Company C wins the tender and signs the contract with Company P with the blacklist provision. Does Company C's action constitute participation in or cooperation with an international boycott under section 999[b][3][A][i][ii]? A: Yes. (See Guideline H-1A.) Although the boycott is not implemented by Country W, but by Country X, and the project is being carried out in Country W, Company C has agreed not to do business with blacklisted U.S. companies as a condition of doing business indirectly with Country X. On the other hand, if the contract financed by Country X in Country W precluded the use of Country Y goods in connection with the project in Country W, the exception reflected in section 999[b][4][B] would apply to Company C's agreement and that agreement would not constitute participation in or cooperation with an international boycott.

Company C competes for an industrial plant construction contract for which Company P of Country W is inviting international tenders. The contract is to be financed by Country X which maintains a blacklist of companies. Country X requires contractors for projects which it finances to state that the contractor is required to refrain from making any purchase for the project from any blacklisted company. Country W does not boycott those companies.
C-2. Q: Company C is engaged in the sale of machinery to Country W. Company C has no knowledge or reason to know that Country W requires participation in cooperation with an international boycott as a condition of doing business within Country W or with its government, companies or nationals, except that Company C is asked to sign a contract with Country W of the type described in Guideline M–5. Does Company C have knowledge that Country W is a boycotting country such that its operations with Country W are reportable?

A: No. Where the only Country W requirements of which Company C knows or has reason to know involve requests which, if agreed to, are not defined to constitute participation in cooperation with an international boycott, Company C has no reason to treat Country W as a boycotting country.

H–37. Q: Company C signs a contract which provides that in connection with its performance Company C acknowledges that the import and customs laws and regulations of Country X shall apply to the furnishing and shipment of any products or components thereof to Country X, and that Company C acknowledges that such import and customs laws and regulations prohibit, among other things, the importation into Country X of products or components: (1) originating in Country Y; (2) manufactured, produced or furnished by companies organized under the laws of Country Y; and (3) manufactured, produced or furnished by nationals or residents of Country Y. Does Company C’s contract constitute an agreement under section 999(b)[3]?

A: No. (see Guideline H–3). Company C has merely acknowledged that such import and customs laws shall apply to the furnishing of goods under the contract. However, an agreement by Company C to comply with Country X’s restriction on the importation of goods furnished either by companies organized under Country Y’s laws or by nationals of Country Y would constitute an agreement under section 999(b)[3].

H–38. Q: Company C signs a contract in which it agrees to comply with the laws, rules and regulations of Country X, except to the extent such compliance is penalized under laws of the United States. Does Company C’s contract constitute an agreement under section 999(b)[3]?

A: No. Agreement to comply with the laws, rules and regulations of Country X does not constitute an agreement under section 999(b)[3] when such a commitment is qualified by making an agreement to comply outside compliance penalized by U.S. law, including section 999. Any phrase which effectively excludes the agreements described in section 999 from the requirements of a contract with Country X would support the same result. For example, a compliance clause qualified by “except to the extent inconsistent with U.S. law” would also suffice to take the contract out of the coverage of section 999. However, a compliance clause qualified by the phrase “except to the extent prohibited by U.S. law” would not defeat the presumption that the contractual provision requires agreements penalized under section 999, since section 999 does not prohibit anything, but merely penalizes certain agreements.

H–39. Q: Company C signs a contract to construct an industrial plant in Country X. The contract states that the laws, regulations, requirements or administrative practices of Country X shall govern Company C’s performance of the contract in Country X. The laws, regulations, requirements or administrative practices of Country X prohibit the importation into Country X of goods manufactured by any company engaged in trade in Country Y or with the government, companies or nationals of Country Y. Does Company C’s action constitute an agreement under section 999(b)[3]?

A: Yes. Company C would have agreed to comply with the laws, regulations, requirements or administrative practices of Country X.

M–14. Q: Company C signs a contract to export goods to Country X. The contract provides that payment will be made by means of a letter of credit confirmed by Bank C. The letter of credit requires Company A to provide to Bank C a certificate stating that the ship on which the goods are to be shipped is eligible to enter the ports of Country X in conformity with its laws and regulations, and that the insurer of the goods has a duly qualified and appointed agent or representative in Country X. Country X’s laws and regulations prohibit, Inter alia, blacklisted vessels from calling at its ports and blacklisted insurance companies from qualifying or appointing an agent in Country X. Bank C confirms the letter of credit requiring the shipping and insurance certificates. Does Bank C’s action constitute an agreement under section 999(b)[3]?

A: Yes. Unless Country X has offered the kind of explanation described in Guidelines M–12 and M–13, Bank C’s confirmation of the letter of credit constitutes an agreement to refrain from doing business with a U.S. person under section 999(b)[3][A][i]. The answer would be the same under section 999(b)[3][A][ii], if the beneficiary of the letter of credit were organized under the laws of Country Y, and under section 999(b)[3][A][iii], if Bank C had reason to know that it would not be able to obtain the required certificate because of the nationality, race, or religion of the beneficiary’s ownership, management, or directors. See Guideline H–29A.

L–6. Q: Company C signs a construction contract that provides that Company C is not to employ individuals or nationals of any country not diplomatically recognized by Country X. Does Company C’s action constitute participation in or cooperation with an international boycott under section 999(b)[3][A][iv]?

A: To the extent that Country X is only one of several countries not recognized by Country X, the exclusion of nationals from unrecognized countries under the contract is not, on its face, boycott related. In those circumstances, agreement to the clause in question would not constitute an agreement to participate in or cooperate with an international boycott under section 999(b)[3]. However, where Country X is the only country not recognized by Country X, agreement to such a clause will constitute an agreement to participate in or cooperate with an international boycott under section 999(b)[3]
included only the acceptable alternative. If Company C were to utilize a ship “eligible to enter the ports of Country X,” Guideline M-10 would apply.

Dated: April 9, 1984.

John E. Chapoton,
Assistant Secretary (Tax Policy).

[F.R. Doc. 84-10290 Filed 4-25-84; 8:45 am]
BILLING CODE 4810-25-M

Fiscal Service

[Dept. Cir. 570, 1983 Rev., Supp. No. 21]

Midwestern Casualty & Surety Co.; Surety Companies Acceptable on Federal Bonds; Termination of Authority

Notice is hereby given that the certificate of authority issued by the Treasury to Midwestern Casualty & Surety Company, under Sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective this date.

The company was last listed as an acceptable surety on Federal bonds at 48 FR 30533, July 1, 1983.

With respect to any bonds currently in force with Midwestern Casualty & Surety Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the company.

Questions concerning this notice may be directed to the Operations Staff (Surety), Banking and Cash Management, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20222, telephone (202) 694-5745.


W. E. Douglas,
Commissioner.

[F.R. Doc. 84-11270 Filed 4-25-84; 8:45 am]
BILLING CODE 4810-25-M