entity separate from its owner.

(d) *Special rule for certain foreign business entities.* A foreign business entity described in paragraph (b)(8) of this section is classified as a partnership if—

(1) The entity was in existence and claimed to be a partnership on May 8, 1996 and for all prior periods;

(2) That classification was relevant to any person for federal tax purposes at any time during the period that includes May 8, 1996;

(3) The entity had a reasonable basis (within the meaning of section 6662) for claiming partnership classification; and

(4) Neither the entity nor any member has been notified in writing on or before May 8, 1996 that the classification of the entity is under examination (in which case the entity's classification will be determined in the examination).

(e) *Effective date.* The rules of this section apply to periods beginning on or after the date that final regulations are published in the Federal Register.

§ 301.7701–3 Classification of certain business entities.

(a) *In general.* A business entity that is not classified as a corporation under § 301.7701–2(b) (1), (3), (4), (5), (6), (7), or (8) (an *eligible entity*) can elect its classification for federal tax purposes as provided in this section. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701–2(b)(2)) or a partnership, and an eligible entity with a single member can elect to be classified as an association or to be disregarded as an entity separate from its owner. Paragraph (b) of this section provides a default classification for an eligible entity that does not make an election. Thus, elections are necessary only when an eligible entity chooses to be classified initially as other than the default classification or when an eligible entity chooses to change its classification. Paragraph (c) of this section provides rules for making express elections. Paragraph (d) of this section provides a special rule for classifying an entity created pursuant to a termination of a partnership under section 708(b)(1)(B). Paragraph (e) of this section sets forth the effective date of this section and a special rule relating to prior periods.

(b) *Classification of eligible entities that do not file an election—(1) Domestic eligible entities.* Except as provided in paragraph (b)(3) of this section, unless the entity elects otherwise, a domestic eligible entity is—

(i) A partnership if it has two or more members; or

(ii) Disregarded as an entity separate from its owner if it has a single owner.

(2) *Foreign eligible entities—(i) In general.* Except as provided in paragraph (b)(3) of this section, unless the entity elects otherwise, a foreign eligible entity is—

(A) A partnership if it has two or more members and any member has unlimited liability;

(B) An association if no member has unlimited liability; or

(C) Disregarded as an entity separate from its owner if it has a single owner that has unlimited liability.

(ii) *Definition of unlimited liability.* For purposes of paragraph (b)(2)(i) of this section, a member of a foreign eligible entity has unlimited liability if the member has personal liability for the debts of or claims against the entity, by reason of being a member, based solely on the statute or law pursuant to which the entity is organized. A member has personal liability if creditors of the entity may seek satisfaction of debts of or claims against the entity from the member as such. A member has personal liability for purposes of this paragraph even if the member makes an agreement under which another person (whether or not a member of the entity) assumes such liability or agrees to indemnify such member for any such liability.

(3) *Existing eligible entities.* Unless the entity elects otherwise, an eligible entity in existence prior to the effective date of this section will have the same classification that the entity claimed under §§ 301.7701–1 through 301.7701–3 as in effect on the date prior to the effective date of this section; except that if an eligible entity with a single owner claimed to be a partnership under those regulations, the entity will be disregarded as an entity separate from its owner under this paragraph. For special rules regarding the classification of such entities for periods prior to the effective date of this section, see paragraph (e)(2) of this section. For purposes of this paragraph, a foreign eligible entity is treated as being in existence prior to the effective date of this section only if the entity's classification is relevant to any person for federal tax purposes at any time during the period that includes the date immediately prior to the effective date of this section.

