

particular, sections 5, 5a, 5b, 6(a), 6b, 8a(7), and 8c, 7 U.S.C. 7, 7a, 7b, 8(a), 8b, 12a(7), 12a(9), and 12c, the Commission hereby proposes to amend Part 1 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

**PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT**

1. The authority citation for Part 1 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, 24.

2. Section 1.35 is proposed to be amended by revising paragraph (a-1)(5) to read as follows:

**§ 1.35 Records of cash commodity, futures and option transactions.**

\* \* \* \* \*

(a-1) \* \* \*

(5) *Post-execution allocation of bunched orders.* Specific customer account identifiers for accounts included in bunched orders need not be recorded at time of order placement or upon report of execution if the requirements of paragraphs (a-1)(5)(i)-(iv) are met.

(i) *Eligible account managers.* The person placing and directing the allocation of an order eligible for post-execution allocation must have been granted written investment discretion with regard to participating customer accounts. The following persons shall qualify as eligible account managers:

(A) A commodity trading advisor registered with the Commission pursuant to the Act or excluded or exempt from registration under the Act or the Commission's rules, except for entities exempt under § 4.14(a)(3) or § 4.14(a)(6) of this chapter;

(B) An investment adviser registered with the Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940 or with a state pursuant to applicable state law or excluded or exempt from registration under such Act or applicable state law or rule;

(C) A bank, insurance company, trust company, or savings and loan association subject to federal or state regulation; or

(D) A foreign adviser that exercises discretionary trading authority solely over the accounts of non-U.S. persons, as defined in § 4.7(a)(1)(iv) of this chapter.

(ii) *Information.* Eligible account managers shall make the following information available to customers upon request:

(A) The general nature of the allocation methodology the account manager will use;

(B) Whether accounts in which the account manager may have any interest may be included with customer accounts in bunched orders eligible for post-execution allocation; and

(C) Summary or composite data sufficient for that customer to compare its results with those of other comparable customers and, if applicable, any account in which the account manager has an interest.

(iii) *Allocation.* Orders eligible for post-execution allocation must be allocated by an eligible account manager in accordance with the following:

(A) Allocations must be made as soon as practicable after the entire transaction is executed, but in any event account managers must provide allocation information to futures commission merchants no later than a time sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate customer for each trade.

(B) Allocations must be fair and equitable. No account or group of accounts may receive consistently favorable or unfavorable treatment.

(C) The allocation methodology must be sufficiently objective and specific to permit independent verification of the fairness of the allocations using that methodology by appropriate regulatory and self-regulatory authorities and by outside auditors.

(iv) *Records.*

(A) Eligible account managers shall keep and must make available upon request of any representative of the Commission, the United States Department of Justice, or other appropriate regulatory agency, the information specified in paragraph (a-1)(5)(ii) of this section.

(B) Eligible account managers shall keep and must make available upon request of any representative of the Commission, the United States Department of Justice, or other appropriate regulatory agency, records sufficient to demonstrate that all allocations meet the standards of paragraph (a-1)(5)(iii) of this section and to permit the reconstruction of the handling of the order from the time of placement by the account manager to the allocation to individual accounts.

(C) Futures commission merchants that execute orders or that carry accounts eligible for post-execution allocation, and members of contract markets that execute such orders, must maintain records that, as applicable, identify each order subject to post-execution allocation and the accounts to

which contracts executed for such order are allocated.

(D) In addition to any other remedies that may be available under the Act or otherwise, if the Commission has reason to believe that an account manager has failed to provide information requested pursuant to paragraph (a-1)(5)(iv)(A) or (a-1)(5)(iv)(B) of this section, the Commission may inform in writing any designated contract market or derivatives transaction execution facility and that designated contract market or derivatives transaction execution facility shall prohibit the account manager from submitting orders for execution except for liquidation of open positions and no futures commission merchants shall accept orders for execution on any designated contract market or derivatives transaction execution facility from the account manager except for liquidation of open positions.

(E) Any account manager that believes he or she is or may be adversely affected or aggrieved by action taken by the Commission under paragraph (D) of this section shall have the opportunity for a prompt hearing in accordance with the provisions of § 21.03(g) of this chapter.

\* \* \* \* \*

Issued in Washington, DC on March 10, 2003 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 03-6177 Filed 3-13-03; 8:45 am]

**BILLING CODE 6351-01-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG-131478-02]

**RIN 1545-BB25**

**Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations; withdrawal of notice of proposed rulemaking; and notice of public hearing.

**SUMMARY:** In the rules and regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations under section 1502 that redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain

transfers of such stock. In addition, temporary regulations suspend certain losses recognized on the disposition of such stock. The regulations apply to corporations filing consolidated returns. The text of the temporary regulations serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by June 12, 2003. Outlines of topics to be discussed at the public hearing scheduled for June 20, 2003, at 10 a.m., must be received by May 30, 2003.

**ADDRESSES:** Send submissions to: CC:PA:RU (REG-131478-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:RU (REG-131478-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs). The public hearing will be held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Aimee K. Meacham, (202) 622-7530; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya M. Cruse, (202) 622-7180 (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(d)). 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, W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by May 13, 2003.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper

performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in §§ 1.1502-35T(c), 1.1502-35T(c)(5)(iii), 1.1502-35T(f)(2) and 1.1502-35T(g)(3). This information is required by the IRS to verify compliance with section 1502. This information will be used to determine whether the amount of tax has been calculated correctly. The collection of information is required to properly determine the amount permitted to be taken into account as a loss. The respondents are corporations filing consolidated returns. The collection of information is required to obtain a benefit.

