interpretation does not address the meaning or scope of contracts of sale of a commodity for future delivery, the forward contract exclusion from the term ''future delivery'' set forth in CEA section 1a(27),[22] or the forward contract exclusion from the term ''swap'' set forth in CEA section 1a(47)(B)(ii).[23] Nor does this interpretation alter any statutory interpretation or statement of Commission policy relating to the forward contract exclusion.[24]

II. Commission Interpretation of ''Actual Delivery''

In the view of the Commission, the determination of whether ''actual delivery'' has occurred within the meaning of new CEA section 2(c)(2)(D)(ii)(III)(aa) requires consideration of evidence regarding delivery beyond the four corners of contract documents. This interpretation of the statutory language is based on Congress's use of the word ''actual'' to modify ''delivery'' and on the legislative history of new CEA section 2(c)(2)(D)(ii)(III)(aa) described above. Consistent with this interpretation of the statutory language, in determining whether actual delivery has occurred within 28 days, the Commission will employ a functional approach and examine how the agreement, contract, or transaction is marketed, managed, and performed, instead of relying solely on language used by the parties in the agreement, contract, or transaction. This approach best accomplishes Congress's intent when it enacted section 742(a) of the Dodd-Frank Act and gives full meaning to Congress's term ''actual delivery.''

Relevant factors in this determination include the following: ownership, possession, title, and physical location of the commodity purchased or sold, both before and after execution of the agreement, contract, or transaction; the nature of the relationship between the buyer, seller, and possessor of the commodity purchased or sold; and the manner in which the purchase or sale is recorded and completed. The Commission provides the following examples to illustrate how it will determine whether actual delivery has occurred within the meaning of new CEA section 2(c)(2)(D)(ii)(III)(aa).

Example 1: Actual delivery will have occurred if, within 28 days, the seller has physically delivered the entire quantity of the commodity purchased by the buyer, including any portion of the purchase made using leverage, margin, or financing, into the possession of the buyer and has transferred title to that quantity of the commodity to the buyer.

Example 2: Actual delivery will have occurred if, within 28 days, the seller has physically delivered the entire quantity of the commodity purchased by the buyer, including any portion of the purchase made using leverage, margin, or financing, whether in specifically segregated or fungible bulk form, into the possession of a depository other than the seller and its parent company, partners, agents, and other affiliates, that is: (a) A financial institution as defined by the CEA; (b) a depository, the warrants or warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the Commission; or (c) a storage facility licensed or regulated by the United States or any United States agency, and has transferred title to that quantity of the commodity to the buyer.[25]

Example 3: Actual delivery will *not* have occurred if, within 28 days, a book entry is made by the seller purporting to show that delivery of the commodity has been made to the buyer and/or that a sale of a commodity has subsequently been covered or hedged by the seller through a third party contract or account, but the seller has not, in accordance with the methods described in Example 1 or 2, physically delivered the entire quantity of the commodity purchased by the buyer, including any portion of the purchase made using leverage, margin, or financing, and transferred title to that quantity of the commodity to the buyer, regardless of whether the agreement, contract, or transaction between the buyer and seller purports to create an enforceable obligation on the part of the seller, or a parent company, partner, agent, or other affiliate of the seller, to deliver the commodity to the buyer.

Example 4: Actual delivery will *not* have occurred if, within 28 days, the seller has purported to physically deliver the entire quantity of the commodity purchased by the buyer, including any portion of the purchase made using leverage, margin, or financing, in accordance with the method described in Example 2, and transfer title to that quantity of the commodity to the buyer, but the title document fails to identify the specific financial institution, depository, or storage facility with possession of the commodity, the quality specifications of the commodity, the identity of the party transferring title to the commodity to the buyer, and the segregation or allocation status of the commodity.

Example 5: Actual delivery will *not* have occurred if, within 28 days, an agreement, contract, or transaction for the purchase or sale of a commodity is rolled, offset, or otherwise netted with another transaction or settled in cash between the buyer and the seller, but the seller has not, in accordance with the methods described in Example 1 or 2, physically delivered the entire quantity of the commodity purchased by the buyer, including any portion of the purchase made using leverage, margin, or financing, and transferred title to that quantity of the commodity to the buyer, regardless of whether the agreement, contract, or transaction between the buyer and seller purports to create an enforceable obligation on the part of the seller, or a parent company, partner, agent, or other affiliate of the seller, to deliver the commodity to the buyer.