(c) *Elections—(1) Time and place for filing*—(i) *In general.* Except as provided in paragraphs (c)(1)(ii) and (iii) of this section, an eligible entity may elect to be classified other than as provided under paragraph (b) of this section, or to change its classification, by filing an election with the appropriate service center. Such an election shall specify the name, address, and taxpayer identifying number of the entity, the chosen classification, whether the election results in a change in classification, and whether the entity is a domestic or foreign entity. The election will be effective on the date specified on the election if that date is not more than 75 days prior to the date on which the election is filed, or on the date filed if no such date is specified on the election. If the Commissioner prescribes a form for this purpose, the election shall be made on such form. See § 301.6109–1 for rules on applying for and displaying Employer Identification Numbers.

(ii) *Limitation.* If an eligible entity makes an election under this paragraph (c) to change its classification (other than an election made by an existing entity to change its classification as of the effective date of this section), it cannot change its classification by election again during the sixty months succeeding the effective date of the election.

(iii) *Special rule for exempt organizations.* An eligible entity that has been determined to be, or claims to be, exempt from taxation under section 501(a) is treated as having made an election under this section to be classified as an association. Such election will be effective as of the first date for which exemption is claimed or determined to apply, regardless of when the claim or determination is made, and will remain in effect unless an election is made under paragraph (c)(1)(i) of this section after the date the claim for exempt status is withdrawn or rejected or the date the determination of exempt status is revoked.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (c)(1):

Example 1. On July 1, 1998, X, a domestic corporation, purchases a 10% interest in Y, an eligible entity formed under Country A law in 1990. The entity's classification was not relevant to any person for federal tax purposes prior to X's acquisition of an interest in Y. Thus, Y is not considered to be in existence on the effective date of this section for purposes of paragraph (b)(3) of this section. Under the applicable Country A statute, no member of Y has unlimited liability as defined in paragraph (b)(2)(ii) of this section. Accordingly, Y is classified as an association under paragraph (b)(2)(i)(B) of this section unless it elects under paragraph (c) of this section to be classified as a partnership. To be classified as a partnership as of July 1, 1998, Y must file the election by September 13, 1998. See paragraph (c)(1)(i) of this section. Because an election cannot be effective more than 75 days prior to the date on which it is filed, if Y files its election after September 13, 1998, it will be classified as an association from July 1, 1998, until the effective date of the election. In that case, it could not change its classification by election under paragraph (c) of this section during the sixty months succeeding the effective date of the election.

Example 2. (i) Z is an eligible entity formed under Country B law and is in existence on the effective date of this section within the meaning of paragraph (b)(3) of this section. Prior to the effective date of this section, Z claimed to be classified as an association. Unless Z files an election under paragraph (c) of this section, it will continue to be classified as an association under paragraph (b)(3) of this section.

(ii) Z files an election under paragraph (c) of this section to be classified as a partnership, effective as of the effective date of this section. Z can file an election to be classified as an association at any time thereafter, but then would not be permitted to change its classification by election during the sixty months succeeding the effective date of that subsequent election.

(2) *Authorized signatures.* An election made under paragraph (c)(1)(i) of this section must be signed by—

(i) Each member of the electing entity; or

(ii) Any officer, manager, or member of the electing entity who is authorized to make the election and who represents to having such authorization under penalties of perjury.

(3) *Further notification of elections.* An eligible entity required to file a federal tax return for the taxable year for which an election is made under paragraph (c)(1)(i) of this section shall attach a copy of the form filed in accordance with paragraph (c)(1)(i) of this section to its federal tax return for that year. If the entity is not required to file a return for that year, the Commissioner will require that a copy of such form be attached to the federal income tax return of any direct or indirect owner of the entity for the taxable year of the owner that includes the date on which the election was effective.

(d) *Special rule for certain partnership terminations.* When a partnership terminates by operation of section 708(b)(1)(B) (on the sale or exchange of fifty percent or more of the total interests in partnership capital or profits within a twelve month period), the resulting entity created by such termination is a partnership.

(e) *Effective date—(1) In general.* The rules of this section apply to periods beginning on or after the date that final regulations are published in the Federal Register.