*Estimated total annual reporting and/or recordkeeping burden:* 15,000 hours.

*Estimated average annual burden per respondent and/or recordkeeper:* 2 hours.

*Estimated number of respondents and/or recordkeepers:* 7,475.

*Estimated annual frequency of responses:* On occasion.

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

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

##### **Background**

Temporary regulations in the rules and regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 1502. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations contains a full explanation of the

reasons underlying the issuance of the proposed regulations.

##### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations, which tend to be larger businesses. Moreover, the number of taxpayers affected and the average burden are minimal. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

##### **Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 20, 2003, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight copies) by May 30, 2003. 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 author of these regulations is Aimee K. Meacham of the Office of Associate Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, proposed regulations published on October 23, 2002 (67 FR 65066), are withdrawn, and 26 CFR part 1 is 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 \* \* \*, 26 U.S.C. 1502 \* \* \*

**Par. 2.** Section 1.1502-21 is amended by:

- 1. Revising paragraph (b)(1).
- 2. Adding paragraph (b)(3)(v) and (h)(7).

The revision and addition read as follows:

**§ 1.1502-21 Net operating losses.**

\* \* \* \* \*

(b) \* \* \*

(1) [The text of the proposed amendment to § 1.1502-21(b)(1) is the same as the text of § 1.1502-21T(b)(1) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(3) \* \* \*

(v) [The text of the proposed amendment to § 1.1502-21(b)(3)(v) is the same as the text of § 1.1502-21T(b)(3)(v) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(h) \* \* \*

(7) [The text of the proposed amendment to § 1.1502-21(h)(7) is the same as the text of § 1.1502-21T(h)(7) published elsewhere in this issue of the **Federal Register**].

**Par. 3.** Section 1.1502-32 is amended by:

- 1. Revising paragraphs (a)(2) and (h).
- 2. Adding paragraphs (b)(3)(iii)(C), (b)(3)(iii)(D), (b)(3)(vi) and (h)(6).

The revision and additions read as follows:

**§ 1.1502-32 Investment adjustments.**

\* \* \* \* \*

(a)(2) [The proposed amendment to § 1.1502-32(a)(2) is the same as § 1.1502-32T(a)(2) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(b) \* \* \* (1) \* \* \*

(3) \* \* \*

(iii) \* \* \*

(C) and (D) [The proposed amendment to § 1.1502-32(b)(3)(iii)(C) and (b)(3)(iii)(D) are the same as § 1.1502-32T(b)(3)(iii)(C) and (b)(3)(iii)(D) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(4)(i) \* \* \*

(vi) [The proposed amendment to § 1.1502-32(b)(4)(vi) is the same as § 1.1502-32T(b)(4)(vi) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(h)(6) [The proposed amendment to § 1.1502-32(h)(6) is the same as § 1.1502-32T(h)(6) published elsewhere in this issue of the **Federal Register**].

**Par. 4.** Section 1.1502-35 is added to read as follows:

**§ 1.1502-35 Transfers and issuances of subsidiary member stock.**

[The text of proposed § 1.1502-35 is the same as the text of § 1.1502-35T published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

**David A. Mader,**

*Assistant Deputy Commissioner of Internal Revenue.*

[FR Doc. 03-6118 Filed 3-11-03; 1:04 pm]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AI69**

**Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Yermo xanthocephalus* (Desert Yellowhead)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), propose to designate critical habitat for *Yermo xanthocephalus* (desert yellowhead) pursuant to the Endangered Species Act (Act) of 1973. *Y. xanthocephalus* was

federally listed as threatened throughout its range in central Wyoming in 2002. Approximately 146 hectares (ha) (360 acres (ac)) in Fremont County, Wyoming, are proposed for designation as critical habitat for *Y. xanthocephalus*. The proposed critical habitat occurs entirely on land managed by the Bureau of Land Management (BLM).

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat.

**DATES:** We will accept comments until the close of business on May 13, 2003. Public hearing requests must be received by April 28, 2003.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

(1) You may submit written comments and information to the Field Supervisor, Wyoming Field Office, U.S. Fish and Wildlife Service, 4000 Airport Parkway, Cheyenne, Wyoming 82001.

(2) You may hand-deliver written comments to our Wyoming Field Office at the address given above.

(3) You may send comments by electronic mail (e-mail) to *fw6\_desertyellowhead@fws.gov*. See the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jodi Bush, Assistant Field Supervisor, Wyoming Field Office, U.S. Fish and Wildlife Service, at the above address (telephone: 307-772-2374; facsimile: 307-772-2358; e-mail: *Jodi\_Bush@fws.gov*).

**SUPPLEMENTARY INFORMATION:**

**Background**

Wyoming botanist Robert Dorn discovered *Yermo xanthocephalus* (desert yellowhead) while conducting field work in the Beaver Rim area of central Wyoming in 1990. Dorn discovered a small population of an unusual species of Composite (Asteraceae). Dorn's closer examination revealed that the species was unknown