Issued in Washington, DC, on December 1, 2011 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011–31355 Filed 12–13–11; 8:45 am]

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[22] 7 U.S.C. 1a(27).

[23] 7 U.S.C. 1a(47)(B)(ii).

[24] *See, e.g.,* Statutory Interpretation Concerning Forward Transactions, 55 FR 39188 (Sept. 25, 1990) (''Brent Interpretation'').

[25] Based on Examples 1 and 2, an agreement, contract, or transaction that results in ''physical delivery'' within the meaning of section 1.04(a)(2)(i)–(iii) of the Model State Commodity Code would ordinarily result in ''actual delivery'' under new CEA section 2(c)(2)(D)(ii)(III)(aa), absent other evidence indicating that the purported delivery is a sham. *See* Model State Commodity Code § 1.04(a)(2)(i)–(iii), Comm. Fut. L. Rep. Archive (CCH) ¶ 22,568 (Apr. 5, 1985). Conversely, an agreement, contract, or transaction that does not result in ''physical delivery'' within the meaning of section 1.04(a)(2)(i)–(iii) of the Model State Commodity Code is highly unlikely to result in ''actual delivery'' under new CEA section 2(c)(2)(D)(ii)(III)(aa).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9566]

RIN 1545–BK82

Employer's Annual Federal Tax Return and Modifications to the Deposit Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the Employers' Annual Federal Tax Program (the Form 944 Program) and the requirements for depositing social security, Medicare, and withheld Federal income taxes (collectively ''employment taxes''). These final regulations allow certain employers to file a Form 944, ''Employer's ANNUAL Federal Tax Return,'' rather than Forms 941, ''Employer's QUARTERLY Federal Tax Return.'' Additionally, these final regulations provide guidance related to the lookback periods and deposit requirements for employers required to file Forms 941 and Form 944. These final regulations affect taxpayers that file Forms 941, Form 944, and any related Spanish-language returns or returns for U.S. possessions.

DATES: *Effective Date:* These regulations are effective on December 14, 2011.

Applicability Date: For dates of applicability, see §§ 31.6011(a)–1(g), 31.6011(a)–4(d), and 31.6302–1(n).

FOR FURTHER INFORMATION CONTACT: Jennifer Records, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These final regulations amend the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) under section 6011 relating to the employment tax return filing requirements and section 6302 relating to the employment tax deposit requirements. These final regulations are part of the IRS' continued effort to reduce taxpayer burden by permitting certain employers to file one employment tax return annually instead of four quarterly employment tax returns.

The Treasury Department and the IRS are considering changes to the annual filing program in light of the program's performance as measured against the program's original goals, administrative and operational considerations, and overall program effectiveness. Any changes to the program will be set forth in future guidance.

On January 3, 2006, temporary regulations (TD 9239) relating to Form 944 (the 2006 temporary regulations) were published in the **Federal Register** (71 FR 11). A notice of proposed rulemaking (REG–148568–04) cross-referencing the 2006 temporary regulations was published in the **Federal Register** on the same day (71 FR 46) (the 2006 proposed regulations). A correction to the 2006 temporary regulations was published in the **Federal Register** on March 17, 2006 (71 FR 13766). On December 29, 2008, temporary regulations (TD 9440), which revised the 2006 temporary regulations, relating to Form 944 (the 2008 temporary regulations) were published in the **Federal Register** (73 FR 79354). A notice of proposed rulemaking (REG–148568–04) cross-referencing the 2008 temporary regulations was published in the **Federal Register** on the same day (73 FR 79423) (the 2008 proposed regulations). No requests for a public hearing were received; therefore, no public hearing was held. As noted in the 2008 temporary regulations, comments were received responding to the 2006 notice of proposed rulemaking. Those comments requested that use of Form 944 be changed from mandatory to voluntary and that the amount of the employment tax liability used to determine whether employers are eligible to file Form 944 (the ''eligibility threshold'') be increased. The Treasury Department and the IRS agreed to make Form 944 voluntary and to continue to consider whether to increase the eligibility threshold. No comments responding to the 2008 notice of proposed rulemaking were received. This Treasury decision adopts the rules of the 2008 proposed regulations with minor clarifying changes and removes the temporary regulations. That is, participation in the Form 944 Program will remain voluntary and the eligibility threshold for participation will remain at $1,000.