(2) *Prior treatment of existing entities.* In the case of a business entity that is not described in § 301.7701–2(b) (1), (3), (4), (5), (6), or (7), and that is in existence prior to the effective date of this section, the entity's claimed classification will be respected for all periods prior to the effective date of this section if—

(i) The entity had a reasonable basis (within the meaning of section 6662) for its claimed classification;

(ii) The entity claimed that same classification for all prior periods; and

(iii) Neither the entity nor any member has been notified in writing on or before May 8, 1996 that the classification of the entity is under examination (in which case the entity's classification will be determined in the examination).

Par. 8. Section 301.7701–4 is amended as follows:

1. The last sentence of paragraphs (b), (c)(1), (c)(2) *Example 1,* and (c)(2) *Example 3* are revised.

2. Paragraph (f) is added.

The revisions and additions read as follows:

§ 301.7701–4 Trusts.

* * * * *

(b) *Business trusts.* * * * The fact that any organization is technically cast in the trust form, by conveying title to property to trustees for the benefit of persons designated as beneficiaries, will not change the real character of the organization if the organization is more properly classified as a business entity under § 301.7701–2.

(c) * * * (1) * * * An investment trust with multiple classes of ownership interests ordinarily will be classified as a business entity under § 301.7701–2; however, an investment trust with multiple classes of ownership interests, in which there is no power under the trust agreement to vary the investment of the certificate holders, will be classified as a trust if the trust is formed to facilitate direct investment in the assets of the trust and the existence of multiple classes of ownership interests is incidental to that purpose.

(2) * * *

Example 1. * * * As a consequence, the existence of multiple classes of trust ownership is not incidental to any purpose of the trust to facilitate direct investment, and, accordingly, the trust is classified as a business entity under § 301.7701–2.

* * * * *

Example 3. * * * Accordingly, the trust is classified as a business entity under § 301.7701–2.

* * * * *

(f) *Effective date.* The rules of this section generally apply to taxable years beginning after December 31, 1960. Paragraph (e)(5) of this section contains rules of applicability for paragraph (e) of this section. In addition, the last sentences of paragraphs (b), (c)(1), and (c)(2) *Example 1* and *Example 3* of this section apply to taxable years beginning on or after the date that final regulations are published in the Federal Register.

Par. 9. Section 301.7701–6 is revised to read as follows:

§ 301.7701–6 Definitions; person, fiduciary.

(a) *Person.* The term *person* includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization or group. The term also includes a guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.

(b) *Fiduciary*—(1) *In general.* Fiduciary is a term that applies to persons who occupy positions of peculiar confidence toward others, such as trustees, executors, and administrators. A fiduciary is a person who holds in trust an estate to which another has a beneficial interest, or receives and controls income of another, as in the case of receivers. A committee or guardian of the property of an incompetent person is a fiduciary.

(2) *Fiduciary distinguished from agent.* There may be a fiduciary relationship between an agent and a principal, but the word agent does not denote a fiduciary. An agent having entire charge of property, with authority to effect and execute leases with tenants entirely on his own responsibility and without consulting his principal, merely turning over the net profits from the property periodically to his principal by virtue of authority conferred upon him by a power of attorney, is not a fiduciary within the meaning of the Internal Revenue Code. In cases when no legal trust has been created in the estate controlled by the agent and attorney, the liability to make a return rests with the principal.

(c) *Effective date.* The rules of this section are effective on the date that final regulations are published in the Federal Register.

§ 301.7701–7 [Removed]

Par. 10. Section 301.7701–7 is removed.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Meeting of the Federal Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Secretary of the Department of the Interior (Department) established a Federal Gas Valuation Negotiated Rulemaking Committee (Committee) to develop specific recommendations with respect to Federal gas valuation under its responsibilities imposed by the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA). The Department has determined that the establishment of this Committee is in the public interest and will assist the agency in performing its duties under FOGRMA.

MMS published a proposed rule on November 6, 1995, in the Federal