Explanation of Revisions

Although this Treasury decision adopts the rules of the proposed regulations with no substantive change, some of the language included in the proposed regulations and the existing final regulations is clarified and updated to reflect current law and practice. The revisions are discussed in this preamble.

Employers that request to participate in the Form 944 Program must receive written notice to file Form 944 before they are permitted to file the form. Once employers receive this notice, they must file Form 944 for each year and cannot file Forms 941 until they are notified that their filing requirement has changed to Forms 941 because (1) They contacted the IRS to request that their filing requirement be changed to Forms 941, or (2) they no longer qualify for the Form 944 Program. The IRS issued guidance published in the Internal Revenue Bulletin (Rev. Proc. 2009–13 (2009–1 CB 323) and Rev. Proc. 2009–51 (2009–45 IRB 625)) that provides procedures for employers to follow to request to file Form 944 instead of Forms 941 (''opt in''). Additionally, Rev. Proc. 2009–13 and Rev. Proc. 2009–51 provide procedures for employers to follow to request to file Forms 941 instead of Form 944 when the IRS previously notified them they should file Form 944 (''opt out''). Under Rev. Proc. 2009–13, for tax year 2009, employers who were notified they should file Form 944 could only opt out if they anticipated that their employment tax liability would exceed the $1,000 threshold or if they wanted to e-file Forms 941 quarterly instead. Beginning in 2010, employers were able to opt out of filing Form 944 for any reason if they followed the procedures set forth in Rev. Proc. 2009–51 or its successor. These final regulations clarify that employers should follow the procedures contained in Rev. Proc 2009–51 or its successor to opt in or to opt out of the Form 944 Program.

The revisions contained in these final regulations also impact employers that file Spanish-language returns or returns for U.S. possessions. For tax year 2012 and later, Form 944–SS, Employer's ANNUAL Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands) and Form 944–PR, Planilla para la Declaración Federal ANUAL del Patrono, will be eliminated due to the low volume of employers filing these forms. Employers who would otherwise file a Form 944–SS or Form 944–PR will file a Form 944. The Treasury Department and the IRS plan to retain Form 944(SP), Declaración Federal ANUAL de Impuestos del Patrono o Empleador, which is the Spanish equivalent of Form 944. Employers in the United States in the Form 944 Program may file Form 944(SP) as an alternative to filing Form 944. Additionally, employers in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and Puerto Rico may file a Form 944(SP) as an alternative to filing Form 944, for tax year 2012 and later. These final regulations remove references to the eliminated forms and update the language included in the proposed regulations and the existing final regulations to provide guidance to former Form 944–SS and Form 944–PR filers who are required to file Form 944 instead.

Employers in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands who are required to file Form 944 for tax year 2012 and later can request to file Forms 941–SS instead of Form 944. Employers in Puerto Rico who are required to file Form 944 for tax year 2012 and later can request to file Forms 941–PR instead of Form 944. Employers required to file Form 944 should follow the procedures contained in Rev. Proc. 2009–51 or its successor to request to file Form 941–SS or Form 941–PR. See § 601.601(d)(2)(ii)(*b*).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities

pursuant to the Regulatory Flexibility Act (5 U.S.C. Chapter 6). The regulations under sections 6011 and 6302 affect only a small number of taxpayers that file employment tax returns, and participation in the Form 944 Program is voluntary. Therefore, the Treasury Department and the IRS have determined that the regulations will not affect a substantial number of small entities. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small entities. No comments from the Small Business Administration were received.

Drafting Information

The principal authors of these regulations are Blaise Dusenberry and Jennifer Records of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

Adoption Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Paragraph 1.** The authority citation for part 31 is amended by removing the entry for § 31.6302–1T to read in part as follows:

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

■ **Par. 2.** Section 31.6011(a)–1 is amended by revising paragraphs (a)(1), (a)(4), (a)(5) and (g) to read as follows:

§ 31.6011(a)–1 Returns under Federal Insurance Contributions Act.

(a) *Requirement*—(1) *In general.* Except as otherwise provided in paragraphs (a)(3) and (a)(5) of this section and in § 31.6011(a)–5 every employer is required to make a return for the first calendar quarter in which the employer pays wages, other than wages for agricultural labor, subject to the tax imposed by the Federal Insurance Contributions Act, and is required to make a return for each subsequent calendar quarter (whether or not wages are paid therein) until the employer has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in § 31.6011(a)–8 and in paragraphs (a)(3), (a)(4), and (a)(5) of this section, Form 941, ''Employer's QUARTERLY Federal Tax Return,'' is the form prescribed for making the return required by this paragraph (a)(1). Such return shall not include wages for agricultural labor required to be reported on any return prescribed by paragraph (a)(2) of this section. The return shall include wages received by an employee in the form of tips only to the extent of the tips reported by the employee to the employer in a written statement furnished to the employer pursuant to section 6053(a).

* * * * *

(4) *Employers in Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.* Except as otherwise provided in paragraph (a)(5), Form 941–PR, ''Planilla para la Declaracion Federal TRIMESTRAL del Patrono,'' is the form prescribed for use in making the return required under paragraph (a)(1) of this section in the case of every employer whose principal place of business is in Puerto Rico, or if the employer has employees who are subject to income tax withholding for Puerto Rico. Except as otherwise provided in paragraph (a)(5), Form 941–SS, ''Employer's QUARTERLY Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands),'' is the form prescribed for use in making the return required under paragraph (a)(1) of this section in the case of every employer whose principal place of business is in the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, or if the employer has employees who are subject to income tax withholding for these U.S. possessions. Form 941 (or Form 944, as described under paragraph (a)(5) of this section, if the IRS notified the employer that Form 944 must be filed in lieu of Form 941) is the form prescribed for making the return in the case of every employer who is required pursuant to § 31.6011(a)–4 to make a return of income tax withheld from wages.

(5) *Employers in the Employers' Annual Federal Tax Program (Form 944)*—(i) *In general.* Employers notified of their qualification for the Employers' Annual Federal Tax Program (Form 944) are required to file Form 944, ''Employer's ANNUAL Federal Tax Return,'' instead of Form 941 (or Form 941–SS or Form 941–PR under paragraph (a)(4) of this section) to make a return as required by paragraph (a)(1) of this section. Upon proper request by the employer, the IRS will notify employers in writing of their qualification for the Employers' Annual Federal Tax Program (Form 944). The IRS will notify employers when they no longer qualify for the Employers' Annual Federal Tax Program (Form 944) and must file Forms 941 instead. Qualified employers are those with an estimated annual employment tax liability (that is, social security, Medicare, and withheld Federal income taxes) of $1,000 or less for the entire calendar year, except employers required under—

(A) Paragraph (a)(2) of this section to make a return on Form 943, ''Employer's Annual Federal Tax Return for Agricultural Employees''; or

(B) Paragraph (a)(3) of this section to make a return on Schedule H (Form 1040), ''Household Employment Taxes.''

(ii) *Requests to opt in or opt out of the Employers' Annual Federal Tax Program (Form 944).* The IRS has established procedures in Revenue Procedure 2009–51 published in the Internal Revenue Bulletin for employers to follow to request to participate in the Employers' Annual Federal Tax Program (Form 944) (to opt in) and to request to be removed from the Employers' Annual Federal Tax Program (Form 944) after becoming a participant in order to file Forms 941 instead (to opt out). The IRS will notify employers that their filing requirements have changed to Form 944 or Forms 941. Employers must follow the procedures in Revenue Procedure 2009–51 or its successor to request to opt in or opt out of the Employers' Annual Federal Tax Program (Form 944).

* * * * *

(g) *Effective/applicability dates.* Paragraphs (a)(1) and (a)(5)(i) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (a)(4) of this section applies to taxable years beginning on or after January 1, 2012. Paragraph (a)(5)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraph (a)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)–1 as in effect prior to December 30, 2008. The rules of paragraph (a)(4) of this section that apply to taxable years beginning before January 1, 2012, are contained in § 31.6011(a)–1 as in effect prior to January 1, 2012. The rules of paragraph (a)(5)(ii) of this section that apply to taxable years beginning before January 1, 2010, but on or after December 30, 2008, are contained in § 31.6011(a)–1T

as in effect on or after December 30, 2008. The rules of paragraph (a)(5) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)–1T as in effect prior to December 30, 2008.

§ 31.6011(a)–1T [Removed].

■ **Par. 3.** Section 31.6011(a)–1T is removed.

■ **Par. 4.** Section 31.6011(a)–4 is amended by revising paragraphs (a)(1), (a)(4) and (d) to read as follows:

§ 31.6011(a)–4 Returns of income tax withheld.

(a) *Withheld from wages*—(1) *In general.* Except as otherwise provided in paragraphs (a)(2), (a)(3), (a)(4), and (b) of this section, and in § 31.6011(a)–5, every person required to make a return of income tax withheld from wages pursuant to section 3402 shall make a return for the first calendar quarter in which the person is required to deduct and withhold such tax and for each subsequent calendar quarter, whether or not wages are paid therein, until the person has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in paragraphs (a)(2), (a)(3), (a)(4), and (b) of this section, and in § 31.6011(a)–8, Form 941, ''Employer's QUARTERLY Federal Tax Return,'' is the form prescribed for making the return required under this paragraph (a)(1).

* * * * *

(4) *Employers in the Employers' Annual Federal Tax Program (Form 944)*—(i) *In general.* Employers notified of their qualification for the Employers' Annual Federal Tax Program (Form 944) are required to file Form 944, ''Employer's ANNUAL Federal Tax Return,'' instead of Form 941 to make a return of income tax withheld from wages pursuant to section 3402. Upon proper request by the employer, the IRS will notify employers in writing of their qualification for the Employers' Annual Federal Tax Program (Form 944). The IRS will notify employers when they no longer qualify for the Employers' Annual Federal Tax Program (Form 944) and must file Forms 941 instead. Qualified employers are those with an estimated annual employment tax liability (that is, social security, Medicare, and withheld federal income taxes) of $1,000 or less for the entire calendar year, except employers required under—

(A) Paragraph (a)(3) of this section to make a return on Form 943, ''Employer's Annual Federal Tax Return for Agricultural Employees''; or

(B) Paragraph (a)(2) of this section to make a return on Schedule H (Form 1040), ''Household Employment Taxes.''

(ii) *Request to opt in or opt out of the Employers' Annual Federal Tax Program (Form 944).* The IRS established procedures in Revenue Procedure 2009–51 published in the Internal Revenue Bulletin for employers to follow to request to participate in the Employers' Annual Federal Tax Program (Form 944) (to opt in) and to request to be removed from the Employers' Annual Federal Tax Program (Form 944) after becoming a participant in order to file Forms 941 instead (to opt out). The IRS will notify employers that their filing requirements have changed to Form 944 or Forms 941. Employers must follow the procedures in Revenue Procedure 2009–51 or its successor to opt in or opt out of the Employers' Annual Federal Tax Program (Form 944).

* * * * *

(d) *Effective/applicability dates.* Paragraphs (a)(1) and (a)(4)(i) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (a)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraph (a)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)–4 as in effect prior to December 30, 2008. The rules of paragraph (a)(4)(ii) of this section that apply to taxable years beginning before January 1, 2010, but on or after December 30, 2008, are contained in § 31.6011(a)–4T as in effect on or after December 30, 2008. The rules of paragraph (a)(4) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)–4T as in effect prior to December 30, 2008. Paragraph (b)(6) of this section (relating to certain payments made by government entities subject to withholding under section 3402(t)) applies to payments made by government entities under section 3402(t) after December 31, 2012.

§ 31.6011(a)–4T [Removed].

■ **Par. 5.** Section 31.6011(a)–4T is removed.

■ **Par. 6.** Section 31.6071(a)–1 is amended by revising paragraph (a)(1) to read as follows:

§ 31.6071(a)–1 Time for filing returns and other documents.

(a) *Federal Insurance Contributions Act and income tax withheld from wages and from nonpayroll payments*—(1) *Quarterly or annual returns.* Except as provided in paragraph (a)(4) of this section, each return required to be made under § 31.6011(a)–1, in respect of the taxes imposed by the Federal Insurance Contributions Act (26 U.S.C. 3101–3128), or required to be made under § 31.6011(a)–4, in respect of income tax withheld, shall be filed on or before the last day of the first calendar month following the period for which it is made. A return may be filed on or before the 10th day of the second calendar month following such period if timely deposits under section 6302(c) of the Code and the regulations have been made in full payment of such taxes due for the period.

* * * * *

Par. 7. Section 31.6302–0 is amended as follows:

■ 1. Revising the introductory text.
■ 2. Revising the section heading for § 31.6302–1.
■ 3. Adding entries for paragraphs (b)(4)(i), (b)(4)(ii), (c)(5), (c)(6), (f)(4)(ii) and (f)(4)(iii) for § 31.6302–1.
■ 4. Revising the entries for paragraphs (d), (f)(4)(i), (f)(5), (g)(1) and (n) for § 31.6302–1.
■ 5. Removing the heading for § 31.6302–1T and the entries for paragraphs (a) though (n).

The revisions and additions to read as follows:

§ 31.6302–0 Table of contents.

This section lists the table of contents for §§ 31.6302–1 through 31.6302–4.

§ 31.6302–1 Deposit rules for taxes under the Federal Insurance Contributions Act (FICA) and withheld income taxes.

* * * * *

(b) * * *
(4) * * *
(i) In general.
(ii) Adjustments and claims for refund.
(c) * * *
(5) Exception to the monthly and semi-weekly deposit rules for employers in the Employers' Annual Federal Tax Program (Form 944).
(6) Extension of time to deposit for employers in the Employers' Annual Federal Tax Program (Form 944) during the preceding year.

* * * * *

(d) Examples.

* * * * *

(f) * * *
(4) * * *
(i) *De minimis* deposit rules for quarterly and annual return periods beginning on or after January 1, 2001.
(ii) *De minimis* deposit rule for quarterly return periods beginning on or after January 1, 2010.
(iii) *De minimis* deposit rule for employers who file Form 944.

(5) Examples.

(g) * * *

(1) In general.

* * * * *

(n) Effective/applicability dates.

* * * * *

§ 31.6302–0T [Removed]

■ **Par. 8.** Section 31.6302–0T is removed.

■ **Par. 9.** Section 31.6302–1 is amended by revising paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6,* (e)(2), (f)(4), (f)(5) *Example 3,* (g)(1), and (n) to read as follows:

§ 31.6302–1 Deposit rules for taxes under the Federal Insurance Contributions Act (FICA) and withheld income taxes.

* * * * *

(b) * * *

(4) *Lookback period*—(i) *In general.* For employers who file Form 941, ''Employer's QUARTERLY Federal Tax Return,'' (or any related Spanish-language returns or returns for U.S. possessions) the lookback period for each calendar year is the twelve month period ended the preceding June 30. For example, the lookback period for calendar year 2006 is the period July 1, 2004, to June 30, 2005. The lookback period for employers who file Form 944, ''Employer's ANNUAL Federal Tax Return,'' or filed Form 944 (or any related Spanish-language returns or returns for U.S. possessions) for either of the two previous calendar years, is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 2006 is calendar year 2004. In determining status as either a monthly or semi-weekly depositor, an employer should determine the aggregate amount of employment tax liabilities reported on its return(s) (Forms 941 or Form 944) for the lookback period. The amount of employment tax liabilities reported for the lookback period is the amount the employer reported on either Forms 941 or Form 944 even if the employer is required to file the other form for the current calendar year. New employers shall be treated as having employment tax liabilities of zero for any part of the lookback period before the date the employer started or acquired its business.

(ii) *Adjustments and claims for refund.* The employment tax liability reported on the original return for the return period is the amount taken into account in determining whether the aggregate amount of employment taxes reported for the lookback period exceeds $50,000. Any amounts reported on adjusted returns or claims for refund pursuant to sections 6205, 6402, 6413, and 6414 filed after the due date of the original return are not taken into account when determining the aggregate amount of employment taxes reported for the lookback period. Prior period adjustments reported on Forms 941 or Form 944 for 2008 and earlier years are taken into account in determining the employment tax liability for the return period in which the adjustments are reported.

(c) * * *

(5) *Exception to the monthly and semi-weekly deposit rules for employers in the Employers' Annual Federal Tax Program (Form 944).* Generally, an employer who files Form 944 for a taxable year may remit its accumulated employment taxes with its timely filed return for that taxable year and is not required to deposit under either the monthly or semi-weekly rules set forth in paragraphs (c)(1) and (c)(2) of this section during that taxable year. An employer who files Form 944 whose actual employment tax liability exceeds the eligibility threshold, as set forth in §§ 31.6011(a)–1(a)(5) and 31.6011(a)–4(a)(4), will not qualify for this exception and should follow the deposit rules set forth in this section.

(6) *Extension of time to deposit for employers in the Employers' Annual Federal Tax Program (Form 944) during the preceding year.* An employer who filed Form 944 for the preceding year but will file Form 941 instead for the current year will be deemed to have timely deposited its current year's January deposit obligation(s) under paragraphs (c)(1) through (c)(4) of this section if the employer deposits the amount of such deposit obligation(s) by March 15 of that year.

* * * * *

(d) * * *

Example 6. Extension of time to deposit for employers who filed Form 944 for the preceding year satisfied. F (a monthly depositor) was notified to file Form 944 to report its employment tax liabilities for the 2006 calendar year. F filed Form 944 on January 31, 2007, reporting a total employment tax liability for 2006 of $3,000. Because F's annual employment tax liability for the 2006 taxable year exceeded $1,000 (the applicable eligibility threshold for that taxable year), the IRS notified F to file Forms 941 for calendar year 2007 and thereafter. Based on F's liability during the lookback period (calendar year 2005, pursuant to paragraph (b)(4)(i) of this section), F is a monthly depositor for 2007. F accumulates $1,000 in employment taxes during January 2007. Because F is a monthly depositor, F's January deposit obligation is due February 15, 2007. F does not deposit these accumulated employment taxes on February 15, 2007. F accumulates $1,500 in employment taxes during February 2007. F's February deposit is due March 15, 2007. F deposits the $2,500 of employment taxes accumulated during January and February on March 15, 2007. Pursuant to paragraph (c)(6) of this section, F will be deemed to have timely deposited the employment taxes due for January 2007, and, thus, the IRS will not impose a failure-to-deposit penalty under section 6656 for that month.

(e) * * *

(2) The term *employment taxes* does not include taxes with respect to wages for domestic service in a private home of the employer, unless the employer is otherwise required to file a Form 941 or Form 944 under § 31.6011(a)–4 or § 31.6011(a)–5. In the case of employers paying advance earned income credit amounts for periods ending before January 1, 2011, the amount of taxes required to be deposited shall be reduced by advance amounts paid to employees. Also, see § 31.6302–3 concerning a taxpayer's option with respect to payments made before January 1, 1994, to treat backup withholding amounts under section 3406 separately.

(f) * * *

(4) *De minimis rule*—(i) *De minimis deposit rules for quarterly and annual return periods beginning on or after January 1, 2001.* If the total amount of accumulated employment taxes for the return period is *de minimis* and the amount is fully deposited or remitted with a timely filed return for the return period, the amount deposited or remitted will be deemed to have been timely deposited. The total amount of accumulated employment taxes is *de minimis* if it is less than $2,500 for the return period or if it is *de minimis* pursuant to paragraph (f)(4)(ii) of this section.

(ii) *De minimis deposit rule for quarterly return periods beginning on or after January 1, 2010.* For purposes of paragraph (f)(4)(i) of this section, if the total amount of accumulated employment taxes for the immediately preceding quarter was less than $2,500, unless § 31.6302–1(c)(3) applies to require a deposit at the close of the next day, then the employer will be deemed to have timely deposited the employer's employment taxes for the current quarter if the employer complies with the time and method payment requirements contained in paragraph (f)(4)(i) of this section.

(iii) *De minimis deposit rule for employers who file Form 944.* An employer who files Form 944 whose employment tax liability for the year equals or exceeds $2,500 but whose employment tax liability for a quarter of the year is *de minimis* pursuant to paragraph (f)(4)(i) of this section will be

deemed to have timely deposited the employment taxes due for that quarter if the employer fully deposits the employment taxes accumulated during the quarter by the last day of the month following the close of that quarter. Employment taxes accumulated during the fourth quarter can be either deposited by January 31 or remitted with a timely filed return for the return period.

(5) * * *

Example 3. De minimis deposit rule for employers who file Form 944 satisfied. K (a monthly depositor) was notified to file Form 944 to report its employment tax liabilities for the 2006 calendar year. In the first quarter of 2006, K accumulates employment taxes in the amount of $1,000. On April 28, 2006, K deposits the $1,000 of employment taxes accumulated in the first quarter. K accumulates another $1,000 of employment taxes during the second quarter of 2006. On July 31, 2006, K deposits the $1,000 of employment taxes accumulated in the second quarter. K's business grows and accumulates $1,500 in employment taxes during the third quarter of 2006. On October 31, 2006, K deposits the $1,500 of employment taxes accumulated in the third quarter. K accumulates another $2,000 in employment taxes during the fourth quarter. K files Form 944 on January 31, 2007, reporting a total employment tax liability for 2006 of $5,500 and submits a check for the remaining $2,000 of employment taxes with the return. K will be deemed to have timely deposited the employment taxes due for all of 2006 because K complied with the *de minimis* deposit rule provided in paragraph (f)(4)(iii) of this section. Therefore, the IRS will not impose a failure-to-deposit penalty under section 6656 for any month of the year. Under this *de minimis* deposit rule, because K was required to file Form 944 for calendar year 2006, if K's employment tax liability for a quarter is *de minimis,* then K may deposit that quarter's liability by the last day of the month following the close of the quarter. This *de minimis* rule allows K to have the benefit of the same quarterly *de minimis* amount K would have received if K filed Form 941 each quarter instead of Form 944 annually. Thus, because K's employment tax liability for each quarter was *de minimis,* K could deposit quarterly.

(g) *Agricultural employers—special rules*—(1) *In general.* An agricultural employer reports wages paid to farm workers annually on Form 943 (Employer's Annual Tax Return for Agricultural Employees) and reports wages paid to nonfarm workers quarterly on Form 941 or annually on Form 944. Accordingly, an agricultural employer must treat employment taxes reportable on Form 943 (''Form 943 taxes'') separately from employment taxes reportable on Form 941 or Form 944 (''Form 941 or Form 944 taxes''). Form 943 taxes and Form 941 or Form 944 taxes are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of paragraph (c)(3) of this section applies, or whether any safe harbor is applicable. In addition, Form 943 taxes and Form 941 or Form 944 taxes must be deposited separately. (See paragraph (b) of this section for rules for determining an agricultural employer's deposit status for Form 941 taxes). Whether an agricultural employer is a monthly or semi-weekly depositor of Form 943 taxes is determined according to the rules of this paragraph (g).

* * * * *

(n) *Effective/applicability dates.* Except for the deposit of employment taxes attributable to payments made by government entities under section 3402(t), §§ 31.6302–1 through 31.6302–3 apply with respect to the deposit of employment taxes attributable to payments made after December 31, 1992. Paragraph (e)(1)(iii)(E) of this section applies with respect to the deposit of employment taxes attributable to payments made by government entities under section 3402(t) after December 31, 2012. To the extent that the provisions of §§ 31.6302–1 through 31.6302–3 are inconsistent with the provisions of §§ 31.6302(c)–1 and 31.6302(c)–2, a taxpayer will be considered to be in compliance with §§ 31.6302–1 through 31.6302–3 if the taxpayer makes timely deposits during 1993 in accordance with §§ 31.6302(c)–1 and 31.6302(c)–2. Paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6,* (e)(2), (f)(4)(i), (f)(4)(iii), (f)(5) *Example 3,* and (g)(1) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (f)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraphs (e)(2) and (g)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6302–1 as in effect prior to December 30, 2008. The rules of paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6,* (f)(4)(i), (f)(4)(iii), and (f)(5) *Example 3* of this section that apply to taxable years beginning on or after January 1, 2006, and before December 30, 2008, are contained in § 31.6302–1T as in effect prior to December 30, 2008. The rules of paragraphs (b)(4) and (f)(4) of this section that apply to taxable years beginning before January 1, 2006, are contained in § 31.6302–1 as in effect prior to January 1, 2006. The rules of paragraph (g) of this section eliminating use of Federal tax deposit coupons apply to deposits and payments made after December 31, 2010.

* * * * *

§ 31.6302–1T [Removed].

Par. 10. Section 31.6302–1T is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: December 6, 2011.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2011–0006; T.D. TTB–100; Ref: Notice No. 119]

RIN 1513–AB81

Establishment of the Coombsville Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury Decision.

SUMMARY: This final rule establishes the 11,075-acre ''Coombsville'' viticultural area in Napa County, California. The viticultural area lies within the Napa Valley viticultural area and the multicounty North Coast viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Date:* January 13, 2012.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G St. NW., Room 200E, Washington, DC 20220; phone (202) 453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol