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# Presidential Documents

**Title 3—**

## The President

**Presidential Determination No. 2014–08 of February 24, 2014**

## Proposed Agreement for Cooperation Between the Government of the United States of America and the Government of the Socialist Republic of Vietnam Concerning Peaceful Uses of Nuclear Energy

**Memorandum for the Secretary of State [and] the Secretary of Energy**

I have considered the proposed Agreement for Cooperation Between the Government of the United States of America and the Government of the Socialist Republic of Vietnam Concerning Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed Agreement and authorize the Secretary of State to arrange for its execution.

The Secretary of State is authorized to publish this determination in the *Federal Register*.

THE WHITE HOUSE,
*Washington, February 24, 2014*

[FR Doc. 2014–04949
Filed 3–5–14; 8:45 am]
Billing code 4710–10

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## NATIONAL CREDIT UNION ADMINISTRATION

## 5 CFR Part 9601 and 12 CFR Part 750

## Technical corrections

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Technical corrections.

**SUMMARY:** NCUA is making minor technical corrections to its supplementary ethics regulation to correct certain statutory references and to its regulation governing golden parachute and indemnification payments to conform certain internal cross citations affected by two recently revised final regulations.

**DATES:** These corrections are effective on March 6, 2014.

**FOR FURTHER INFORMATION CONTACT:** For part 9601: Hattie Ulan, Senior Ethics Counsel, Office of General Counsel, (703) 518–6544; and for part 750: John H. Brolin, Staff Attorney, Office of General, (703) 518–6438, both at National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Technical Corrections
III. Regulatory Procedures

### I. Background

*Why is NCUA issuing these corrections?*

On April 17, 2013, NCUA published its final supplemental ethics rule concerning approval of outside employment and activities.[1] The ethics rule only applies to NCUA employees. It does not affect credit unions. The ethics rule as published inadvertently made a few incorrect references to the Federal Credit Union Act in § 9601.104. This document corrects those references.

On January 18, 2013 and May 31, 2013, NCUA published final rules amending various parts of NCUA's regulations.[2] Some of these amendments renumbered sections and paragraphs of these regulations, which affected certain internal cross citations in part 750 of NCUA's regulations causing them to be incorrect. This document corrects those internal cross citations.

### II. Technical Corrections

*5 CFR 9601.104—Ethics*

This document corrects 5 CFR 9601.104(a)(1), (a)(2) and (b)(1) of 5 CFR part 9601 by deleting the phrase ''of the Act'' from those paragraphs. 5 CFR part 9601 should not reference an ''Act,'' but rather should reference other paragraphs of part 9601. The phrase ''of the Act'' confuses the references and should be deleted.

*12 CFR Part 750—Golden Parachute and Indemnification Payments*

This document amends 12 CFR 750.1, 750.4, 750.5, and 750.6 to correct internal cross citations that were affected when a duplicative definition of the term ''Act'' was removed from 12 CFR § 750.1(a) and the remaining definitions in that section were renumbered as part of a technical amendments final rule.[3] In addition, this document amends 12 CFR 750.4(a)(4)(ii) to correct an internal cross citation to § 750.1(l). The definition of ''troubled condition'' formerly appearing in 12 CFR 750.1(l) was removed and replaced in 12 CFR 700.2 as part of NCUA's final rule regarding the definition of troubled condition.[4]

All of these changes to 5 CFR Part 9601 and 12 CFR Part 750 correct errors that are obvious in form and technical in nature. NCUA intends no substantive change to its regulations by making these corrections.

### III. Regulatory Procedures

*Effective Date*

Generally, the Administrative Procedure Act (APA) requires a federal agency to provide the public with notice and the opportunity to comment on agency rulemakings. The corrections discussed herein are non-substantive and technical and are exempt from APA notice and comment requirements.[5] The APA permits an agency to forego the notice and comment period under certain circumstances, such as when an action is technical and non-substantive. NCUA finds good cause that notice and public comments are unnecessary under section 553(b)(3)(B) of the APA.[6] NCUA also finds good cause to dispense with the 30-day delayed effective date requirement under section 553(d)(3) of the APA.[7] These corrections, therefore, will be effective immediately upon publication.

**List of Subjects**

*5 CFR Part 9601*

Conflicts of interests, Government employees.

*12 CFR Part 750*

Credit unions, Golden parachute payments, Indemnity payments.

By the National Credit Union Administration Board on February 27, 2014.

**Gerald Poliquin,**

*Secretary of the Board.*

For the reasons stated above, NCUA amends 5 CFR Part 9601 and 12 CFR Part 750 as follows:

**Title 5—Administrative Personnel**

## PART 9601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL CREDIT UNION ADMINISTRATION

■ 1. The authority citation for part 9601 continues to read as follows:

**Authority:** 12 U.S.C. 1752a(d), 1766; 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 5 CFR 2635.403, 5 CFR 2635.502 and 5 CFR 2635.803.

**§ 9601.104 [Amended]**

■ 2. Amend § 9601.104 as follows:

■ a. In paragraph (a)(1), remove ''section 103 of the Act'' and add in its place ''§ 9601.103''; and remove ''section 105 of the Act'' and add in its place ''§ 9601.105''.

[1] 74 FR 22767 (April 17, 2013).

[2] 78 FR 4029 (Jan. 18, 2013) and 78 FR 32545 (May 31, 2013).

[3] 78 FR 32545 (May 31, 2013).

[4] 78 FR 4029 (Jan. 18, 2013).

[5] 5 U.S.C. 553(a)(2) and 553(b)(3)(B).

[6] 5 U.S.C. 553(b)(3)(B).

[7] 5 U.S.C. 553(d)(3).

■ b. In paragraph (a)(2), remove ''section 103 of the Act'' and add in its place ''§ 9601.103''.

■ c. In paragraph (b)(1), remove ''section 102 of the Act'' and add in its place ''§ 9601.102''.

**Title 12—Banks and Banking**

## PART 750—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

■ 3. The authority citation for part 750 continues to read as follows:

**Authority:** 12 U.S.C. 1786(t).

### § 750.1 [Amended]

■ 4. Amend § 750.1 as follows:

■ a. In paragraph (a), remove ''paragraph (c) or (i), respectively, of this section'' and add in its place ''paragraph (b) or (h), respectively, of this section''.

■ b. In paragraph (b)(2) introductory text, remove ''paragraph (c)(1) of this section'' and add in its place ''paragraph (b)(1) of this section''.

■ c. In paragraph (b)(2)(ii), remove ''paragraph (e)(2)(v) of this section'' and add in its place ''paragraph (d)(2)(v) of this section''.

■ d. In paragraph (b)(3) introductory text, remove ''paragraphs (c)(1) and (2) of this section'' and add in its place ''paragraphs (b)(1) and (2) of this section''.

■ e. In paragraph (b)(3)(i), remove ''paragraph (e)(1)(ii) of this section'' and add in its place ''paragraph (d)(1)(ii) of this section''.

■ f. In paragraph (b)(3)(ii), remove ''paragraph (e)(1)(ii) of this section'' and add in its place ''paragraph (d)(1)(ii) of this section''.

■ g. In paragraph (b)(3)(v), remove ''paragraph (e)(1)(ii) of this section'' and add in its place ''paragraph (d)(1)(ii) of this section''.

■ h. In paragraph (d)(1)(ii)(C), remove ''§ 700.2(j)'' and add in its place ''§ 700.2''.

■ i. In paragraph (d)(1)(iii), remove ''paragraphs (e)(1)(ii)(A) through (E) of this section'' and add in its place ''paragraphs (d)(1)(ii)(A) through (E) of this section''.

■ j. In paragraph (d)(2)(ii), remove ''paragraph (b) of this section'' and add in its place ''paragraph (a) of this section''.

■ k. In paragraph (d)(2)(iii), remove ''paragraph (c) of this section'' and add in its place ''paragraph (b) of this section''.

■ l. In paragraph (d)(2)(v), remove ''paragraph (e)(1)(ii) of this section'' and add in its place ''paragraph (d)(1)(ii) of this section''.

### § 750.4 [Amended]

■ 5. In § 750.4, amend paragraph (a)(2) by removing ''§ 750.1(e)(1)(ii)'' and adding in its place ''§ 750.1(d)(1)(ii)'', and amend paragraph (a)(4)(ii) by removing ''§ 750.1(1)'' and adding in its place ''§ 700.2 of this chapter''.

### § 750.5 [Amended]

■ 6. Amend § 750.5 as follows:

■ a. In paragraph (a)(2)(ii), remove ''§ 750.1(k)(2)(i)'' and add in its place ''§ 750.1(j)(2)(i)'', and remove ''§ 750.1(k)'' and add in its place ''§ 750.1(j)''.

■ b. In paragraph (a)(3), remove ''§ 750.1(k)'' and add in its place ''§ 750.1(j)''.

### § 750.6 [Amended]

■ 7. In § 750.6, amend paragraph (a) by removing ''§ 750.1(e)(2)(v)'' and adding in its place ''§ 750.1(d)(2)(v)''.

[FR Doc. 2014–04918 Filed 3–5–14; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Saint Lawrence Seaway Development Corporation

### 33 CFR Part 401

**[Docket No. SLSDC–2014–0001]**

**RIN 2135–AA33**

## Seaway Regulations and Rules: Periodic Update, Various Categories

**AGENCY:** Saint Lawrence Seaway Development Corporation, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations by updating the Seaway Regulations and Rules in various categories. The changes update the following sections of the Regulations and Rules: Condition of Vessels; Preclearance and Security for Tolls; Tolls Assessment and Payment; Seaway Navigation; Dangerous Cargo; Toll Assessment and Payment; and, Information and Reports. These amendments are necessary to take account of updated procedures and will enhance the safety of transits through the Seaway. Many of the amendments are merely editorial or for clarification of existing requirements. The joint regulations will become effective in Canada on March 31, 2014. For consistency, because these are joint regulations under international agreement, and to avoid confusion among users of the Seaway, the SLSDC finds that there is good cause to make the U.S. version of the amendments effective on the same date.

**DATES:** The rule will become effective on March 31, 2014.

**ADDRESSES:** For access to the docket to read background documents or comments received, go to *http://www.Regulations.gov;* or in person at the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Carrie Mann Lavigne, Chief Counsel, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662; 315/764–3200.

**SUPPLEMENTARY INFORMATION:** The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations by updating the Regulations and Rules in various categories. The changes update the following sections of the Regulations and Rules: Condition of Vessels; Preclearance and Security for Tolls; Tolls Assessment and Payment; Seaway Navigation; Dangerous Cargo; Toll Assessment and Payment; and, Information and Reports. These updates are necessary to take account of updated procedures which will enhance the safety of transits through the Seaway. Many of these changes are to clarify existing requirements in the regulations. Where new requirements or regulations are made, an explanation for such a change is provided below. The joint regulations will become effective in Canada on March 31, 2014. For consistency, because these are joint regulations under international agreement, and to avoid confusion among users of the Seaway, the SLSDC finds that there is good cause to make the U.S. version of the amendments effective on the same date.

*Regulatory Notices: Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.Regulations.gov.*

The Notice of Proposed Rulemaking was published in the **Federal Register** on January 28, 2014 (79 FR 4433). No comments were received.

The SLSDC is amending several sections of the Condition of Vessels portion of the joint Seaway regulations. In section 401.9, ''Radio Telephone Equipment'', the two Corporations are limiting the degree of error for gyro and magnetic compasses. Under section 401.10, ''Mooring lines'', the SLSDC is mandating the use of synthetic lines when using tie-up services at tie-up walls and docks. Currently the use of synthetic lines is optional. For safety purposes in section 401.14, ''Anchor marking buoys'', the SLSDC is amending the rules to require vessels to ensure that the anchor buoy is secured by a suitable line and ready to be released prior to entering the Seaway.

In the Preclearance and Security for Tolls section, the Seaway Corporations are amending their joint rules in section 401.22, ''Preclearance of vessels'', to require that past due invoices must be paid prior to transiting the Seaway. In addition, provisions are being amended that would provide representatives with the ability to obtain a continuous preclearance status.

Several revisions are being made in the Seaway Navigation portion of the regulations. In section 401.29, ''Maximum Draft,'' the SLSDC is requiring vessels to meet a minimum draft requirement. In addition, the two Corporations are requiring vessels to be equipped with an operational anchor. Mooring lines on deck must be individually attended unless the vessel is equipped with side control pursuant to a change to section 401.46, ''Attending lines.''

In the Information and Reports section, a change to section 401.79, ''Advance notice of arrival, vessels requiring inspection'' is being made that would require tall ships or vessels of an unusual design to undergo a Seaway yearly inspection.

The other changes to the joint regulations are merely editorial or to clarify existing requirements.

**Regulatory Evaluation**

This regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

**Regulatory Flexibility Act Determination**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Regulations and Rules primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

**Environmental Impact**

This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, et seq.) because it is not a major federal action significantly affecting the quality of the human environment.

**Federalism**

The Corporation has analyzed this rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a Federalism Assessment.

**Unfunded Mandates**

The Corporation has analyzed this rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

**Paperwork Reduction Act**

This regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

**List of Subjects in 33 CFR Part 401**

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation is amending 33 CFR Part 401 as follows:

## PART 401—SEAWAY REGULATIONS AND RULES

### Subpart A—Regulations

■ 1. The authority citation for subpart A of part 401 continues to read as follows:

**Authority:** 33 U.S.C. 983(a) and 984(a)(4), as amended; 49 CFR 1.52, unless otherwise noted.

■ 2. In § 401.2, redesignate paragraphs (b) through (r) as paragraphs (c) through (s) and add a new paragraph (b) to read as follows:

**§ 401.2 Interpretation.**

* * * * *

(b) E-business means web applications on the St. Lawrence Seaway Management Corporation Web site which provides direct electronic transmission of data to complete and submit application forms and transit data;

* * * * *

■ 3. In § 401.9, revise the section heading and add new paragraphs (c) and (d) to read as follows:

**§ 401.9 Radio telephone and navigation equipment.**

* * * * *

(c) Gyro compass error greater than 2 degrees must be serviced prior to transiting the Seaway, and if noted during a Seaway transit, it must be reported to the nearest Seaway station and the gyro compass must be serviced at the first opportunity.

(d) When magnetic compass error is greater than 5 degrees, the vessel is required to have the compass swung and a new deviation card produced, unless the ''record of deviations'' has been properly maintained and verified.

■ 4. In § 401.10, revise paragraph (c) to read as follows:

**§ 401.10 Mooring lines.**

* * * * *

(c) Synthetic lines must be used for mooring at approach walls when using tie-up services at tie-up walls and docks within the Seaway.

* * * * *

■ 5. In § 401.13, revise paragraph (b) to read as follows:

**§ 401.13 Hand lines.**

* * * * *

(b) Be of uniform thickness and have a diameter of not less than 12 mm and not more than 17 mm and a minimum length of 30 m. The ends of the lines shall be back spliced or tapered; and

* * * * *

■ 6 . Revise § 401.14 to read as follows:

**§ 401.14 Anchor marking buoys.**

(a) Every vessel shall have its anchors cleared and have the anchor marking buoys free to deploy (weak link to hold buoy line on board) with the buoy lines firmly secured to each anchor and ready to be released prior to entering the Seaway.

(b) Every vessel shall deploy the anchor marking buoy when dropping an anchor in Seaway waters.

■ 7. In § 401.19, revise paragraph (a) and paragraph (b)(2) to read as follows:

**§ 401.19 Disposal and discharge systems.**

(a) Every vessel not equipped with containers for ordure shall be equipped with a sewage disposal system enabling compliance with the Vessel Pollution and Dangerous Chemicals regulations (Canada), the U.S. Clean Water Act and the U.S. River and Harbor Act, and amendments thereto.

(b) * * *

(2) Retained on board in covered, leak-proof containers, until such time as it can be disposed of in accordance with the provisions of the Vessel Pollution and Dangerous Chemicals regulations (Canada), the U.S. Clean Water Act and the U.S. River and Harbor Act, and amendments thereto.

* * * * *

■ 8. In § 401.22, revise paragraphs (b)(2), (b)(3) and add a new paragraph (b)(4) to read as follows:

**§ 401.22 Preclearance of vessels.**

* * * * *

(b) * * *

(2) A change of representative of the vessel,

(3) A material alteration in the physical characteristics of the vessel, until another application for preclearance has been made and approved, or

(4) Past due invoices by the representative as set out in § 401.75.

* * * * *

■ 9. Revise § 401.24 to read as follows:

**§ 401.24 Application for preclearance.**

(a) The representative of a vessel may, on a preclearance form obtained from the Manager, St. Lambert, Quebec or downloaded from the St. Lawrence Seaway Web site (*www.greatlakes-seaway.com*), apply for preclearance, giving particulars of the ownership, liability insurance and physical characteristics of the vessel and guaranteeing payment of the fees that may be incurred by the vessel. The form may also be completed and submitted on the Seaway Web site via e-business. Preclearance application must be received by the St. Lawrence Seaway between 08:00—16:00 hours Monday through Friday excluding holidays and at least 24 hours prior to Seaway inspection or vessel arrival.

(b) For representatives benefitting from the exemption of security tolls as set out in § 401.26(c) and § 401.26(d), a continuous preclearance status may be assigned to all vessels under their responsibility. Validation of the continuous preclearance status will be required every 5 years.

(c) For representatives with a valid security for tolls and a good payment history as set out in § 401.26(c) and § 401.26(d), a continuous preclearance status may be assigned to all vessels under their responsibility. Validation of the continuous preclearance status will be required every year.

(d) In the event that a vessel under the representative's responsibility is modified or upgraded, an application for preclearance will be required to update the vessel's information and reset the vessel's preclearance status.

■ 10. In § 401.26, revise paragraphs (a)(2), (a)(3), (c), and (d) to read as follows:

**§ 401.26 Security for tolls.**

(a) * * *

(2) A letter of guarantee to the Manager given by a financial institution approved by the Manager; or

(3) A letter of guarantee given to the Manager by an acceptable Bonding Company. Bonding Companies may be accepted if they:

* * * * *

(c)(1) Where a number of vessels:

(i) For each of which a preclearance has been given;

(ii) Are owned or controlled by the same individual or company; and

(iii) Have the same representative,

(2) The security for the tolls may not be required if the individual, company or representative has paid every toll invoice received in the preceding five years within the period set out in § 401.75(a).

(d) Notwithstanding paragraph (c) of this section, where a number of vessels, for each of which a preclearance has been given, are owned or controlled by the same individual or company and have the same representative, the security for the tolls may be reduced or eliminated provided the representative has paid every toll invoice received in the preceding five (5) years within the period set out in § 401.75(a). Upon request from the Manager, the representative must provide the Manager with a financial statement that meets the requirements established by the Manager.

* * * * *

■ 11. In § 401.29 revise paragraph (b) to read as follows:

**§ 401.29 Maximum draft.**

* * * * *

(b) The draft of a vessel shall meet a minimum draft requirement as defined at inspection on the ESI form and not, in any case, exceed 79.2 dm or the maximum permissible draft designated in a Seaway Notice by the Manager and the Corporation for the part of the Seaway in which a vessel is passing.

* * * * *

■ 12. Revise § 401.34 to read as follows:

**§ 401.34 Vessels in tow.**

(a) No vessel that is not self-propelled (including but not limited to tug/tows and/or dead ship/tows) shall be underway in any Seaway waters unless it is securely tied to an adequate tug or tugs, in accordance with special instructions given by the Manager or the Corporation pursuant to § 401.33 and must be equipped with an operational anchor.

(b) Every vessel in tow has to be inspected prior to every transit unless it has a valid Seaway Inspection Certificate. The owner/master shall give a 24 hour notice of arrival when an inspection is required.

■ 13. In § 401.46 add new paragraph (c) to read as follows:

**§ 401.46 Attending lines.**

* * * * *

(c) Mooring lines on deck must be individually attended unless the vessel is equipped with side control and visual contact must be maintained for signal from lock employees taking or letting go of mooring lines.

■ 14. In § 401.52 revise paragraph (b) to read as follows:

**§ 401.52 Limit of approach to a bridge.**

* * * * *

(b) No vessel shall pass the limit of approach sign at the twin railway bridges on the South Shore Canal at Kahnawake, until both bridges are in a fully open position and both signal lights show green.

■ 15. In § 401.68, revise the section heading and paragraph (c) to read as follows:

**§ 401.68 Explosives permission letter.**

* * * * *

(c) A written application for a Seaway Explosives Permission Letter certifying that the cargo is packed, marked and stowed in accordance with the *Transportation of Dangerous Goods Regulations* (Canada), the United States regulations under the *Dangerous Cargo Act* and the *International Maritime*

*Dangerous Goods Code,* may be made to the St. Lawrence Seaway Management Corporation, 202 Pitt Street, Cornwall, Ontario, K6J 3P7, or to the Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York, U.S.A. 13662.

* * * * *

■ 16. In § 401.74, revise paragraphs (a) and (f) to read as follows:

**§ 401.74 Transit Declaration.**

(a) A Seaway Transit Declaration Form (Cargo and Passenger) shall be forwarded to the Manager by the representative of a vessel, for each vessel that has an approved preclearance except non-cargo vessels, within fourteen (14) days after the vessel enters the Seaway on any up bound or down bound transit. The form may be obtained from the St. Lawrence Management Corporation, 151 Ecluse Street, St. Lambert, Quebec, J4R 2V6 or downloaded from the St. Lawrence Seaway Web site at *www.greatlakes-seaway.com.* The form may also be completed and submitted on the Seaway Web site via e-business.

* * * * *

(f) Seaway Transit Declaration Forms shall be used in assessing toll charges in accordance with the *St. Lawrence Seaway Schedule of Tolls,* and toll accounts shall be forwarded to the representative or its designated agent.

* * * * *

■ 17. In § 401.75, revise paragraph (b) and add a new paragraph (d) to read as follows:

**§ 401.75 Payment of tolls.**

* * * * *

(b) Tolls established by agreement between Canada and the United States, and known as the *St. Lawrence Seaway Schedule of Tolls,* shall be paid by pleasure crafts with prepaid tickets purchased in Canadian funds using credit card ticket dispensers located at pleasure craft docks or Paypal on the Seaway Web site. At U.S. locks, the toll is paid in U.S. funds or the pre-established equivalent in Canadian funds or through payment via Pay.gov on the Seaway Web site.

* * * * *

(d) Vessel representatives with past due toll accounts, unpaid after 45 days, may be subject to the suspension of preclearance for each vessel of which a preclearance has been given and/or the immediate removal of the waved security for the toll charges set in § 401.26(c) and § 401.26(d.)

■ 18. In § 401.79, add a new paragraph (b)(5) to read as follows:

**§ 401.79 Advance notice of arrival, vessels requiring inspection.**

* * * * *

(b) * * *

(5) A tall ship or vessel of an unusual design is subject to Seaway yearly inspection.

Issued at Washington, DC, on February 28, 2014.

**Carrie Lavigne,**

*Chief Counsel, Saint Lawrence Seaway Development Corporation.*

[FR Doc. 2014–04821 Filed 3–5–14; 8:45 am]

BILLING CODE 4910–61–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 450

**[EPA–HQ–OW–2010–0884; FRL–9906–51–OW]**

**RIN 2040–AF44**

## Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing changes to the effluent limitations guidelines and standards for the Construction and Development point source category. EPA is promulgating these changes pursuant to a settlement agreement to resolve litigation. This final rule withdraws the numeric discharge standards, which are currently stayed, and changes several of the non-numeric provisions of the existing rule.

**DATES:** This final rule is effective on May 5, 2014.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2010–0884. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the USEPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1744.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jesse W. Pritts at Engineering and Analysis Division, Office of Water (4303T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–566–1038; fax number: 202–566–1053; email *address: pritts.jesse@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

Regulated Entities

Entities potentially regulated by this action include:

| Category | Examples of regulated entities | North American Industry Classification System (NAICS) Code |
|---|---|---|
| Industry | Construction activities required to obtain NPDES permit coverage and performing the following activities: | |
| | Construction of buildings, including building, developing and general contracting | 236 |
| | Heavy and civil engineering construction, including land subdivision | 237 |

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether

your facility is regulated by this action, you should carefully examine the applicability criteria at 40 CFR 450.10 and the definition of ''storm water discharge associated with industrial activity'' and ''storm water discharge associated with small construction activity'' in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular site, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Overview

This preamble describes the terms, acronyms, and abbreviations used in this document; the legal authority for this final rule; background information; and a summary of the final changes.

**Table of Contents**

I. Legal Authority
II. Purpose & Summary of the Final Rule
III. Statutory and Executive Order Reviews

## I. Legal Authority

EPA is promulgating these regulations under the authorities of sections 101, 301, 304, 306, 308, 401, 402, 501 and 510 of the Clean Water Act (CWA), 33 U.S.C. 1251, 1311, 1314, 1316, 1318, 1341, 1342, 1361 and 1370, and pursuant to the Pollution Prevention Act of 1990, 42 U.S.C. 13101 et seq.

## II. Purpose & Summary of the Final Rule

### *A. Background*

EPA promulgated Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category (hereafter referred to as the ''C&D rule'') (74 FR 62996, December 1, 2009). The C&D rule established requirements based on Best Practicable Control Technology Currently Available, Best Available Technology Economically Achievable, Best Conventional Pollutant Control Technology, and New Source Performance Standards based on Best Available Demonstrated Control Technology. Construction activities like clearing, excavating, and grading significantly disturb the land. The disturbed soil, if not managed properly, can easily be washed off of the construction site during storms and enter water bodies. Stormwater discharges from construction activities can cause an array of physical, chemical and biological impacts to receiving streams.

The C&D rule included non-numeric requirements to:

- Implement erosion and sediment controls;
- stabilize soils;
- manage dewatering activities;
- implement pollution prevention measures;
- prohibit certain discharges; and
- utilize surface outlets for discharges from basins and impoundments.

The C&D rule also established a numeric limitation on the allowable level of turbidity in discharges from certain construction sites. The technology basis for the final numeric limitation was passive treatment controls including polymer-aided settling to reduce the turbidity in discharges.

Following promulgation of the C&D rule, the Wisconsin Builders Association, the National Association of Home Builders (NAHB) and the Utility Water Act Group (UWAG) filed petitions for review in the U.S. Circuit Courts of Appeals for the Fifth, Seventh, and D.C. Circuits. The petitions were consolidated in the Seventh Circuit. *Wisconsin Builders Association, et al.* v. *EPA,* Case Nos. 09–4113, 10–1247, and 10–1876 (7th Cir.). On July 8, 2010, the petitioners filed their briefs.

In April 2010, the Small Business Administration (SBA) filed with EPA a petition for administrative reconsideration of several technical aspects of the C&D rule. SBA identified potential deficiencies with the dataset that EPA used to support its decision to adopt the numeric turbidity limitation. In June 2010, NAHB also filed a petition for administrative reconsideration with EPA incorporating by reference SBA's argument regarding the potential deficiencies in the data.

On August 12, 2010, EPA filed an unopposed motion with the Court seeking to hold the litigation in abeyance until February 15, 2012 (see the docket for this action, EPA–HQ–OW–2010–0884–0085), and asking the Court to remand the record to EPA and vacate the numeric limitation portion of the rule. In addition, EPA agreed to reconsider the numeric limitation and to solicit site-specific information regarding the applicability of the numeric effluent limitation to cold weather sites and to small sites that are part of a larger project.

On August 24, 2010, the Court issued an order remanding the matter to the Agency but without vacating the numeric limitation. Subsequently on September 9, 2010, the petitioners filed an unopposed motion for clarification or reconsideration of the Court's August 24, 2010 order, asking the Court again to vacate the numeric limitation. On September 20, 2010, the Court remanded the administrative record to EPA, and ordered the case held in abeyance until February 15, 2012, but did not vacate the numeric limitation. During this period, EPA provided additional information in the docket to supplement the administrative record for the C&D rule (see EPA–HQ–OW–2008–0465–2124 through EPA–HQ–OW–2008–0465–2134) and an updated response to comment document (see EPA–HQ–OW–2008–0465–2135).

In November 2010, EPA issued a direct final regulation and a companion proposed regulation to stay the numeric limitation at 40 CFR 450.22 indefinitely (75 FR 68215, November 5, 2010 and 75 FR 68305, November 5, 2010). The proposed rule solicited comment due no later than December 6, 2010. Since no adverse comments were received, the direct final rule took effect on January 4, 2011.

As of this date, neither states nor EPA were required to incorporate the numeric turbidity limitation and monitoring requirements found at § 450.22(a) and § 450.22(b) into NPDES permits because the numeric limitation was stayed. However, the remainder of the C&D rule was still in effect and had to be incorporated into newly issued NPDES permits.

After issuing the stay of the numeric turbidity limitation, EPA continued to consult with stakeholders regarding next steps with respect to numeric discharge standards. EPA published a **Federal Register** notice (77 FR 112, January 3, 2012) seeking data on the effectiveness of technologies in controlling turbidity in discharges from construction sites and information on other related issues.

EPA also continued to meet with the petitioners in an effort to settle the litigation over the C&D rule. On December 10, 2012, EPA entered into a settlement agreement with petitioners to resolve the litigation in *Wisconsin Builders Association, et al.* v. *EPA,* Case Nos. 09–4113, 10–1247, and 10–1876 (7th Cir.). The settlement agreement provides for EPA to propose for public comment certain changes specific to the non-numeric portions of the C&D rule, as well as withdrawal of the numeric limitation, and take final action on the proposal. Under the terms of the settlement agreement, by April 15, 2013 EPA was to sign for publication in the **Federal Register** a notice of proposed rulemaking, with at least a 30-day comment period, to amend the C&D rule in a manner substantially similar to Exhibit A, which is attached to the settlement agreement. The settlement then provides that by February 28, 2014, EPA will take final action on the proposed rule. Under the settlement, if EPA takes the above actions by the

specified dates, and EPA's final action on the proposed rule amends the C&D rule in any manner, then Petitioners and EPA will promptly file a joint request with the Court asking it to dismiss the C&D litigation. In addition, if EPA's final action amends the C&D rule in a manner substantially similar to Exhibit A, Petitioners will not seek judicial review of those amendments. Finally, the settlement provides that within 60 days after EPA signs the proposal mentioned above, NAHB and EPA will file a joint request with the Court to dismiss NAHB's challenge to the 2012 Construction General Permit (CGP), which EPA issued on February 29, 2012 (see 77 FR 12286). EPA proposed a rule on April 1, 2013. Today's final rule satisfies EPA's commitments under the settlement agreement.

*B. Revisions to 40 CFR Part 450*

The revisions to 40 CFR part 450 being promulgated consist of the following three elements:

- Addition of a definition of ''infeasible'';
- revisions to the effluent limitations reflecting the best practicable control technology currently available (BPT), effluent limitations reflecting the best available technology economically achievable (BAT), effluent limitations reflecting the best conventional pollutant control technology (BCT), and the new source performance standards reflecting the best available demonstrated control technology (NSPS) found at 40 CFR 450.21, 450.22, 450.23 and 450.24, respectively; and
- withdrawal of the numeric turbidity effluent limitation and monitoring requirements found at 40 CFR 450.22(a) and 450.22(b) and reserving these subparts.

EPA has made these revisions to clarify when and where these provisions apply and what exceptions apply. Today's changes provide clarity to permitting authorities on how to implement or incorporate these provisions into permits. The following discusses each of the changes promulgated today, and summarizes the comments EPA received on each of the changes.

1. Addition of Definition at 40 CFR 450.11

EPA proposed to add a definition of infeasible at 40 CFR 450.11(b). Several of the provisions of the C&D rule require permittees to implement controls, unless infeasible. EPA did not provide a definition of infeasible in the 2009 C&D rule, although EPA did provide a definition in the preamble (74 FR 63005, 63017, December 1, 2009). The proposed definition of infeasible was derived from EPA's preamble language from the 2009 final rule and the 2012 CGP.

EPA received a number of comments on the proposed definition of infeasible. Some commenters supported EPA's inclusion of a definition, while some did not. Some commenters offered specific revisions to the definition, while others requested that EPA provide additional examples of specific instances where a given practice may be infeasible. Some commenters requested that EPA incorporate an infeasibility condition into all of the requirements of the final rule, not just those where it is currently included.

EPA had previously concluded that an infeasibility provision for some requirements (specifically, buffers, preserving topsoil, and use of surface outlets) was appropriate, given that site-specific constraints may exist. EPA now concludes that a definition of infeasible is appropriate in the rule in order to provide clarity to permitting authorities. EPA has not changed the proposed definition for today's final rule as a result of comments received because the definition allows sufficient flexibility for permitting authorities to incorporate appropriate requirements into their permits to address the limited number of circumstances where a given requirement may be infeasible. See the comment response document for today's action for additional discussion of the comments received.

2. Revision of 40 CFR 450.21(a)(1)

EPA received several comments on this proposed amended requirement. Some stated that this requirement is not needed since there are other ways of controlling erosion besides controlling volume and velocity, or that the requirement is too prescriptive. Others stated that the ''within the site'' language that is contained in the 2009 final rule is necessary and should be retained in this rule so that permittees are not held responsible for installing controls beyond their area of disturbance in order to control erosion caused by their discharges. Others stated that EPA does not have authority to regulate internal processes at a construction site, and that removal of the ''within the site'' language is justified on this basis.

After consideration of comments, EPA did not make any changes to the proposed requirement for this final rule. EPA has determined that the revision, as proposed, is an important component of construction stormwater management as increased volume and duration of flows resulting from removal of vegetation and soil compaction that accompany construction activities can contribute to significant increases in soil erosion and transport and discharge of pollutants to surface waters. EPA has authority to promulgate non-numeric effluent limitations that regulate internal processes at construction sites in order to control and minimize the discharge of pollutants to surface waters. See EPA–HQ–OW–2008–0465–2124 through EPA–HQ–OW–2008–0465–2134 for discussion linking up-slope/on-site activities to controlling or minimizing the discharge of pollutants from the site to surface waters. See also *Citizens Coal Council, et al.* v. *EPA,* 446 F.3d 879, 895 (6th Cir. 2006)(''under the [Clean Water] Act, effluent limitations are not limited to numeric discharges but encompass 'any restriction' on discharges''); *Waterkeeper Alliance, Inc.* v. *EPA,* 399 F.3d 486, 502 (2nd Cir. 2005)(''rather than setting forth *numerical* effluent limitations for land application of manure, the CAFO Rule establishes *non-numerical* effluent limitations in the form of best management practices''); *Texas Municipal Power Agency* v. *EPA,* 836 F.2d 1482, 1488 (5th Cir. 1988) (''it is sometimes necessary to regulate discharges within the treatment process to control discharges at the end . . . [t]his position has support in the language of the CWA, its legislative history, and common sense.''); *Public Service Company of Colorado, Fort St. Vrain Station* v. *EPA,* 949 F.2d 1063, 1065 (10th Cir. 1991) (''We find no clear Congressional or Presidential intent expressly forbidding EPA from imposing internal waste stream effluent limitations when such limitations would be impracticable to monitor at the end of the pipe.'').

3. Revision of 40 CFR 450.21(a)(2)

EPA received a number of comments on this proposed revision. One commenter suggested that EPA change the language to require management of local scour. Others suggested that EPA's proposed change to limit erosion in the ''immediate vicinity of discharge points'' narrows the requirement from what was contained in the 2009 rule. Others stated that EPA does not have authority under the effluent guidelines program to control erosion in receiving waters since effluent guidelines regulate the discharge of pollutants from point sources, and more broadly that EPA does not have authority to regulate volume. Some comments stated that projects with constrained space, such as linear projects, cannot feasibly control the volume of discharges. Other comments suggested that the requirement is too prescriptive, and that

there are other measures to control erosion in receiving waters. Some commenters suggested that the ''in the immediate vicinity'' language is ambiguous and should be removed, and that permittees should be responsible for downstream erosion caused by their discharges. Other comments stated that the language should be expanded to state that attainment of water quality standards should be the goal and that the discharges should not contribute to an existing impairment.

EPA made one change to the proposed requirement for today's final rule, which is the insertion of the words ''and scour'' after the word ''erosion''. EPA made this change as a result of comments received by the American Association of State Highway and Transportation Officials (AASHTO) (see EPA–HQ–OW–2010–0884–0194), which indicated that ''local scour'' is an appropriate term for the erosion in receiving waters that EPA is intending to address by this requirement. EPA did not include the ''local'' qualifier since the requirement is limited to erosion ''in the immediate vicinity'' of discharge points, and therefore the addition of ''local'' would be redundant. EPA has not elected to make any of the other changes suggested by commenters. While EPA understands that some would find a requirement to also include downstream erosion environmentally beneficial, it is more appropriate to consider downstream erosion on a site-specific water quality basis than in this nationally applicable, technology-based rule.

4. Revision of 40 CFR 450.21(a)(6)

EPA received several comments on this proposed amended requirement. Some commenters expressed concern over requiring infiltration for controlling pollutants, indicating that there are other methods for reducing pollutants other than infiltration. Commenters also were concerned about the requirement to provide buffers, indicating that some disturbance would be needed, such as stream crossing. Commenters were also concerned about the overlap between this requirement and Section 404 permits, and the switch from ''surface waters'', which was the language in the 2009 rule, to ''Waters of the United States,'' as they believed that the latter has a broader scope. Specific mention was made of the need to install buffers around jurisdictional wetlands. Commenters also requested clarification of the terms ''provide'' and ''natural buffers''.

EPA did not make any changes to the proposed requirement for today's final rule. The language, as proposed, includes an exception for infeasibility and provides sufficient flexibility for permitting authorities to incorporate appropriate language into permits to address the range of site-specific conditions that may exist and to address instances where a buffer or infiltration may be infeasible for some part of a project. See the 2012 CGP for an example of how EPA has incorporated buffer requirements, as well as alternative controls, into a general permit.

EPA has not changed the proposed use of the term ''waters of the United States'' instead of the phrase ''surface waters.'' EPA intended that the two phrases mean the same set of waters. See the comment response document for specific responses to other comments concerning this provision.

5. Revision of 40 CFR 450.21(a)(7)

EPA proposed to amend this requirement, as well as separate the two provisions (minimizing soil compaction and preserving topsoil) into two separate requirements. EPA received several comments on this proposed amended requirement. Some commenters requested more specificity on types of practices that would meet this provision, such as use of soil amendments or deep ripping. Other comments suggested that the use of soil compaction for temporary soil stabilization should be permitted. Still other comments indicated that there are methods to provide stabilization other than preserving topsoil.

EPA did not make any changes to the proposed requirement for today's final rule. The provision, as proposed, provides sufficient flexibility for permitting authorities to develop appropriate language for their permits and provides permittees sufficient flexibility to obtain relief in cases where these practices would be infeasible based on site-specific conditions. The requirement to minimize soil compaction does not prohibit use of compaction for temporary stabilization since the requirement is to minimize, not prohibit, compaction. If the permitting authority determines that compaction is an appropriate temporary stabilization measure (considering other stabilization language contained at 450.21(b)), then it may elect to develop appropriate language to this effect in its permit.

6. Revision of 40 CFR 450.21(b)

EPA received several comments on this proposed amended requirement. One commenter requested an exemption from the ''immediate'' initiation of stabilization requirement for areas of disturbance less than one acre on a site so as to allow prioritization of stabilization activities. The commenter also requested inclusion of the definition of ''initiate immediately'' from the 2012 CGP, and other commenters requested additional clarification of the term ''immediately.'' Commenters also requested that additional exemptions be provided, for example, during periods with low temperatures or excessive or inadequate moisture that would limit the ability to establish vegetative stabilization. One commenter was also concerned that the language regarding ''intended function'' was not specific, and that this could allow permittees to take advantage of this exemption. This commenter suggested that requiring that the permittee obtain a waiver from stabilization would be a reasonable requirement.

The final rule allows an exemption from stabilization in limited circumstances. In general, stabilization represents sound industry practice to minimize discharges from an active construction site. Industry representatives have pointed out to the Agency that there are limited circumstances where this requirement may not make sense. Therefore the rule gives permitting authorities flexibility to provide a waiver from stabilization in limited circumstances (an example might be a motocross track where the intended function is an unstabilized area). Rather than specify in this national rule all such circumstances, which would likely miss some reasonable exception, the rule allows permitting authorities to define these circumstances at the time of permitting. As stated above, however, EPA expects that sound industry practice of stabilizing the site immediately will be the norm.

With respect to providing additional exemptions from vegetative stabilization, EPA notes that 450.21(b) does not require *vegetative* stabilization. Both vegetative and non-vegetative stabilization may be appropriate measures, consistent with permit requirements. In arid, semiarid and drought-stricken areas, the amended requirement states that alternative ''e.g., non-vegetative'' stabilization measures must be employed in these areas because vegetative stabilization is infeasible (because adequate moisture would not be present to establish and maintain such vegetation). However, the language does not limit the use of non-vegetative stabilization in other instances, such as during cold weather conditions. All areas (except those where the intended function

necessitates that it remain disturbed) would require stabilization, vegetative or non-vegetative, consistent with requirements developed by the permitting authority.

After consideration of all comments on this provision, EPA did not make any changes to the proposed requirement for today's final rule. EPA has determined that the requirement contains sufficient flexibility for permitting authorities to develop appropriate criteria for vegetative and non-vegetative stabilization, and to develop permit language regarding the timing of such stabilization activities.

7. Revision of 40 CFR 450.21(d)(2)

EPA did not receive any substantive comments on this proposed amended requirement, and therefore EPA did not make any changes to the proposed requirement for today's final rule.

8. Removal of Numeric Standard and Monitoring Provisions at 40 CFR 450.22(a) and 450.22(b)

The final change removes the numeric discharge standard and monitoring requirements previously found at 40 CFR 450.22(a) and 450.22(b).

EPA received several comments on this proposed change. While many commenters were supportive of removing the numeric turbidity effluent limitation and monitoring requirements, some commenters were opposed to this and requested that EPA reinstate a numeric limitation. Some commenters suggested that EPA completely remove these sections of the CFR instead of reserving these sections.

EPA is withdrawing the numeric limitation but has reserved these paragraphs for potential revisions should EPA decide to propose and promulgate additional effluent limitations guidelines and monitoring requirements in a future rulemaking. The Agency is considering data and comments submitted in response to the January 3, 2012 **Federal Register** notice (77 FR 112) seeking additional information and data on numeric standards. At this time, EPA is concerned that a numeric limitation may create a disincentive to green infrastructure techniques for managing stormwater. For example, meeting a numeric standard may require installation of a sediment basin or other impoundment on certain sites, which may be a disincentive to installing distributed stormwater controls. Also, EPA recognizes that additional data collection would likely be necessary in order to inform any establishment of numeric discharge standards and monitoring requirements in the future. At such time that EPA decides on a path forward with respect to numeric discharge standards and monitoring requirements, EPA will take appropriate actions to notify interested stakeholders. EPA encourages interested parties to continue submitting data and information to EPA with respect to numeric discharge standards at construction sites. In the interim, it is preferable to reserve these sections of the CFR for future action. Removing these paragraphs altogether would require re-organization of other sections of the rule. EPA sees no meaningful disadvantage of reserving these sections as opposed to removing these sections.

## III. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). The action does not impose an information collection burden because the amendments do not impose any data collection or reporting requirements.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

The final rule clarifies applicability of the existing non-numeric effluent limitations at 40 CFR Part 450 and provides exemptions to some requirements in limited cases. We have therefore concluded that today's final rule will relieve regulatory burden for affected small entities.

### *D. Unfunded Mandates Reform Act*

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule clarifies applicability of the existing non-numeric effluent limitations at 40 CFR Part 450 and provides exemptions to some requirements in limited cases. The rule does not impose new or more stringent requirements, and therefore this action does not subject regulated entities to any costs incremental to the existing rule. Thus, this rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule clarifies applicability of the existing non-numeric effluent limitations at 40 CFR Part 450 and provides exemptions to some requirements in limited cases. These requirements apply to all governmental entities that undertake construction activities regulated at 40 CFR 122.26, and therefore do not significantly or uniquely affect small governments.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule clarifies applicability of the existing non-numeric effluent limitations at 40 CFR Part 450 and provides exemptions to some requirements in limited cases. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule clarifies applicability of the existing non-numeric effluent limitations at 40 CFR Part 450 and provides exemptions to some requirements in limited cases. The rule does not impose new or more stringent requirements, and therefore this action would not subject regulated entities to any costs incremental to the existing rule. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involved technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has concluded that it is not practicable to determine whether there would be disproportionately high and adverse human health or environmental effects on minority and/or low income populations from this final rule. This final rule clarifies applicability of the existing non-numeric effluent limitations at 40 CFR Part 450 and provides exemptions to some requirements in limited cases. While EPA considers it unlikely, it is possible that the changes to some of these requirements could result in greater pollution discharge to waters of the United States. However, EPA does not expect the quantity of pollution discharges to specific waterbodies or at the national level to significantly increase as a result of this final rule. Furthermore, the primary pollutants discharged by this industry, which are sediment and turbidity, are present in background levels to varying quantities in waters of the United States. Therefore, the extent, if any, of changes in human health or environmental effects as a result of this action would depend upon waterbody-specific conditions and the locations and interaction of populations with those waterbodies. Due to the varying nature and location of construction site discharges, and due to the fact that there are often other sources of sediment and turbidity pollution in waterbodies, it is not practicable to quantify the extent to which this action would alter levels of pollution discharges or whether any change in pollution discharges as a result of this action would contribute disproportionately high and adverse human health or environmental effects on minority and/or low income populations.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective May 5, 2014.

*L. Judicial Review*

In accordance with 40 CFR 23.2, today's rule is considered promulgated for the purposes of judicial review as of 1 p.m. Eastern Standard Time, March 20, 2014. Under Section 509(b)(1) of the Clean Water Act (CWA), judicial review of today's effluent limitations guidelines and new source performance standards may be obtained by filing a petition in the United States Circuit Court of Appeals for review within 120 days from the date of promulgation of these guidelines and standards. Under Section 509(b)(2) of the CWA, the requirements of this regulation may not be challenged later in civil or criminal proceedings brought to enforce these requirements.

**List of Subjects in 40 CFR Part 450**

Environmental protection, Construction industry, Land development, Water pollution control.

Dated: February 20, 2014.

**Gina McCarthy,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 450—CONSTRUCTION AND DEVELOPMENT POINT SOURCE CATEGORY

■ 1. The authority citation for part 450 is revised to read as follows:

**Authority:** 33 U.S.C. 1311, 1312, 1314, 1316, 1341, 1342, 1361 and 1370.

### Subpart A—General Provisions

■ 2. Section 450.11 is amended by adding paragraph (b) to read as follows:

**§ 450.11 General definitions.**

* * * * *

(b) *Infeasible.* Infeasible means not technologically possible, or not economically practicable and achievable in light of best industry practices.

### Subpart B—Construction and Development Effluent Guidelines

■ 3. Section 450.21 is amended by:
■ a. Revising paragraphs (a)(1), (a)(2), (a)(6), and (a)(7).
■ b. Adding paragraph (a)(8).
■ c. Revising paragraph (b).
■ d. Revising paragraph (d)(2).

The added and revised text read as follows:

**§ 450.21 Effluent limitations reflecting the best practicable technology currently available (BPT).**

* * * * *

(a) * * *

(1) Control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges;

(2) Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points;

* * * * *

(6) Provide and maintain natural buffers around waters of the United States, direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible;

(7) Minimize soil compaction. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted; and

(8) Unless infeasible, preserve topsoil. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.

(b) *Soil Stabilization.* Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the permitting authority. Stabilization must be completed within a period of time determined by the permitting authority. In limited circumstances, stabilization may not be required if the intended function of a specific area of the site necessitates that it remain disturbed.

* * * * *

(d) * * *

(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater. Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use); and

* * * * *

**§ 450.22 [Amended]**

■ 4. Section 450.22 is amended by removing and reserving paragraphs (a) and (b).

[FR Doc. 2014–04612 Filed 3–5–14; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 15

**[ET Docket Nos. 10–23 and 10–27; FCC 14–2]**

### Level Probing Radars

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document modifies the Commission's rules for level probing radars (LPRs) operating on an unlicensed basis in the 5.925–7.250 GHz, 24.05–29.00 GHz, and 75–85 GHz bands to revise our measurement procedures to provide more accurate and repeatable measurement protocols for these devices. LPR devices are low-power radars that measure the level (relative height) of various substances in man-made or natural containments. The new rules will benefit the public and industry by improving the accuracy and reliability of these measuring tools, and providing needed flexibility and cost savings for LPR device manufacturers which should in turn make them more available to users, without causing harmful interference to authorized services.

**DATES:** Effective April 7, 2014.

**FOR FURTHER INFORMATION CONTACT:** Anh Wride, Office of Engineering and Technology, 202–418–0577, *Anh.Wride@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order and Order, ET Docket Nos.10–23 and 10–27, FCC 14–2, adopted January 15, 2014 and released January 15, 2014. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

### Summary of Report and Order

1. By this action, the Commission modifies part 15 of its rules for level probing radars (LPRs) operating on an unlicensed basis in the 5.925–7.250 GHz, 24.05–29.00 GHz, and 75–85 GHz bands to revise our measurement procedures to provide more accurate and repeatable measurement protocols for these devices. LPR devices are low-power radars that measure the level (relative height) of various substances in man-made or natural containments. In open-air environments, LPR devices may be used to measure levels of substances such as water basin levels or coal piles. An LPR device that is installed inside an enclosure, which could be filled with liquids or granulates, is commonly referred to as a tank level probing radar (TLPR). LPR (including TLPR) devices can provide accurate and reliable target resolution to identify water levels in rivers and dams or critical levels of materials such as fuel or sewer-treated waste, reducing overflow and spillage and minimizing

exposure of maintenance personnel in the case of high risk substances.

2. On January 14, 2010, the Commission adopted the *Notice of Proposed Rulemaking and Order,* (*Notice and Order)* in this proceeding, 75 FR 9850, March 4, 2010. The *Notice and Order* proposed to modify part 15 of the rules to allow the restricted 77–81 GHz frequency band to be used on an unlicensed basis for the operation of LPR equipment installed inside closed storage tanks made of metal, concrete, or other material with similar attenuating characteristics and also sought comment on whether to allow TLPR operation on an unlicensed basis in the 75–85 GHz band. The *Notice and Order* also granted conditional waivers of the restriction in § 15.205(a) that bars intentional radiators in the 77–81 GHz restricted band to Siemens, VEGA, and any other responsible party that can meet the waiver conditions specified in that decision. Under the terms of the waivers, these parties could employ TLPR devices in this band if installed inside tanks with high attenuation characteristics (*e.g.,* metal and concrete tanks), pending the conclusion of the concurrently initiated rulemaking.

3. Since the adoption of the *Notice and Order,* the Commission received an additional waiver request (disposed herein), as well as some inquiries, regarding outdoor use on additional frequencies under existing part 15 rules. To address the apparent need for a comprehensive and consistent approach to LPR devices, on March 26, 2012, the Commission adopted a *Further Notice of Proposed Rule Making (FNPRM),* 77 FR 25386, April 30, 2012, in this proceeding, it proposed a set of common technical rules for the operation of LPRs in any type of tanks (*i.e.,* with low RF attenuation characteristics such as fiberglass, or high RF attenuation characteristics such as metal) as well as in open-air environments in the following frequency bands: 5.925–7.250 GHz, 24.05–29.00 GHz, and 75–85 GHz. In the *FNPRM,* the Commission made new proposals that treat LPR and TLPR devices the same with respect to emission limits and frequency bands of operation without any additional installation limitations. That is, a level measuring radar that complies with our proposed rules would be able to be used in any application, whether outdoors in the open or inside any type of enclosure. In adopting the *FNPRM,* the Commission held in abeyance all waiver requests regarding LPR operations pending final action in this rulemaking proceeding.

4. The *FNPRM's* technical and operational proposals were based in large part on measurements and analytical work conducted in support of the European Telecommunications Standards Institute (ETSI) LPR Technical Standard for LPR devices. This standard is based on the research, modeling and recommendations provided by the Electronic Communications Committee (ECC) within the European Conference of Postal and Telecommunications Administrations (CEPT) in ECC Report 139, a study of the co-existence of LPR devices with various authorized services in the 6–8.5 GHz, 24.05–26.5 GHz, 57–64 GHz, and 75–85 GHz and adjacent frequency bands.

5. LPR devices have operated for years under the general technical standards for intentional radiators in § 15.209 of the Commission's rules, primarily inside metal or concrete tanks which substantially attenuate radio frequency energy from the LPR antenna. Although the Commission will continue to certify LPR under this rule, manufacturers have had a difficult time demonstrating compliance with the rule's low emission limits for certain types of level-measuring applications in fiberglass or polyethylene (plastic) tanks or in open air. Such difficulty occurs because reflections off of the surfaces being measured attenuate inconsistently due to devices' orientation and the material being measured, the physical shape of which can change continuously depending on the material and circumstances. Thus, it is difficult to make a measurement that will validly apply to all installations of a given LPR device when measuring LPR emissions *in situ* for certification purposes. The amended rules adopted in the Report and Order establishes a comprehensive and consistent approach that would provide simplicity and predictability for authorizing LPRs for level-measuring applications in any type of tank or open-air environments, in the following frequency bands: 5.925–7.250 GHz, 24.05–29.00 GHz, and 75–85 GHz. Certification of LPR equipment under the new rules will require measuring emissions in the main beam of the LPR antenna, while adjusting the emission limits in part 15 for devices so measured to account for the significant attenuation that occurs upon reflection of those emissions. These emission limits will protect any nearby receivers from encountering any increase in interfering signal levels. The new rules will benefit the public and industry by improving the accuracy and reliability of these measuring tools, and providing needed flexibility and cost savings for LPR device manufacturers which should in turn make them more available to users, without causing harmful interference to authorized services. To the extent practicable, these amended rules harmonize our technical rules for LPR devices with similar European standards, thus improving the competitiveness of U.S. manufacturers in the global economy.

6. The Order, also dismissed as moot a request by VEGA Americas, Inc. (formerly Ohmart/VEGA Corporation) (VEGA) to waive the use restrictions in § 15.252 so that it can operate an LPR device in the 26 GHz band.

7. In the Report and Order (R&O), the Commission adopted a comprehensive set of technical and operational rules for authorizing LPR devices operating on an unlicensed basis in the 5.925–7.250 GHz, 24.05–29.00 GHz, and 75–85 GHz in any RF level-measuring application, whether in an open-air environment or inside any type of enclosure. Section 5.256 will allow for the introduction of more diverse applications of LPR in several frequency bands and improve the accuracy and reliability of these level-measuring tools beyond what is achievable under § 15.209. The new rules will also help to streamline equipment development and certification of LPR devices, allowing manufacturers to take advantage of economies of scale by marketing the same LPR device for a variety of RF level-measuring applications, as well as provide a simplified method for measuring the radiated emissions from these devices.

8. The Commission's action here addresses a significant obstacle to authorizing LPR devices under the current rules, namely, the difficulty of obtaining repeatable and accurate radiated emission measurements. Unlike most part 15 devices that operate with the emitter/transmitter pointing horizontally, LPR devices must operate in a downward-pointing position such that their emissions are directed toward the substance to be measured located. The Commission's current rules are designed for devices with horizontal emitters or transmitters, and require measuring radiated emissions at a 3-meter horizontal distance from the radiating source, with the radiating source pointed directly at the measurement antenna (boresighted), while varying the measurement antenna height from 1 meter to 4 meters to obtain worst-case emissions. This compliance measurement practice does not yield repeatable results when LPR emissions are measured *in situ, i.e.,* with the radar pointing down toward a representative substance. This difficulty arises because the current measurement

procedures are optimized for directly measuring device emissions, whereas *in situ* measurements for LPRs would essentially only measure reflected emissions, which can vary erratically, depending on the nature of the surface at the precise moment(s) of measurement. To obtain repeatable and accurate emission test results, manufacturers can measure LPR emissions directly in the main beam of the antenna for certification compliance purposes. However, when so measured, the general emission limit in § 15.209 constrains LPR emissions to such a low level that the device cannot be used for most high-precision, high-accuracy applications, such as measuring volatile liquids inside non-corrosive fiberglass tanks or water level in rivers, for which LPR devices need higher power than a main-beam measurement permits under our current rules to achieve the necessary precision in these applications. The part 15 rules that permit higher power for similar wideband devices, such as §§ 15.250 and 15.252, contain frequency and operational restrictions which preclude the certification of LPR devices absent a waiver, which some LPR manufacturers have sought.

9. Due to the normal operating condition of an LPR where it radiates in a downward direction, potential victims of interference from LPRs are unlikely to be located in the main beam and subject to the maximum radiated power from the device. Rather, it is the reflected emissions from LPRs—which will be lower than the main-beam emissions—that present the greatest potential for harmful interference. Because of this, and the difficulty in measuring reflected emissions discussed in the R&O, the Commission amended part 15 to add new § 15.256 to increase the (main-beam) emissions limit for LPRs to a level that will still ensure that the reflected emissions remain within the maximum permitted level. This will allow LPR devices to achieve better accuracy in certain applications while not increasing the potential of causing harmful interference to other devices. The Commission also requires that all spurious or unwanted emissions from LPR devices not exceed the general emission limits in § 15.209. Measuring a main beam emission limit rather than measuring reflected emissions will make certification measurements simpler, repeatable and more reliable, and allow certified LPR devices to be used either in tanks or in open-air environments without increasing interference to any authorized services. LPRs will have the higher power and bandwidth needed without manufacturers having to request waivers of operational restrictions in §§ 15.250 and 15.252 for similar wideband devices as they have in the past. To further protect authorized services operating in the same and adjacent frequency bands, the Commission will (1) require the LPR antenna to be dedicated or integrated as part of the transmitter and installed in a downward position; (2) limit installations of LPR devices to fixed locations; and (3) prohibit hand-held applications of LPR and the marketing of LPR devices to residential consumers.

10. The Commission will continue to permit certification of LPR devices under the provisions of § 15.209 of its rules as unlicensed intentional radiators. Certification of LPRs under § 15.209 provides an alternative for those manufacturers who may not need higher power or who want to operate in frequency bands that are not covered by the new LPR rules. The Commission modified § 15.31 of the rules to provide compliance testing guidance for those manufacturers who choose to certify LPR under § 15.209.

**Certification Under Section 15.209**

11. The Commission will continue to certify LPRs under § 15.209. Although the new LPR rules are intended to simplify measurement procedures and permit certification of LPR devices that could be used both in any type of tank and outdoors in specific frequency bands, including the restricted band 75–85 GHz, the Commission recognizes that the new rules' frequency and technical requirements may limit options for some applications. LPR certified under § 15.209 may operate in any non-restricted band at much lower emission limits than permitted under the new LPR rule and, would demonstrate compliance by measuring their worst-case emissions in the main beam of the antenna; peak emissions for pulsed LPRs may be reduced further because the rules require that peak power output use a pulse desensitization correction factor (PDCF). The Commission observes that legacy LPR operations certified under § 15.209 have primarily operated in enclosed tanks with high attenuation levels and have not caused harmful interference over the years, but manufacturers have had difficulty in demonstrating compliance with § 15.209 for other types of applications (*e.g.,* open-air operation).

12. While TLPRs are currently receiving certification under § 15.209 using *in situ* measurement procedures, the Commission will provide specific measurement guidelines for certifying LPRs that are intended for installation inside enclosed tanks made of metal or concrete to promote consistency and repeatability. Some manufacturers who have operated LPRs inside metallic and concrete tanks for many years request that, for these uses, they continue to be permitted to demonstrate compliance with § 15.209 general emission limits by measuring radiated emissions outside a representative test tank with the LPR installed inside, as they have in the past. These parties point out that a tank wall made of metal or concrete provides a substantial RF shield, and they request that LPRs intended for this type of application not be subject to any further restriction on antenna beamwidth or main-beam emission limits, as long as emissions measured at 3 meters outside of the tank meet the general emission limit as currently required by § 15.209.

13. The Commission finds that there is good reason for providing specific measurement procedures that allow more flexibility for certifying, under § 15.209, LPRs intended for installation inside enclosures made of metal or concrete. At the same time, the rules will continue to permit manufacturers to demonstrate compliance with the § 15.209 general emission limits as they have in the past, by measuring radiated emissions outside a representative enclosure with the LPR installed inside. As observed in the *Notice and Order,* TLPR emissions outside of enclosed tanks with very high RF attenuation characteristics, *e.g.,* steel or concrete, will likely be minimal when considering the enclosure's attenuation coefficient in addition to the absorption characteristics of the target material (liquid or solid), and thus, any reflected signal will be mostly contained within the tank. Because metal and concrete enclosures provide substantial RF attenuation, the power in the main beam of the antenna installed within such tanks can be increased beyond the limits required for unenclosed devices, thus permitting better measurement performance in LPR applications (*e.g.,* higher power may permit the LPR to better focus and receive accurate echoes from the substance to be measured below the LPR), but the potential for harmful interference is significantly diminished because the signal can be substantially attenuated by the enclosure itself. The Commission also notes that this addresses MCAA's concerns regarding the difficulties of accommodating some antennas in existing openings of some metal and concrete tanks. Because other materials do not provide the same attenuation, the Commission limits these measurement procedures to LPR devices intended to

be used only in completely enclosed metal or concrete tanks. The Commission modified § 15.31 of the rules to provide compliance testing guidance for those manufacturers who choose to certify LPR under § 15.209.

**New Section 15.256**

**Frequency Bands of Operation**

14. As discussed most LPR devices on the U.S. market currently operate on an unlicensed basis in frequencies around 6 GHz, 24 GHz, or 26 GHz under the general emission limits of § 15.209 of the Commission's rules. These operating frequency ranges are chosen by the different LPR manufacturers to accommodate various level-measuring applications. As proposed in the *FNPRM,* the Commission will allow LPR devices certified under the new technical rules adopted herein to operate both in any type of enclosure and in open air, in the following frequency bands: 5.925–7.250 GHz, 24.05–29.00 GHz, and 75–85 GHz. The new rules addresses the specific spectrum needs and restrictions in the U.S., and to the extent practicable, harmonize our technical rules for LPR devices with similar European standards.

*1. 5.925–7.250 GHz Frequency Band*

15. The Commission authorizes unlicensed wideband transmitter operation within the 5.925–7.250 GHz band under § 15.250 of its rules. LPR devices seeking higher power and wider bandwidths than provided therein in order to improve their performance cannot be authorized under this rule absent a waiver of certain usage restrictions in the rule. In this band, licensed users include non-Federal fixed, fixed satellite, and mobile services from 5.925 GHz to 7.125 GHz; and Federal fixed and space research services (deep space & Earth-to-space) from 7.125 GHz to 7.250 GHz. Part 15 transmitters operating in this band are prohibited from being used in toys or operating on board an aircraft or satellite. They cannot utilize fixed outdoor infrastructure, including outdoor-mounted transmit antennas, to establish a wide area communications network. The Commission observed in the *FNPRM* that it would consider LPR operation in the 5.925–7.250 GHz band, including permitting limited fixed outdoor installations, consistent with the intent underlying the usage restrictions in § 15.250, because in this regard, LPRs are single, *i.e.,* relatively isolated, transmitters whose individual operations outdoors would not result in the establishment of a local area network of transmitters.

16. The Commission declines to expand the frequency band for LPR devices under the new rules at this time. First, the technical and operational requirements that it adopted under the new rules are based on analytical work that encompasses frequencies from 6.0–8.5 GHz for LPR operations; therefore, the Commission finds that compatibility of these limits with authorized services below 6 GHz has not been studied. Neither, Sutron nor any other commenter provided technical analyses or studies to support compatibility of LPR operating at the proposed higher emission limit with incumbent operations below 5.925 GHz. Although Sutron argues that greater bandwidth would yield greater level measurement resolution, neither it nor any other party indicated with any specificity, much less demonstrated, how permitting a higher resolution than that which can be attained under the rules adopted herein would further the public interest. The Commission concludes that, without further analyses, it would be imprudent to permit a wider bandwidth than what it proposed in the *FNPRM* and to expose incumbent services unnecessarily to additional radio noise. Further, the Commission and the NTIA are involved in active discussions relating to the 5.850–5.925 GHz bands. Pending the outcome of these activities, the Commission finds that LPR devices should be confined to the 5.925–7.250 GHz band when operating at the higher emission limit it adopted herein for LPR devices. Manufacturers requiring wider bandwidth than permitted under new § 15.256 may seek authorization, by demonstrating compliance under § 15.209.

*2. 24.05–29.0 GHz Frequency Band*

17. In the *FNPRM,* the Commission proposed to permit LPR operation in the 24.05–29.00 GHz band to provide expanded flexibility for optimizing LPR applications and to enhance global marketing opportunities by more closely harmonizing with ETSI in this frequency range. Currently, the Commission authorizes unlicensed wideband operation in the 23.12–29.0 GHz band under § 15.252 of its rules. LPR devices seeking higher power and wider bandwidths to improve their performance cannot be authorized under this rule absent a waiver of certain usage restrictions in the rule. While some LPRs currently operate in this band, their utility is limited by the restrictions of § 15.252. This band is shared between Federal and non-Federal services. Authorized licensed operations include radiolocation, Earth exploration satellite service (EESS) (active), amateur, fixed, inter-satellite, radionavigation, radiolocation satellite (Earth-to-space), fixed satellite (Earth-to-space), mobile, standard frequency and time signal satellite (Earth-to-space), space research (space-to-Earth), and EESS (space-to-Earth) services. Unlicensed transmitters operating in the 23.12–29.0 GHz band subject to this rule must be mounted on vehicles and cannot be used in aviation applications. Finally, in the *FNPRM,* the Commission observed that the proposed frequency band is wider than that which ETSI has adopted; however, it believes that the risk of interference to incumbent authorized services from LPR devices will be no greater than it is from part 15 vehicular radars currently operating in this band because LPR devices operate in a fixed downward-looking position, and because there have been no interference complaints related to the operation of these part 15 radars, which unlike LPRs do not always operate in a downward position. There were no comments related to our proposals in this band, and for the reasons stated, the Commission will allow LPRs to operate within the 24.05–29 GHz frequency band at the radiated emission limits under § 15.256.

*3. 75–85 GHz Frequency Band*

18. Apart from a handful of specified frequency bands, spectrum above 38.6 GHz, including most of the 75–85 GHz band, is designated as ''restricted'' in § 15.205 of the rules. Unless expressly permitted by rule or waiver, unlicensed devices are not allowed to intentionally radiate energy into a restricted band, in order to protect sensitive radio services from harmful interference. The Commission has permitted unlicensed operation within specific frequency bands above 38.6 GHz, *i.e.,* 46.7–46.9 GHz, 57–64 GHz, 76–77 GHz, and 92–95 GHz.

19. The 75–85 GHz band is shared between Federal and non-Federal services. Authorized operations in this band currently include radio astronomy, fixed/mobile/fixed satellite, mobile satellite, broadcast and broadcast satellite, radiolocation, space research (space-to-Earth), amateur and amateur satellite services. In addition, unlicensed vehicular radars are currently permitted to operate in the 76–77 GHz band. In the *FNPRM,* the Commission observed that the services in this band typically employ highly directional antennas to overcome the relatively higher propagation loss that occurs at these frequencies. The Commission stated its belief that LPR

operation in the 75–85 GHz band would not adversely affect incumbent authorized users, because this band is currently sparsely used and the propagation losses are significant at these frequencies, making harmful interference unlikely beyond a short distance from the LPR device.

20. The Commission has authorized vehicular radar operation, including Foreign Object Debris (FOD) detection fixed radar operations at airports, in the 76–77 GHz band under its part 15 unlicensed rules; and a rulemaking petition is now pending asking that it permit unlicensed vehicular radars to operate in the 77–81 GHz band as well. It is further noted that the Commission has modified § 90.103 of the rules to permit the certification, licensing and use of FOD detection radars in the 78–81 GHz band. The Commission finds that FOD radars and LPR devices would most likely not operate in the same geographical location, because the FOD radars are only authorized to operate at airports whereas LPR typically operate in industrial or remote areas. However, even if they were co-located, at these frequencies, the potential for harmful interference to FOD radars from LPR is extremely unlikely, given the substantial free-space propagation losses and the extremely narrow beamwidths of the FOD radar. As for spectrum sharing between vehicular radars and LPR, the Commission believes that LPR devices will be able to co-exist successfully with vehicular radars because the LPR is installed in a downward-looking position at fixed locations and the main-beam emission limits have been carefully calculated to avoid harmful interference to other radio services. The Commission further finds that the extreme propagation losses of radio signals at these frequencies would mitigate any potential harmful interference beyond a very short distance from the LPR device.

21. Accordingly, the Commission will allow LPR to operate within the 75–85 GHz frequency band, at the radiated emission limits specified in § 15.256. To permit LPR operation in the 75–85 GHz band, it also modified § 15.205 of the rules to remove the prohibition on intentional emissions in this band for LPR devices authorized under the new rules.

**Technical Requirements**

22. To maintain the existing interference protection criteria to authorized services in the frequency bands covered by § 15.256 for LPR operations, the *FNPRM* invited comment on establishing requirements for the following interdependent parameters: Main-beam radiated emission limits, antenna beamwidth, and antenna side-lobe gain. Main-beam emissions must be measured with the LPR antennas ''boresighted'' to produce the maximum realizable antenna coupling. The main-beam emission limits adopted will allow an LPR device to operate at higher peak levels than part 15 currently permits but would continue to provide the same level of interference protection to authorized services as any other part 15 device operating under the general emission limits, provided that the LPR antenna always maintains a downward position and utilizes a relatively narrow beamwidth. Because the LPR is always pointing downward and direct emissions from the LPR antenna are focused by a narrow beamwidth toward the substance being measured, it is unlikely that emissions reflected from this material or from the ground surface would cause interference to a potential victim receiver located at any height relative to the LPR due to the significant attenuation of the reflected signal.

23. The technical and operational requirements proposed in the *FNPRM* and discussed below are based on analytical work performed by the ECC in support of the ETSI Technical Standard for LPR devices. This standard specifies compliance measurements based on main-beam emission limits. To determine the maximum allowable radiated emission limits for LPR devices operating in each authorized frequency band, the ECC studied the interference potential of an LPR by taking into account reflected emissions within a hemispherical boundary around the LPR device. The ECC assumed a worst-case material reflectivity coefficient and determined the main-beam emission level that correlates to the appropriate reflected emission level. The Commission finds that the analytical work of ETSI/ECC provides a reliable correlation between main-beam emissions and emissions at 3 meters from the LPR that is sufficiently conservative to conclude that the use of a main-beam emission limit rather than limits based on reflected emissions will not create a greater interference potential, thus providing strong support for the approach we are taking here. Moreover, a main-beam emission limit would represent a more realistic evaluation of interference potential and permit higher power, thus increasing the accuracy and utility of LPRs. At the same time, it will simplify compliance measurements of LPR emissions, because emissions from the LPR would be measured directly in the main beam of the antenna where maximum emissions are found, thus avoiding the measurement of reflected emissions that can be highly variable due to the variable site-related factors involved with *in situ* testing. Under this approach, certification measurements will be simpler, repeatable and more reliable. Accordingly, the Commission amended the rules to require that LPR radiated emissions be measured in the main beam of the LPR antenna. The Commission notes that no party opposes the use of main-beam emission measurement or the general measurement principles in the FNPRM proposed rules.

**Radiated Emission Limits**

24. The Commission adopted distinct radiated emission limits for LPR devices operating in each of the frequency bands, as set forth in Table 1 in the R&O. The emission limits for main-beam emissions were derived by mathematically correlating the reflected emissions from an LPR with the existing part 15 average emission limit at −41.3 dBm EIRP for devices operating above 960 MHz –or lower levels (at −55 dBm EIRP for frequencies below 8.5 GHz). The LPR main-beam emission limits therefore would maintain the existing level of interference protection to incumbent radio services. As the Commission tentatively concluded in the *FNPRM,* the LPR emission limits for each of the specified operating frequency bands as measured in the main beam of the LPR antenna will adequately protect against harmful interference to incumbent authorized services in any of the proposed frequency bands, based on several factors. First, LPR devices will be required to utilize downward-focused narrow-beam transmit antennas, which are also needed to optimize level-measuring performance; therefore, the only LPR emissions likely to be incident on an incumbent receiver within proximity will be reflected from the target material and thus significantly attenuated. Second, the LPR emission limits are consistent with the results expected from application of the existing limits in radiated *in situ* measurements and therefore will maintain the existing level of protection afforded to incumbent authorized services under existing rules and their attendant measurement procedures. Third, as the operating frequency increases, the propagation path loss also increases as a result of the increased attenuating effects on radio waves from intervening objects and atmospheric conditions, and the Commission accounts for this by varying the

permitted radiated emission limit for each frequency band. None of the commenters took issue with any of these factors or with the conclusion that the proposed limits will provide adequate protection against harmful interference. Moreover, adoption of several operational restrictions, in addition to these emission limits, provides further assurance that authorized services will not be subject to harmful interference.

25. The Commission agrees with MCAA that because STL links are installed high off the ground with highly directional receive antennas, received interference from LPRs that point downward toward the measured substance is highly unlikely. It does not believe that EIBASS is correct in comparing LPR devices to other unlicensed narrowband part 15 devices that operate under §§ 15.209 and 15.35(b) of its rules because LPR devices are wideband devices that are more similar to unlicensed devices operating under § 15.250 of the rules. While it is true that the proposed main-beam peak emission limit for LPR is 7 dB higher than the peak emission limit in § 15.250, *i.e.,* 0 dBm peak EIRP, with the LPR antenna pointing down toward the substance being measured, only *reflected* emissions (which typically are already attenuated from the direct emission levels) would be expected. Because of reflection losses, LPR emission levels are therefore lower than other unlicensed wideband devices operating in the same frequency range. Further, because STL antennas are also directional in nature, there are additional antenna losses in the potential STL victim receive antenna, unless the LPR emissions are in the STL antenna main beam, which is a highly unlikely circumstance. The Commission further notes that the number used to derive the LPR equivalent main-beam emission limit at 6 GHz is actually 14 dB lower (at −55 dBm EIRP) than the average emission limit in § 15.250 (at −41.3 dBm EIRP) for part 15 devices operating in the same bands as STLs. Therefore, in the 6 GHz frequency range, the proposed main-beam emission limit is constraining any potential reflected emissions from an LPR to a level lower than the existing interference protection level for authorized services from unlicensed devices, resulting in a 14 dB additional interference protection margin for authorized services as compared to that provided by other part 15 devices. Furthermore, there has not been any case of harmful interference to STL links from other part 15 devices that currently operate in the same frequency band (devices that do not even have the interference-avoiding characteristic of being pointed downward). The Commission further notes that LPR devices are not by their nature used to establish local or wide area networks because LPRs are designed to measure the level of a substance at a single, circumscribed site (*e.g.,* a pile of coal or gravel, or water in a tank or under a bridge).

26. *Aggregate emissions of LPR devices.* The Commission observes that in calculating the LPR main-beam emission limits, the ECC Report 139 did take into account the co-existence between LPRs and EESS operating in the EESS allocated frequencies. ECC simulations show that in the most critical scenarios, there are wide margins of safety against harmful interference to EESS, even when using a very conservative number for the possible future growth of LPR devices in the long-term. CORF did not dispute these ECC analyses. The Commission therefore finds that there would be minimal or no effect on EESS or non-GSO satellite services from LPRs operating in the 24–26 GHz frequency range, and thus the Commission does not adopt aggregate emission limits for LPR in these bands. The Commission also observed that LPR, as all unlicensed devices operating under part 15 of the Commission rules, are subject to the non-interference rules in § 15.5.

27. *Unwanted (harmonic and spurious) emissions of LPR devices.* The Commission notes that similar part 15 equipment operating under § 15.250 in the 5.925–7.250 GHz band and under § 15.252 in the 23.12–29 GHz band are subject to unwanted emission limits that are much more stringent than what the Commission proposed for LPR devices, because it expects that LPRs will have a low interference potential as they operate in a fixed downward position. However, the Commission does not believe that LPR unwanted emissions should be allowed to be as high as −34 dBm EIRP as Hach requests for LPRs operating in the 26 GHz frequency range, because, the Commission goal is to maintain the existing interference protection criteria (*i.e.,* the part 15 general limit of less than −41.3 dBm EIRP) to authorized services from LPR' unwanted emissions. Further, the same principle of establishing an unwanted emissions limit at 20 dB below the fundamental limit would allow unwanted emissions from LPRs operating in the 80 GHz range to be as high as −23 dBm EIRP. The Commission finds that the −41.3 dBm EIRP general emission limit of § 15.209 is appropriate so as to constrain any LPR unwanted emissions to the existing level of interference protection for incumbent users of the spectrum and Hach has not presented evidence that this is an inappropriately strict level for part 15 devices in general or for LPRs in particular. The Commission therefore denies Hach's request for LPR unwanted emissions to be 20 dB below the fundamental emissions.

**Antenna Requirements**

28. An antenna converts electrical signals traveling along a transmission line into electromagnetic energy that is radiated into the environment. Antennas such as those used in LPR devices are directional, in that the energy being transmitted is concentrated into one direction. If the gain characteristics of the antenna are plotted, a pattern is formed that consists of a single main lobe in the direction in which the majority of the energy is transmitted. In addition to the main lobe, there are multiple side lobes in undesired directions. The magnitude of the main lobe is called the gain of the antenna, and is compared to the magnitude of an isotropic antenna that transmits energy equally in every direction. Because an antenna can only focus energy, but cannot create additional energy, a higher gain (more energy) in the main lobe of the antenna can be realized only when the beamwidth of the main lobe is narrowed, accordingly reducing the gain in the side lobes (lessening the energy in other directions). In other words, the beamwidth, main-beam gain, and side-lobe gain of the antenna are all interdependent. Since the Commission is specifying a maximum antenna beamwidth, for any given antenna, there is necessarily a minimum antenna gain that corresponds to the maximum beamwidth and a corresponding maximum side-lobe gain as well.

(i) Antenna Beamwidth

29. In the *FNPRM,* the Commission proposed an antenna beamwidth no greater than 12 degrees for frequencies below 57 GHz and no greater than 8 degrees in the 75–85 GHz bands. Because the main source of the scattering of LPR emissions is the interaction with the surface being measured, the proposed maximum antenna beamwidth for LPRs was restricted to limit emission scattering in order to control the interference potential of LPRs to other radio services. The Commission also observed that maintaining a narrow antenna beamwidth could enhance LPR performance because a narrower beam reduces false echoes from objects other than the desired target material.

30. The Commission adopted its proposed antenna beamwidth limitations of no greater than 12 degrees for frequencies below 57 GHz and no greater than 8 degrees in the 75–85 GHz bands. First, the antenna beamwidth limits proposed in the *FNPRM* were designed to be consistent with the proposed main-beam emission limits, which in turn were based on ETSI standards. As noted, harmonization of our emission limits with the ETSI limits serves to expand global marketing opportunities for U.S. manufacturers. The Commission concludes that any benefits that might result from Sutron's proposed beamwidth limits would be outweighed by the potential benefits of harmonization with European standards. Moreover, the Commission notes that a wider main beam could result in greater reflected emissions, and increase the potential for harmful interference to other spectrum users. The Commission further observes that other waterways level-measuring LPR manufacturers such as Hach state in their comments that their devices use planar antennas which have outer dimensions much smaller than a horn antenna, are less obtrusive and less susceptible to vandalism and can still meet the proposed rule for antenna beamwidth. In addition, the Commission does not find Sutron's argument about wind/snow effects on the LPR antenna compelling, because this problem could be addressed by judiciously choosing an installation location that would shield the LPR antenna from weather conditions. Accordingly, the Commission denies Sutron's request to increase the antenna beamwidth limit to 35 degrees.

(ii) Antenna Side-Lobe Gain

31. In the *FNPRM,* the Commission proposed a fixed side-lobe gain limit of −10 dBi for off-axis angles greater than 60 degrees. The Commission also sought comment on the necessity of establishing limits on the gain of the antenna in the side lobe region and off-axis angles.

32. The Commission agrees with Delphi that, in some cases, an LPR operating at the maximum main-beam power as proposed in the *FNPRM* could have side-lobe emissions that exceed the −41.3 dBm EIRP interference protection criteria in § 15.209, depending on the efficiency of the antenna used and the power at which the LPR is operated. The Commission noted in the *FNPRM* that it did not intend any rule revisions adopted in this proceeding to permit the gain of any LPR side lobe to exceed the EIRP limit in § 15.209. Therefore, it will modify the side-lobe gain limits from those proposed in the *FNPRM.* The Commission notes that antenna side-lobe gains correlate to main-beam gains; as the antenna main-beam gain varies, the side-lobe gain also varies. Therefore, to ensure that LPRs provide the same interference protection to authorized radio services as other part 15 devices (*i.e.,* maintain the general −41.3 dBm EIRP limit from § 15.209 on horizontal transmissions from LPRs), the Commission adopted a side-lobe gain limits *relative* to the main-lobe gain, as shown in Table 3 of the R&O. The calculations for those limits are found in Appendix C of the R&O.

**Automatic Power Control**

33. In the *FNPRM,* the Commission noted that as a consequence of its proposed main-beam emission limits, all reflected emissions from the LPR device will be kept at or below the § 15.209 general emission limits, and thus it did not to propose to adopt automatic power control (APC) requirements for LPR devices. The Commission sought technical analyses from parties advocating a requirement for APC to show the inadequacy of the emission limit in § 15.209. No party provided comments on APC. Accordingly, the Commission did not adopt APC requirements for LPR devices.

**Other Requirements**

**Operational and Marketing Restrictions**

34. In the *FNPRM,* the Commission proposed, for LPR devices authorized under the higher emission limits in the new rule, that the antenna of an LPR device be dedicated or integrated as part of the transmitter and professionally installed in a downward position; to limit installations of LPR devices to fixed locations; to prohibit hand-held applications of LPR devices; and to prohibit the marketing of LPR devices to residential consumers. It stated that these restrictions are intended to protect incumbent authorized services operating in the same and adjacent frequency bands from potential harmful interference from LPRs. The Commission will require the antenna of an LPR device to be dedicated or integrated as part of the transmitter; limit installations of LPR devices to fixed locations; prohibit hand-held applications of LPR devices; and prohibit the marketing of LPR devices to residential consumers. A requirement for professional installation appears unnecessary as the Commission is requiring LPRs to be installed in a downward position and LPRs would not function correctly if they are not pointed down toward the substance to be measured. Accordingly, the Commission is not adopting a requirement for professional installation.

35. The Commission concludes that the LPR antenna must be dedicated or integrated as part of the transmitter. It does so because, antennas used in LPR devices must satisfy the requirements for main-beam radiated emissions, beamwidth and side-lobe gain, which are interdependent, to demonstrate compliance with § 15.256. By requiring a dedicated or integrated antenna as part of the transmitter, the Commission will ensure that the LPR when operated will meet the emission limits necessary to protect authorized users. The Commission also concludes that there is no need to adopt a rule to require professional installation of LPR. The Commission has not adopted a specific definition for ''professional installation'' in any of its rules for unlicensed devices but has rather left it to be assessed on a case-by-case basis as a certification grant condition. Here, LPR devices are commercial products intended to measure industrial types of materials such as coal, gravel, sand piles or waterways such as rivers or dams, and the rules adopted herein prohibit their marketing to residential consumers. The Commission also finds that the installation of these devices is relatively simple, and because they are commercial products, they will typically be handled by people with product knowledge, unlike many part 15 devices that have consumer-oriented applications. Further, the Commission prohibits the marketing of LPR devices to residential consumers. It therefore finds that the operational and marketing restrictions placed on LPR devices are sufficient to avoid harmful interference to authorized radio services without imposing the requirement for professional installation on LPR devices. The Commission also observes that by its operating nature, an LPR device must be directed toward the substance being measured; the device would not operate correctly if there are too many false echoes caused by reflections from various neighboring physical objects. Thus, installation errors or unintentional misuse of the product will require correction to operate effectively and would need no additional hardware or software safeguard. The Commission also requires in the rules adopted herein that LPRs be installed in a downward position. However, the Commission finds that additionally requiring built-in circuits to prevent transmission in case

of installation errors as recommended by EIBASS an unnecessary cost without correlating benefits.

36. The Commission concludes that LPR devices should only be operated when installed in fixed locations, and thus it prohibits hand-held and mobile applications to prevent interference to authorized services in the same or adjacent frequency bands. The record supports this conclusion. YSI Incorporated (YSI) urges us to confirm that ''fixed'' also means temporary fixed installations, to allow users the flexibility to operate an LPR at different locations to meet diverse measurement needs, without requiring it to remain permanently at a specific fixed location. The Commission clarifies that an LPR may be temporarily affixed to a structure, so long as it operates only when at a fixed location as required by the rules. The Commission prohibits hand-held applications since these could increase the potential for harmful interference to authorized radio services; they could easily be moved, operated while in motion, or operated when not pointed straight downward. The same concerns apply to operating an LPR while it is moving (*e.g.,* while being transported inside a tanker truck), and the rules will prohibit such use. Because the Commission believes that misuse of an LPR will render it ineffective and thus is quite unlikely to be pursued or to occur, it finds that requiring built-in circuits to detect motion as recommended by EIBASS is an unnecessary cost without sufficient correlating benefits.

37. The Commission disagrees with EIBASS' assertion that the Commission lacks authority to prohibit marketing of LPR devices to certain types of customers or for certain types of applications. It notes that Congress granted the Commission authority to regulate the marketing, offering for sale, sale or use of RF devices in § 302 of the Communications Act, and the Commission implemented that authority in § 2.803 of its rules. Further, as an unlicensed part 15 device, an LPR is subject to the provisions of § 15.5 of the rules, which require the user of a transmitter that causes interference to authorized radio communications to stop operating the transmitter or correct the problem causing the interference. The Commission has the authority to investigate part 2 and part 15 violations and take action accordingly, including imposing fines and penalties through its Enforcement Bureau's actions. Therefore, the rules provide several safeguards against the improper use of an LPR (*e.g.,* using it for hand-held applications), that could result in harmful interference to authorized spectrum services.

**Equipment Certification**

38. In the *FNPRM,* the Commission proposed to permit Telecommunications Certification Bodies (TCBs) to certify LPR devices operating under the proposed rules. The Commission noted that the *FNPRM* proposals specify direct measurement of emissions within the main beam of the LPR antenna and are consistent with compliance measurement methodologies currently used by TCBs with other types of unlicensed transmitters. The Commission continues to hold this view, and it will allow LPR equipment certification by TCBs in addition to the Commission.

39. In the *FNPRM,* the Commission recognized that, currently, a certified TLPR device could be approved to operate under other conditions, *e.g.,* outdoor installations in open-air environments, in an enclosure with low RF attenuation characteristics, or with higher power. To allow previously-certified devices to take advantage of any changes proposed in the *FNPRM* and adopted in this *Order,* the Commission proposed to allow the responsible party to file for a permissive change in accordance with the existing rules and practices, provided that: (1) The LPR device operates only within the frequency bands authorized by rules proposed herein; (2) measurement data taken in accordance with the measurement procedure proposed above is provided to demonstrate compliance with the new emission limits specified in these proposed rules; and (3) operational changes to the device are being implemented by software upgrade without any hardware change. The Commission continues to believe that these provisions are appropriate because, consistent with our existing practice, they minimize additional certification burdens on applicants without causing an increased potential for harmful interference to authorized services. The Commission will implement the changes in our equipment certification guidelines for LPRs.

*Additional Protection for the Radio Astronomy Service (RAS)*

40. *Distance Separation and Height Restrictions.* As noted above, CORF notes that RAS has primary allocations at 76–77.5 GHz and 78–85 GHz and does not oppose sharing these bands with LPRs provided the Commission adopts certain protections designed to ensure that RAS can operate in the interference-free environment that the service requires for picking up extremely weak signals. More specifically, CORF and NRAO request that these protections include exclusion zones around RAS stations, restrictions on the height of LPR antennas, requirements for antenna installation, a restriction of operations to fixed installations only, and the deployment of a publicly accessible database of all LPR installations. CORF and NRAO state that the ECC Report 139 recommends a geographical region in which LPRs cannot be installed within 4 km from RAS locations and a limit of 15 meters above ground level on LPR antenna height within 40 km of these locations. They request that the Commission require the same distance separation and height restrictions to protect RAS stations, particularly in the 6650–6675.2 MHz (part of the 5.925–7.250 GHz band) and 75–85 GHz bands. MCAA, which represents the LPR industry, agrees with the separation distance and height restrictions to protect RAS sites.

41. The Commission did not propose these restrictions in the *FNPRM* because interference to RAS observatories from downward-looking LPRs is unlikely. First, the ETSI/ECC distance and antenna height limitation requirements are based on the RAS operating environment in Europe where RAS sites are typically found in urban areas; this is a different environment than in the United States, where RAS receivers are commonly located in remote or rural areas, not the industrial areas where LPRs are likely to be found. Second, in the *FNRPM,* the Commission proposed radiated emission limits for LPRs, designed to ensure that, at 3 meters from the LPR, the reflected emission level is less than the existing general limit of −41.3 dBm EIRP of § 15.209, which is the limit currently applicable to part 15 devices, such as computers and video monitors, which are likely being used inside a RAS site, apparently without harm. Third, RAS receivers discriminate against off-beam signals and are pointed skyward, discriminating against reflected signals that would be reflected from the side or below. Even in the case of LPRs installed over waterways in remote areas, because the radio astronomy observatories typically have control over access to a distance of one kilometer from the telescopes to provide protection from interference caused by uncontrolled RFI sources, the potential for interference caused by LPRs at that distance (one kilometer) would be infinitesimal, when also taking into account the variability in propagation characteristics due to terrain, weather

and other factors. Given these factors and the additional operational and marketing restrictions on LPR devices that the Commission adopted herein (*e.g.,* integrated antennas, downward operation, prohibition on marketing to consumers), the Commission does not find that it is necessary to also prohibit LPRs by rule to avoid operating in the line of sight of RAS stations as NRAO requested. While the MCAA does not oppose the restrictions proposed by CORF and NRAO, MCAA represents only a segment of current LPR users of the band and does not necessarily anticipate future uses. Accordingly, the Commission denies CORF and NRAO's requests for separation distances from radio astronomy observatories and for a limitation on LPR antenna height within certain distances of the line of sight of RAS stations.

42. *LPR Installation Database.* The Commission declines to require a publicly available LPR installation database or to require manufacturers to maintain lists of LPR installation sites. We note that it is customary for the Commission to proceed in a very cautious manner in a waiver proceeding by imposing specific conditions on operations that typically involve new technology products or new applications of existing technologies and with which the Commission may have little or no prior experience regulating. In the case of the waiver grant for TLPR devices operating in the 77–81 GHz band, the Commission requires manufacturers to maintain a list of LPR installation sites as an additional safeguard to permitting LPR operations in a restricted band, even though it expected that TLPR devices would not be operating in close proximity to radio astronomy sites and thus not likely to cause harmful interference to them. As discussed in the Report and Order, the Commission adopted new rules based on ETSI/ECC's analysis which derived the limits for LPR main-beam emissions by mathematically correlating them with reflected emissions from an LPR; the resulting values are the same as the existing part 15 average emission limit. The LPR main-beam emission limits therefore would maintain the existing level of interference protection to incumbent radio services, including RAS sites—a level that has already proven to be adequate. The Commission finds that NRAO's recommendation that the NSF be notified of each LPR installation site is an unnecessary cost without countervailing benefits, and agrees with the LPR industry that this could give rise to confidentiality issues. The Commission concludes that the downward-looking operation of LPRs at such emission limits, when combined with the various operating/marketing restrictions, is extremely unlikely to cause harmful interference to radio astronomy telescopes, thereby making a database or list of LPR installation sites, or notification to authorized users unnecessary. Further, the Commission finds that its decision not to require a publicly available database addresses the LPR industry's concern over potential security risks from the disclosure of LPR locations.

43. *Cost Benefit Analysis.* In the *FNPRM,* the Commission provided an analysis on the potential costs of the proposed LPR regulation versus its potential benefits. The Commission stated that, because LPR devices need higher power and wider bandwidth than that which is permitted under the existing part 15 rules to fully achieve the potential of this measuring technology, the proposed rules would tender a necessary remedy for LPR devices to operate at the power levels and in the appropriate frequency bands required to deliver the needed accuracy for diverse applications, thereby promoting the expanded development and use of this technology to the benefit of businesses, consumers, and the economy. The Commission tentatively concluded that the proposed higher power levels in the proposed frequency bands would further the development of better and improved level-measuring tools, but these changes would not increase the potential for interference to authorized users beyond what is permitted under the current rules. The Commission also considered how the proposed rules would help to simplify equipment development and certification of LPR devices, as well as provide a simplified method for measuring the radiated emissions from these devices.

44. Except for a comment from EIBASS, none of the commenters took issue with any of these factors or with our tentative conclusion. EIBASS argues that the *FNPRM* cost-benefit analysis fails to consider the costs to incumbent TV BAS licensees in the 6 GHZ frequency range in tracking down harmful interference caused by unlicensed high power LPRs. The Commission does not anticipate, however, that BAS licensees will incur costs to investigate interference from LPR; it does not find that LPRs will cause harmful interference to BAS or any other licensed user in any of the adopted frequency bands for LPR operation, as discussed at length. The Commission concludes that the rules adopted herein will provide significant benefits to LPR manufacturers and users with no apparent cost to any party.

## Order

45. In the Order, the Commission dismissed a waiver request from VEGA to operate LPR devices in the 24.6–27 GHz frequency band under § 15.252 as moot. The Commission previously held this request in abeyance pending final action in this rulemaking proceeding because this waiver raises issues that are, in part, similar to those raised in the *FNPRM.*

46. VEGA requested a waiver of § 15.252(a) to operate LPR devices in the 24.6–27 GHz frequency band under this section as a fixed structure, either in tanks or in open air. Section 15.252(a) permits the use of field disturbance sensors within the frequency bands 16.2–17.7 GHz and 23.12–29.0 GHz but requires them to be mounted in terrestrial transportation vehicles, whereas VEGA's LPR devices would only be installed at fixed locations. The waiver request also proposed an emission method of measurement that does not take into account boresight emissions. After the release of the *FNPRM,* VEGA amended this waiver request on June 6, 2012 for permission to market its 6 GHz and 26 GHz LPRs that would comply with the proposed rules. Because the rules the Commission adopted in the Report and Order enables VEGA to operate LPR devices in the 24.6–27 GHz frequency band without a waiver of the usage restrictions in § 15.252(a), VEGA will be able to apply for LPR certification under § 15.256 for both in tank and open air applications. Accordingly, the Commission dismissed VEGA's waiver request as moot.

## Procedural Matters

### Final Regulatory Flexibility Analysis

47. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking (FNPRM)* in ET Docket No. 10–23.[2] The Commission sought written public comment on the

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996), and the Small Business Jobs Act of 2010, Public Law 111–240, 124 Stat. 2504 (2010).

[2] *Further Notice of Proposed Rulemaking* in ET Docket No. 10–23 *(In the Matter of Amendment of Part 15 of the Commission's Rules To Establish Regulations for Tank Level Probing Radars in the Frequency Band 77–81 GHz and Amendment of Part 15 of the Commission's Rules To Establish Regulations for Level Probing Radars and Tank Level Probing Radars in the Frequency Bands 5.925–7.250 GHz, 24.05–29.00 GHz and 75–85 GHz),* 27 FCC Rcd. 3660 (2012) (FNPRM).

proposals in the *FNPRM,* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

*A. Need for, and Objectives of, the Report and Order*

48. In this Report and Order, we modify our rules to provide a set of new technical and operational rules to govern the operation of level probing radar (LPR) devices installed both in open-air environments and inside storage tanks (TLPR applications) in the following frequency bands: 5.925–7.250 GHz, 24.05–29.00 GHz, and 75–85 GHz. To permit LPR operation in the 75–85 GHz band, we also modify the existing § 15.205 of the rules to remove the prohibition on intentional emissions in this band. The amended rules will allow devices with accurate and reliable target resolution to identify water levels in rivers and dams or critical levels of materials such as fuel or sewer-treated waste, reducing overflow and spillage and minimizing exposure of maintenance personnel in the case of high risk substances. The amended rules would also, to the extent practicable, harmonize our technical rules for LPR devices with similar European standards and would improve the competitiveness of U.S. manufacturers in the global economy, leading to potential cost savings for small businesses, all without causing harmful interference to authorized spectrum users in the affected frequency bands.

*B. Statement of Significant Issues Raised by Public Comments in Response to the IRFA*

49. There were no public comments filed that specifically addressed the rules and policies proposed in the IRFA.

*C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration*

50. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration, and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

*D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply*

51. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[3] The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under Section 3 of the Small Business Act.[4] Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operations; and (3) meets may additional criteria established by the Small Business Administration (SBA).[5]

52. Small Businesses, Small Organizations, and Small Governmental Jurisdictions. Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the proposals under consideration.[6] As of 2009, small businesses represented 99.9% of the 27.5 million businesses in the United States, according to the SBA.[7] Additionally, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' [8] Nationwide, as of 2007, there were approximately 1,621,315 small organizations.[9] Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' [10] Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States.[11] We estimate that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.'' [12] Thus, we estimate that most governmental jurisdictions are small.

53. The adopted rules pertain to manufacturers of unlicensed communications devices. The appropriate small business size standard is that which the SBA has established for radio and television broadcasting and wireless communications equipment manufacturing. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' [13] The SBA has developed a small business size standard for firms in this category, which is: all such firms having 750 or fewer employees.[14] According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 784 had less than 500 employees and 155 had more than 100 employees.[15] Thus, under this size standard, the majority of firms can be considered small.

*E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities*

54. Unlicensed devices operating in the 5.925–7.250 GHz and 24.05–29.00 GHz band are already required to be authorized under the Commission's certification procedure as a prerequisite to marketing and importation, and the

[3] *See* 5 U.S.C. 603(b)(3).

[4] *Id.* 601(3).

[5] *Id.* 632.

[6] *See* 5 U.S.C. 601(3)–(6).

[7] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' available at *http://web.sba.gov/faqs/faqindex.cfm?areaID=24* (last visited Aug. 31, 2012).

[8] 5 U.S.C. 601(4).

[9] Independent Sector, The New Nonprofit Almanac & Desk Reference (2010).

[10] 5 U.S.C. 601(5).

[11] U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011, Table 427 (2007).

[12] The 2007 U.S Census data for small governmental organizations are not presented based on the size of the population in each such organization. There were 89,476 local governmental organizations in 2007. If we assume that county, municipal, township, and school district organizations are more likely than larger governmental organizations to have populations of 50,000 or less, the total of these organizations is 52,095. If we make the same population assumption about special districts, specifically that they are likely to have a population of 50,000 or less, and also assume that special districts are different from county, municipal, township, and school districts, in 2007 there were 37,381 such special districts. Therefore, there are a total of 89,476 local government organizations. As a basis of estimating how many of these 89,476 local government organizations were small, in 2011, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. CITY AND TOWNS TOTALS: VINTAGE 2011—U.S. Census Bureau, *available at http://www.census.gov/popest/data/cities/totals/2011/index.html.* If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2011, Tables 427, 426 (Data cited therein are from 2007).

[13] U.S. Census Bureau, 2007 NAICS Definitions, ''334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing''; *http://www.census.gov/naics/2007/def/ND334220.HTM#N334220.*

[14] 13 CFR 121.201, NAICS code 334220.

[15] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=300&-ds_name=EC0731SG2&-_lang=en.*

Report and Order makes no change to that requirement. *See* 47 CFR 15.101, 15.201, 15.250, and 15.252. Currently, the 75–85 GHz band is a restricted band in which unlicensed device may not only transmit spurious (unintentional) emissions. The Report and Order modifies the existing § 15.205, 47 CFR 15.205, of the rules to remove the prohibition on intentional emissions in this band and adopt the same certification procedures for level probing radars operating in this band as for the other above-listed frequency bands. The technical requirements adopted in this Report and Order, do not impose significant burden and will not have a significant economic impact on a substantial number of small entities that are, or may be, subject to the requirements of the rules in the item.

*F. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered*

55. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[16]

56. In this Report and Order, we modify our rules to provide a set of new technical and operational rules to govern the operation of LPR devices installed both in open-air environments and inside storage tanks (TLPR applications) in the following frequency bands: 5.925–7.250 GHz, 24.05–29.00 GHz, and 75–85 GHz. To permit LPR operation in the 75–85 GHz band, we also modify the existing § 15.205 of the rules to remove the prohibition on intentional emissions in this band. These rule changes will provide needed flexibility and cost savings for LPR devices, benefiting the U.S. consumers and manufacturers without causing harmful interference to authorized services. The amended rules will allow devices with accurate and reliable target resolution to identify water levels in rivers and dams or critical levels of materials such as fuel or sewer-treated waste, reducing overflow and spillage and minimizing exposure of maintenance personnel in the case of high risk substances. The amended rules would also, to the extent practicable, harmonize our technical rules for LPR devices with similar European standards and would improve the competitiveness of U.S. manufacturers in the global economy, leading to potential cost savings for small businesses. We find that the benefits of the above changes to the rules outweigh their regulatory costs. We believe that the adopted rules will apply equally to large and small entities. Therefore, there is no inequitable impact on small entities.

**Ordering Clauses**

57. Pursuant to sections 4(i), 301, 302, 303(e), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302a, 303(e), 303(f), 303(g), and 303(r), this Report and Oder is hereby *adopted* and part 15 of the Commission's Rules ARE *amended* as set forth in the Appendix, effective April 7, 2014.

58. Pursuant to authority in § 1.3 of the Commission's rules, 47 CFR 1.3, and 4(i), 302, and 303(e), of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, and 303(e), the Request for Waiver filed by VEGA Americas, Inc. (formerly Ohmart/VEGA Corporation) filed on December 3, 2009, ET Docket No. 10–27, *is dismissed,* consistent with the terms of this Order. This action is effective upon release of this Order.

59. Report to Congress: The Commission will send a copy of the *Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[17] In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA.

**List of Subjects in 47 CFR Part 15**

Communications equipment, Radio.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Final Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 of the Code of Federal Regulations part 15 to read as follows:

## PART 15—RADIO FREQUENCY DEVICES

■ 1. The authority citation for part 15 continues to read as follows:

**Authority:** 47 U.S.C. 154, 202, 303, 304, 307 and 544A.

■ 2. Section 15.3 is amended by adding paragraph (ii) to read as follows:

**15.3 Definitions.**

* * * * *

(ii) *Level Probing Radar (LPR):* A short-range radar transmitter used in a wide range of applications to measure the amount of various substances, mostly liquids or granulates. LPR equipment may operate in open-air environments or inside an enclosure containing the substance being measured.

■ 3. Section 15.31 is amended by revising paragraphs (c) and (g) and adding paragraph (q) to read as follows:

**§ 15.31 Measurement standards.**

* * * * *

(c) Except as otherwise indicated in § 15.256, for swept frequency equipment, measurements shall be made with the frequency sweep stopped at those frequencies chosen for the measurements to be reported.

* * * * *

(g) Equipment under test shall be positioned and adjusted, using those controls that are readily accessible to or are intended to be accessible to the consumer, in such a manner as to maximize the level of the emissions. For those devices to which wire leads may be attached by the operator, tests shall be performed with wire leads attached. The wire leads shall be of the length to be used with the equipment if that length is known. Otherwise, wire leads one meter in length shall be attached to the equipment. Longer wire leads may be employed if necessary to interconnect to associated peripherals.

* * * * *

(q) As an alternative to § 15.256, a level probing radar (LPR) may be certified as an intentional radiator by showing compliance with the general provisions for operation under part 15 subpart C of this chapter, provided that the device is tested in accordance with the provisions in either paragraphs (q)(1) or (2) of this section. Compliance with the general provisions for an intentional radiator may require compliance with other rules in this part, *e.g.,* §§ 15.5, 15.31, and 15.35, etc., when referenced.

(1) An LPR device intended for installation inside metal and concrete enclosures may show compliance for radiated emissions when measured outside a representative enclosure with the LPR installed inside, in accordance with the measurement guidelines established by the Commission for these

[16] 5 U.S.C. 603(c).

[17] *See* 5 U.S.C. 801(a)(1)(A).

devices. LPR devices operating inside these types of enclosures shall ensure that the enclosure is closed when the radar device is operating. Care shall be taken to ensure that gaskets, flanges, and other openings are sealed to eliminate signal leakage outside of the structure. The responsible party shall take reasonable steps to ensure that LPR devices intended for use in these types of enclosures shall not be installed in open-air environments or inside enclosures with lower radio-frequency attenuating characteristics (*e.g.,* fiberglass, plastic, etc.). An LPR device approved under this subsection may only be operated in the type of enclosure for which it was approved.

(2) Except as provided in paragraph (q)(1) of this section, an LPR device shall be placed in testing positions that ensure the field strength values of the radiated emissions are maximized, including in the main beam of the LPR antenna.

■ 4. Section 15.35 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 15.35 Measurement detector functions and bandwidths.**

* * * * *

(b) Unless otherwise specified, on any frequency or frequencies above 1000 MHz, the radiated emission limits are based on the use of measurement instrumentation employing an average detector function. Unless otherwise specified, measurements above 1000 MHz shall be performed using a minimum resolution bandwidth of 1 MHz. When average radiated emission measurements are specified in this part, including average emission measurements below 1000 MHz, there also is a limit on the peak level of the radio frequency emissions. Unless otherwise specified, *e.g.,* see §§ 15.250, 15.252, 15.253(d), 15.255, 15.256, and 15.509 through 15.519 of this part, the limit on peak radio frequency emissions is 20 dB above the maximum permitted average emission limit applicable to the equipment under test. This peak limit applies to the total peak emission level radiated by the device, *e.g.,* the total peak power level. Note that the use of a pulse desensitization correction factor may be needed to determine the total peak emission level. The instruction manual or application note for the measurement instrument should be consulted for determining pulse desensitization factors, as necessary.

(c) Unless otherwise specified, *e.g.,* §§ 15.255(b), and 15.256(l)(5), when the radiated emission limits are expressed in terms of the average value of the emission, and pulsed operation is employed, the measurement field strength shall be determined by averaging over one complete pulse train, including blanking intervals, as long as the pulse train does not exceed 0.1 seconds. As an alternative (provided the transmitter operates for longer than 0.1 seconds) or in cases where the pulse train exceeds 0.1 seconds, the measured field strength shall be determined from the average absolute voltage during a 0.1 second interval during which the field strength is at its maximum value. The exact method of calculating the average field strength shall be submitted with any application for certification or shall be retained in the measurement data file for equipment subject to notification or verification.

■ 5. Section 15.205 is amended by revising paragraph (d)(4) to read as follows:

**§ 15.205 Restricted bands of operation.**

* * * * *

(d) * * *

(4) Any equipment operated under the provisions of § 15.253, 15.255, and 15.256 in the frequency band 75–85 GHz, or § 15.257 of this part.

* * * * *

■ 6. Section 15.256 is added to read as follows:

**§ 15.256 Operation of level probing radars within the bands 5.925–7.250 GHz, 24.05–29.00 GHz, and 75–85 GHz.**

(a) Operation under this section is limited to level probing radar (LPR) devices.

(b) LPR devices operating under the provisions of this section shall utilize a dedicated or integrated transmit antenna, and the system shall be installed and maintained to ensure a vertically downward orientation of the transmit antenna's main beam.

(c) LPR devices operating under the provisions of this section shall be installed only at fixed locations. The LPR device shall not operate while being moved, or while inside a moving container.

(d) Hand-held applications are prohibited.

(e) Marketing to residential consumers is prohibited.

(f) The fundamental bandwidth of an LPR emission is defined as the width of the signal between two points, one below and one above the center frequency, outside of which all emissions are attenuated by at least 10 dB relative to the maximum transmitter output power when measured in an equivalent resolution bandwidth.

(1) The minimum fundamental emission bandwidth shall be 50 MHz for LPR operation under the provisions of this section.

(2) LPR devices operating under this section must confine their fundamental emission bandwidth within the 5.925–7.250 GHz, 24.05–29.00 GHz, and 75–85 GHz bands under all conditions of operation.

(g) *Fundamental emissions limits.* (1) All emission limits provided in this section are expressed in terms of Equivalent Isotropic Radiated Power (EIRP).

(2) The EIRP level is to be determined from the maximum measured power within a specified bandwidth.

(i) The EIRP in 1 MHz is computed from the maximum power level measured within any 1-MHz bandwidth using a power averaging detector;

(ii) The EIRP in 50 MHz is computed from the maximum power level measured with a peak detector in a 50-MHz bandwidth centered on the frequency at which the maximum average power level is realized and this 50 MHz bandwidth must be contained within the authorized operating bandwidth. For a RBW less than 50 MHz, the peak EIRP limit (in dBm) is reduced by 20 log(RBW/50) dB where RBW is the resolution bandwidth in megahertz. The RBW shall not be lower than 1 MHz or greater than 50 MHz. The video bandwidth of the measurement instrument shall not be less than the RBW. If the RBW is greater than 3 MHz, the application for certification filed shall contain a detailed description of the test procedure, calibration of the test setup, and the instrumentation employed in the testing.

(3) The EIRP limits for LPR operations in the bands authorized by this rule section are provided in Table 1. The emission limits in Table 1 are based on boresight measurements (*i.e.,* measurements performed within the main beam of an LPR antenna).

TABLE 1—LPR EIRP EMISSION LIMITS

| Frequency band of operation (GHz) | Average emission limit (EIRP in dBm measured in 1 MHz) | Peak emission limit (EIRP in dBm measured in 50 MHz) |
|---|---|---|
| 5.925–7.250 | −33 | 7 |
| 24.05–29.00 | −14 | 26 |
| 75–85 | −3 | 34 |

(h) *Unwanted emissions limits.* Unwanted emissions from LPR devices shall not exceed the general emission limit in § 15.209 of this chapter.

(i) *Antenna beamwidth.* (A) LPR devices operating under the provisions of this section within the 5.925–7.250 GHz and 24.05–29.00 GHz bands must use an antenna with a –3 dB beamwidth no greater than 12 degrees.

(B) LPR devices operating under the provisions of this section within the 75–85 GHz band must use an antenna with a –3 dB beamwidth no greater than 8 degrees.

(j) *Antenna side lobe gain.* LPR devices operating under the provisions of this section must limit the side lobe antenna gain relative to the main beam gain for off-axis angles from the main beam of greater than 60 degrees to the levels provided in Table 2.

TABLE 2—ANTENNA SIDE LOBE GAIN LIMITS

| Frequency range (GHz) | Antenna side lobe gain limit relative to main beam gain (dB) |
|---|---|
| 5.925–7.250 | −22 |
| 24.05–29.00 | −27 |
| 75–85 | −38 |

(k) Emissions from digital circuitry used to enable the operation of the transmitter may comply with the limits in § 15.209 of this chapter provided it can be clearly demonstrated that those emissions are due solely to emissions from digital circuitry contained within the transmitter and the emissions are not intended to be radiated from the transmitter's antenna. Emissions from associated digital devices, as defined in § 15.3(k) of this part, *e.g.,* emissions from digital circuitry used to control additional functions or capabilities other than the operation of the transmitter, are subject to the limits contained in subpart B, part 15 of this chapter. Emissions from these digital circuits shall not be employed in determining the –10 dB bandwidth of the fundamental emission or the frequency at which the highest emission level occurs.

(l) *Measurement procedures.* (1) Radiated measurements of the fundamental emission bandwidth and power shall be made with maximum main-beam coupling between the LPR and test antennas (boresight).

(2) Measurements of the unwanted emissions radiating from an LPR shall be made utilizing elevation and azimuth scans to determine the location at which the emissions are maximized.

(3) All emissions at and below 1,000 MHz except 9–90 kHz and 110–490 kHz bands are based on measurements employing a CISPR quasi-peak detector.

(4) The fundamental emission bandwidth measurement shall be made using a peak detector with a resolution bandwidth of 1 MHz and a video bandwidth of at least 3 MHz.

(5) The provisions in § 15.35(b) and (c) of this part that require emissions to be averaged over a 100 millisecond period and that limits the peak power to 20 dB above the average limit do not apply to devices operating under paragraphs (a) through (l) of this section.

(6) Compliance measurements for minimum emission bandwidth of frequency-agile LPR devices shall be performed with any related frequency sweep, step, or hop function activated.

(7) Compliance measurements shall be made in accordance with the specific procedures published or otherwise authorized by the Commission.

[FR Doc. 2014–04733 Filed 3–5–14; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 73 and 74

**[MB Docket No. 03–185; FCC 13–126]**

### Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and To Amend Rules for Digital Class A Television Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; denial of petitions for reconsideration.

**SUMMARY:** In this document, the Federal Communications Commission (''Commission'') denies eight petitions for reconsideration of a Second Report and Order in this proceeding adopting final rules to ensure a timely and successful completion of the low power television digital transition.

**DATES:** Effective March 6, 2014.

**FOR FURTHER INFORMATION CONTACT:** Shaun A. Maher, *Shaun.Maher@fcc.gov*, Video Division, Media Bureau, (202) 418–2324.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Memorandum Opinion and Order, FCC 13–126, MB Docket No. 03–185, adopted September 26, 2013, and released September 27, 2013. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com.*

In the Second Report and Order, 26 FCC Rcd 10732 (2011) in this proceeding, the Commission adopted final rules to ensure the timely and successful completion of the low power television digital transition. Eight parties filed petitions for reconsideration of the Second Report and Order. In the Memorandum Opinion and Order, the Commission granted two petitions to the extent that they each seek clarification of the Second Report and Order and otherwise denied those filings and dismissed or denied, as appropriate, the remaining six petitions for reconsideration.

The Commission denied Signal Above, LLC's request to extend the September 1, 2015 transition date finding that it had previously considered and rejected Signal's

arguments in the Second Report and Order.

The Commission denied the National Translator Associations request to reconsideration the December 31, 2011 ''out of core'' transition date finding that it had already considered and rejected NTA's arguments in the Second Report and Order.

The Commission denied the law firm of Cohn and Marks's and One Ministries' requests to extend the expiration date for all construction permits for new digital low power television stations, finding that the Commission did not contemplate in this proceeding nor did it seek comment on whether to change the existing three-year construction period for new digital LPTV stations and that One Ministries failed to propose the change to the Commission's rules during the comment stage of the proceeding.

The Commission granted in part and otherwise denied the petitions for clarification and reconsideration of National Public Radio and Hammett & Edison and clarified that, regardless of their power level, low power television stations may not cause interference to a primary service such as noncommercial educational FM radio stations.

This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of the Memorandum Opinion and Order to GAO, pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A) because the petitions for reconsideration were denied).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2014–03465 Filed 3–5–14; 8:45 am]

**BILLING CODE 6712–01–P**

# Proposed Rules

Federal Register
Vol. 79, No. 44
Thursday, March 6, 2014

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 60, 70, 71 and 98

**[EPA–HQ–OAR–2013–0495; FRL–9907–42–OAR]**

**RIN 2060–AQ91**

### Standards of Performance for Greenhouse Gas Emissions From New Stationary Sources: Electric Utility Generating Units

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of extension of public comment period.

**SUMMARY:** The EPA is announcing that the period for providing public comments on the January 8, 2014, proposed ''Standards of Performance for Greenhouse Gas Emissions From New Stationary Sources: Electric Utility Generating Units'' and on the February 26, 2014, notice of data availability soliciting comment on the provisions in the Energy Policy Act of 2005, is being extended by 60 days.

**DATES:** *Comments.* The public comment period for the proposed rule published January 8, 2014 (79 FR 1352) and the notice of data availability published on February 26, 2014 (79 FR 10750), is being extended by 60 days to May 9, 2014, in order to provide the public additional time to submit comments and supporting information.

**ADDRESSES:** *Comments.* Written comments on the proposed rule may be submitted to the EPA electronically, by mail, by facsimile or through hand delivery/courier. Please refer to the proposal (79 FR 1352) for the addresses and detailed instructions.

*Docket.* Publicly available documents relevant to this action are available for public inspection either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. The EPA has established the official public docket No. EPA–HQ–OAR–2013–0495.

*Worldwide Web.* The EPA Web site containing information for this rulemaking is: *http://www2.epa.gov/carbon-pollution-standards.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Nick Hutson, Energy Strategies Group, Sector Policies and Programs Division (D243–01), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–2968, facsimile number (919) 541–5450; email address: *hutson.nick@epa.gov* or Mr. Christian Fellner, Energy Strategies Group, Sector Policies and Programs Division (D243–01), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–4003, facsimile number (919) 541–5450; email address: *fellner.christian@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Comment Period

The EPA is extending the public comment period for an additional 60 days. The public comment period will end on May 9, 2014, rather than March 10, 2014. This will ensure that the public has sufficient time to review and comment on all of the information available, including the proposed rule, the notice of data availability and other materials in the docket.

#### List of Subjects

*40 CFR Part 60*

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

*40 CFR Part 70*

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

*40 CFR Part 71*

Environmental Protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

*40 CFR Part 98*

Environmental protection, Greenhouse gases and monitoring, Reporting and recordkeeping requirements.

Dated: February 25, 2014.

**Mary Henigin,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. 2014–04633 Filed 3–5–14; 8:45 am]

**BILLING CODE 6560–50–P**

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 102–36

**[FMR Case 2012–102–4; Docket No. 2012–0014; Sequence No. 1]**

**RIN 3090–AJ30**

### Federal Management Regulation; Disposal and Reporting of Federal Electronic Assets (FEA)

**AGENCY:** Office of Government-wide Policy, General Services Administration (GSA).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** GSA is proposing to amend the Federal Management Regulation (FMR) by changing its personal property policy regarding the disposal and reporting of Federal Electronic Assets (FEA). The proposed changes are to provide policy for the safe handling and disposal of FEA, and make minor clarifying edits to existing policies.

**DATES:** Interested parties should submit comments in writing on or before May 5, 2014 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FMR Case 2012–102–4 by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''FMR Case 2012–102–4'' under the heading ''Enter Keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''FMR Case 2012–102–4.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FMR Case 2012–102–4'' on your attached document.
- Fax: 202–501–4067
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1800 F Street NW., Washington, DC 20405.

*Instructions:* Please submit comments only and cite FMR Case 2012–102–4 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or confidential business information provided.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Robert Holcombe, Office of Governmentwide Policy, Office of Asset and Transportation Management (MA), at 202–501–3828 or by email at *robert.holcombe@gsa.gov*. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FMR Case 2012–102–4.

**SUPPLEMENTARY INFORMATION:**

## A. Background

This proposed amendment to FMR part 102–36 (41 CFR part 102–36) would update policy pertaining to the disposal and reporting of FEA. On October 5, 2009, President Obama signed Executive Order (E.O.) 13514, *Federal Leadership in Environmental, Energy, and Economic Performance,* to create a clean energy economy that will increase the nation's prosperity, promote energy security, protect the interests of taxpayers, and safeguard the health of our environment. The E.O. mandated Federal agencies to lead the national effort by example.

To address the goals of the E.O., an Interagency Task Force on Electronics Stewardship (the Task Force) was formed, and was co-chaired by the White House Council on Environmental Quality, the Environmental Protection Agency, and GSA. On July 20, 2011, the Task Force issued its report, the ''National Strategy for Electronic Stewardship,'' which provided recommendations to Executive agencies in regards to meeting the objectives of E.O. 13514 for the reuse, disposal, and handling of FEA. The Task Force recommended that certain sections of FMR part 102–36 be amended to provide policy to Executive agencies on the disposal and reporting of FEA.

In order to develop those amendments, GSA requests comments regarding (1) the suitability and feasibility of bulk sale of functional Federal Electronic Assets (FEA) to certified recyclers only through public auction programs (not the general public as drafted in this proposed rule); (2) restricting disposal of FEA in landfills or through incineration; (3) what electronics recycling standards are in use or being developed; and, (4) criteria regarding the technical content and other aspects of the electronics recycling standards that recyclers conform to in order to be considered ''certified recyclers '' under this proposed rule.

At this time, GSA has identified two electronics recycling standards to which recyclers may conform to in order to be considered a ''certified recycler'' under this proposed rule—the Responsible Recycling (R2) Standard (*http://www.r2solutions.org/r2practices/r2-standard/*) and the e-Stewards Standard (*http://e-stewards.org/certification-overview/e-stewards-standard/*). Recyclers that conform to either of these two standards would be considered a ''certified recycler'' under the proposed rule.

GSA recognizes that recyclers may use other existing standards or that other standards may be developed in the future. In order to ensure that recyclers conforming to such other standards are not excluded from procurements as the recycling industry grows domestically and internationally, GSA, in consultation with relevant agencies, will develop criteria to be used to evaluate and determine which standards recyclers may conform to in order to be considered ''certified recyclers'' under this proposed rule. Once completed, GSA will make these criteria publicly available.

Comments regarding certification criteria should address the following:

(1) The technical content of the standard, such as environmental, workplace and safety practices, data sanitization and security standards, environmental, health and safety management systems, and how to promote reuse and recycling over disposal;

(2) The standard-setting process—*i.e.,* the procedures used to develop and maintain the standard, such as the transparency and objectiveness of the processes; and

(3) The conformity assessment procedures used to determine whether a recycler conforms to a standard. An example would be the independence of assessors evaluating a recycler.

Additional information regarding reuse, recycling, and refurbishment is available at *http://www.epa.gov/fec/publications.html#eol.*

In addition, the proposed amendment would make minor edits, update organizational designations, and make non-substantive changes to improve the readability and ease of use of this part.

This proposed amendment would specifically:

1. Replace the definition ''Cooperative'' to ''Cooperator'' in section 102–36.40 and change applicable terminology throughout this part;

2. Define Certified Recycler, Federal Electronic Asset (FEA), Functional FEA, Non-Functional FEA, and Take Back Programs.

3. Change the Defense Reutilization and Marketing Office (DRMO) to Defense Logistics Agency Disposition Services (DLADS) (section 102–36.105);

4. Amend regulations regarding reporting and providing personal property to non-Federal recipients;

5. Modify restrictions for non-functional FEA when using the abandonment/destruction authority;

6. Add new requirements regarding public notice when abandoning/destroying excess personal property;

7. Add the new undesignated section heading ''Federal Electronic Assets (FEA)'' and ten new sections thereunder that would address which assets are considered FEA; disposal of functional FEA; disposal of non-functional FEA; sanitizing of FEA; disposing of FEA in landfills or through incineration; guiding recipients of FEA to environmentally-preferable disposal; disposal of overseas excess FEA; reporting requirements for FEA; submitting annual report information; and dissemination of information after it is reported.

8. Revise the Disposal Condition Codes from the numeric 1, 4 and 7 to alpha codes N, U, and R respectively.

9. Redesignate sections 102–36.375 through 102–36.475 as sections 102–36.425 through 102–36.525.

10. Make minor edits and clarifications to existing policies.

## B. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## C. Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory

Flexibility Act, 5 U.S.C. 601, *et seq.* This proposed rule is also exempt from the Administrative Procedure Act per 5 U.S.C. 553(a)(2) because it applies to agency management, personnel, and public property. However, this proposed rule is being published to provide transparency in the promulgation of Federal policies.

**D. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the proposed changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**E. Small Business Regulatory Enforcement Fairness Act**

This proposed rule is exempt from Congressional review under 5 U.S.C. 801 since it does not substantially affect the rights or obligations of non-agency parties.

**List of Subjects in 41 CFR Part 102–36**

Government property management, Surplus Government property.

Dated: February 21, 2014.

**Anne E. Rung,**

*Associate Administrator, Office of Government-wide Policy.*

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR part 102–36 as set forth below:

## PART 102–36—DISPOSITION OF EXCESS PERSONAL PROPERTY

■ 1. The authority for part 102–36 continues to read as follows:

**Authority:** 40 U.S.C. 121(c).

■ 2. Amend § 102–36.40 by—
■ a. Removing the definition ''Cooperative'';
■ b. Removing from the definition ''Cooperative agreement'', in paragraphs (2) and (3), the word ''cooperative'' and adding ''cooperator'' in its place; and
■ c. Adding, in alphabetical order, the definitions ''Certified Recycler'', ''Cooperator'', ''Federal Electronic Asset (FEA)'', ''Functional FEA'', ''Non-Functional FEA'', and ''Take-Back Programs'' to read as follows:

**§ 102–36.40 What definitions apply to this part?**

* * * * *

*Certified Recycler* means an entity that recycles, refurbishes, or both recycles and refurbishes used electronics and who has demonstrated to an accredited, independent third-party certification entity that they meet specific standards to safely recycle and manage electronics. These standards must also meet the criteria published by GSA. Once certified, the recycler is held to the particular standard by oversight by the certifying entity.

* * * * *

*Cooperator* means the organization or entity that has a cooperative agreement with a Federal agency.

* * * * *

*Federal Electronic Asset (FEA)* means equipment that is classified within certain designated classes or categories of electronic personal property which is powered by electricity and has logic circuitry enabling the item to perform its intended function. The classifications of assets defined as FEA under this part are listed in FMR Bulletin B–34 or succeeding Bulletins. (FMR Bulletins are located at *gsa.gov/fmrbulletins*).

* * * * *

*Functional FEA* means FEA with Disposal Condition Code N or U (see § 102–36.240).

* * * * *

*Non-Functional FEA* means FEA with Disposal Condition Code R, X or S (see § 102–36.240).

* * * * *

*Take-Back Programs* means a method of disposal where the asset is returned to a *vendor or manufacturer* and where no funds or other form of consideration are returned to the Government for use under the exchange/sale authority.

* * * * *

**§ 102–36.60 [Amended]**

■ 3. Amend § 102–36.60, paragraph (a) by removing the word ''cooperatives'' and adding the word ''cooperators'' in its place.

**§ 102–36.105 [Amended]**

■ 4. Amend § 102–36.105, in the second sentence by removing ''Defense Reutilization and Marketing Offices (DRMOs)'' and adding ''Defense Logistics Agency Disposition Services (DLADS)'' in its place.

**§ 102–36.150 [Amended]**

■ 5. Amend § 102–36.150, in the first sentence by removing the word ''cooperatives'' and adding the word ''cooperators'' in its place.

■ 6a. Remove the undesignated center heading ''Cooperatives'' which appears before § 102–36.180 and add the undesignated center heading ''Cooperators'' in its place.

■ 6b. Amend § 102–36.180 by revising the section heading to read as follows:

**§ 102–36.180 Is there any limitation/condition to acquiring excess personal property for use by cooperators?**

**§ 102–36.190 [Amended]**

■ 7. Amend § 102–36.190, paragraph (c), by removing ''40 U.S.C. 483(d)(2)(E)'' and adding ''40 U.S.C. 525(c)(2)(A)'' in its place.

**§ 102–36.220 [Amended]**

■ 8. Amend § 102–36.220 by—
■ a. Removing from the second sentence of paragraph (a) the word ''cooperatives'' and adding the word ''cooperators'' in its place; and
■ b. Removing from paragraph (b)(3) ''102–36.380'' and adding ''102–36.430'' in its place.

**§ 102–36.230 [Amended]**

■ 9. Amend § 102–36.230, by removing from paragraph (a), ''Property Management Division (FBP)'' and adding ''Office of Personal Property Management (QSC)'' in its place.

**§ 102–36.240 [Amended]**

■ 10. Amend § 102–36.240 in the first column of the table by revising the numeric Disposal Condition Codes as follows:
■ a. Remove the number ''1'' and add the letter ''N'' in its place;
■ b. Remove the number ''4'' and add the letter ''U'' in its place; and
■ c. Remove the number ''7'' and add the letter ''R'' in its place.
■ 11. Revise § 102–36.300 to read as follows:

**§ 102–36.300 How do we report personal property given to non-Federal recipients?**

Submit your annual report of personal property given to non-Federal recipients by using the report template located at *https://gsa.inl.gov/property* within 45 calendar days after the close of each fiscal year.

**§ 102–36.305 [Amended]**

■ 12. Amend § 102–36.305 by removing the word ''written''.

**§ 102–36.310 [Amended]**

■ 13. Amend § 102–36.310 by removing the words ''written finding'' and adding the word ''determination'' in its place.
■ 14. Amend § 102–36.315 by adding paragraph (c) to read as follows:

**§ 102–36.315 Are there any restrictions to the use of the abandonment/destruction authority?**

* * * * *

(c) Any asset identified as non-functional FEA may only be transferred or sold to a certified recycler in accordance with § 102–36.385.
■ 15. Amend § 102–36.330 by—
■ a. Removing the word ''or'' at the end of paragraph (b);

■ b. Removing from paragraph (c) ''$500'' and adding ''$1000; or'' in its place; and

■ c. Adding paragraph (d) to read as follows:

**§ 102–36.330 Are there occasions when public notice is not needed regarding abandonment/destruction of excess personal property?**

* * * * *

(d) When abandonment or destruction of FEA or other electronics are directed to a certified recycler under provisions of this part.

**§§ 102–36.375 through 102–36.475 [Redesignated as §§ 102–36.425 through 102.36–525]**

■ 16. Redesignate §§ 102–36.375 through 102–36.475 as §§ 102–36.425 through 102–36.525 respectively. A table is provided below.

| Old section | New section |
|---|---|
| 102–36.375 | 102–36.425 |
| 102–36.380 | 102–36.430 |
| 102–36.385 | 102–36.435 |
| 102–36.390 | 102–36.440 |
| 102–36.395 | 102–36.445 |
| 102–36.400 | 102–36.450 |
| 102–36.405 | 102–36.455 |
| 102–36.410 | 102–36.460 |
| 102–36.415 | 102–36.465 |
| 102–36.420 | 102–36.470 |
| 102–36.425 | 102–36.475 |
| 102–36.430 | 102–36.480 |
| 102–36.435 | 102–36.485 |
| 102–36.440 | 102–36.490 |
| 102–36.445 | 102–36.495 |
| 102–36.450 | 102–36.500 |
| 102–36.455 | 102–36.505 |
| 102–36.460 | 102–36.510 |
| 102–36.465 | 102–36.515 |
| 102–36.470 | 102–36.520 |
| 102–36.475 | 102–36.525 |

■ 17. Add the undesignated center heading ''Federal Electronic Assets (FEA)'' and §§ 102–36.375 through 102–36.420 to read as follows:

## Federal Electronic Assets (FEA)

**§ 102–36.375 What assets are considered Federal Electronic Assets (FEA)?**

Refer to the definition in § 102–36.40. The list of assets classified as FEA will be updated as appropriate through revisions to FMR Bulletin B–34.

**§ 102–36.380 How do I dispose of my functional FEA?**

When disposing of functional FEA, use every opportunity to re-use these assets to the fullest extent possible using the disposal codes in this part (§ 102–36.240) and following the sequence of the Federal disposal program listed below:

(a) Re-use within the agency, including exchange or sale under the Exchange Sale authority (see 41 CFR part 102–39);

(b) Transfer to other Federal agencies (see subpart D of this part) or transfer to schools and educational organizations such personal property as eligible under E.O. 12999 and the Stevenson-Wydler Technology Innovation Act (see subpart F of this part);

(c) Donation through GSA to states and eligible nonprofit organizations (see 41 CFR part 102–37); or

(d) Sale to the public (see 41 CFR part 102–38).

**§ 102–36.385 How do I dispose of my non-functional FEA or other electronic assets eligible for disposal under the abandonment/destruction authority?**

(a) If you determine that your FEA is non-functional, you must, except as otherwise authorized by law, dispose of these assets through:

(1) Use of the Exchange Sale Authority where the sale is made only to certified recyclers, or where the exchange is made to vendors or manufacturers that solely use such certified recyclers when the asset is not returned to use as designed;

(2) Contracts or agreements with certified recyclers;

(3) Sales in which only certified recyclers can participate as buyers; or

(4) Manufacturer take-back programs that solely use certified recyclers when the asset is not returned to use as designed.

(b) Other electronic assets (non-FEA) disposed of under the abandonment/destruction authority (see §§ 102–36.305 thorough 102–36.330), should also be disposed of through a certified recycler using the methods in paragraph (a) of this section.

(c) You must perform due diligence in ensuring certified recyclers are meeting regulatory and legal requirements, consistent with the quantity and value of the property being disposed of.

(d) In circumstances where you are disposing of your FEA to a certified recycler via an intermediary transportation entity, you must perform due diligence, consistent with the quantity and value of the property being disposed of, to ensure that all the FEA is being delivered to the intended certified recipients.

**§ 102–36.390 If I use a certified recycler, am I still responsible for sanitizing my electronic assets?**

Yes, you must develop consistent practices, using the National Institute of Standards (NIST) 800–8, ''*Guidelines for Media Sanitization,*'' to clean hard drives and other storage devices in order to protect sensitive data and maximize reuse potential. This sanitization must be performed by your agency or by an entity acting as your agent. You may enter into an agreement with a certified recycler to perform these functions.

**§ 102–36.395 Is disposing of FEA in a landfill or through incineration acceptable?**

No. The Federal Government encourages reuse and recycling over disposal in landfills or by incineration because electronics are made of valuable resources and highly engineered materials such as metals (gold, silver, copper), plastics, and glass. Recycling these materials conserves our nation's resources and avoids air and water pollution, as well as greenhouse gas emissions that are caused during extraction and manufacturing of virgin materials.

**§ 102–36.400 What steps must I take to guide recipients of functional FEA to environmentally-preferable disposal?**

Each recipient of usable FEA should be guided towards ultimate disposal through a certified recycler. Agencies must use the following statement in documentation transferring ownership or custody of functional FEA, and the statement must also be apparent in any listing or advertisement of the FEA planned for disposal under any disposal option:

This/these electronic product(s) must be disposed of at [its/]their end of useful life in accordance with all Federal, state, and local laws.

The Federal Government strongly encourages recycling these products through certified recyclers, even when such recycling is not required by Federal, state or local laws.

**§ 102–36.405 How do I dispose of overseas excess FEA?**

FEA located overseas and designated as foreign excess must follow § 102–36.440. However, any abandonment and destruction action should give preference to disposition through a certified recycler, when permissible under relevant foreign laws and regulations. All disposal actions for foreign excess must comply with the laws and environmental regulations of the host country.

**§ 102–36.410 Are there reporting requirements for FEA?**

Yes, you must submit an annual report on electronic assets given to non-Federal recipients, the Non-Federal Recipients Report, in accordance with § 102–36.300. This report captures disposal information regarding personal property provided or conveyed to non-Federal entities.

**§ 102–36.415 How and when do I submit the report?**

You must submit your annual report using the online reporting tool at *https://gsa.inl.gov/property.* The report should be submitted 45 days after the fiscal year for the fiscal year just concluded.

**§ 102–36.420 What happens to this information after it is reported?**

The information provided will be published on *www.data.gov* for transparency and public information.

[FR Doc. 2014–04585 Filed 3–5–14; 8:45 am]

BILLING CODE 6820–14–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### 49 CFR Part 382

**[Docket No. FMCSA–2011–0031]**

**RIN 2126–AB18**

### Commercial Driver's License Drug and Alcohol Clearinghouse

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Proposed rule; correction.

**SUMMARY:** This document corrects the preamble to a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on February 20, 2014. This NPRM would establish the Commercial Driver's License Drug and Alcohol Clearinghouse, a database under the Agency's administration that will contain controlled substances and alcohol test result information for the holders of commercial driver's licenses.

**DATES:** Effective March 6, 2014.

**ADDRESSES:** You may submit comments, identified by docket number FMCSA–2011–0031 or RIN 2126–AB18, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Juan Moya, (202) 366–4844; or by email at *fmcsadrugandalcohol@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Correction*

In the NPRM, (79 FR 9703), beginning on page 9703 in the **Federal Register** issue of February 20, 2014, make the following corrections: on page 9703 in the 2nd column in the rule title section, replace the docket number to read ''FMCSA–2011–0031'' and in the 3rd column under the **ADDRESSES** section replace the docket number to read ''FMCSA–2011–0031.'' On page 9704 in the 1st column under the Submitting Comments section replace the docket number to read ''FMCSA–2011–0031'' and in the 2nd column under the Viewing Comments and Documents section replace the docket number to read ''FMCSA–2011–0031.''

Dated: February 26, 2014.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2014–04827 Filed 3–5–14; 8:45 am]

BILLING CODE 4910–EX–P

# Notices

Federal Register

Vol. 79, No. 44

Thursday, March 6, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Assessment Report of Ecological, Economic and Social Conditions, Trends and Sustainability for the Santa Fe National Forest

**AGENCY:** Santa Fe National Forest, Forest Service, USDA.

**ACTION:** Notice of initiating the assessment phase of the forest plan revision for the Santa Fe National Forest.

**SUMMARY:** The Santa Fe National Forest (Forest), located in northern New Mexico, is initiating the first phase of the forest planning process pursuant to the 2012 National Forest System land management planning rule. This process will result in a revised forest land management plan (Forest Plan) which describes the strategic direction for management of forest resources on the Santa Fe National Forest for the next ten to fifteen years. The first phase of the process, the assessment phase, is beginning on the Santa Fe National Forest and interested parties are invited to contribute in the development of the assessment. The Forest will be hosting public forums throughout April and May 2014 where we will invite the public to share information relevant to the assessment including existing information, current trends, and local knowledge.

**DATES:** Public meetings associated with the development of the assessment are anticipated throughout April and May 2014 and will be announced on our Web site *www.fs.usda.gov/goto/SantaFeForestPlan* and to individuals and organizations on our mailing list. The assessment for the Santa Fe National Forest is anticipated to be completed in early 2015. Following completion of the assessment, the Forest will initiate procedures pursuant to the National Environmental Policy Act (NEPA) to prepare and evaluate a revised forest plan.

**ADDRESSES:** Written correspondence can be sent to: Santa Fe National Forest, Attn: Forest Plan, 11 Forest Lane, Santa Fe, NM 87508, or emailed to *SantaFeForestPlan@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Jennifer Cramer, Forest Planner, Santa Fe National Forest, 11 Forest Lane, Santa Fe, New Mexico 87508. More information on our plan revision process can be found on our Web site at *www.fs.usda.gov/goto/SantaFeForestPlan.* If you have questions or would like to sign-up for our mailing list, you can email *SantaFeForestPlan@fs.fed.us* or call our Plan Revision number: 505–438–5442. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The National Forest Management Act (NFMA) of 1976 requires that every National Forest System (NFS) unit develop a land management plan (LMP). On April 9, 2012, the Forest Service finalized its land management planning rule (2012 Planning Rule, 36 CFR 291), which describes requirements for the planning process and the content of the land management plans. Forest plans describe the strategic direction for management of forest resources for ten to fifteen years, and are adaptive and amendable as conditions change over time.

Under the 2012 Planning Rule, the assessment of ecological, social, and economic conditions and trends is the first stage of the planning process (36 CFR 219.6). The second stage, formal plan revision, involves the development of our Forest Plan in conjunction with the preparation of an Environmental Impact Statement under the NEPA. The third stage of the process is monitoring and feedback, which is ongoing over the life of the revised forest plans.

The Santa Fe National Forest is initiating its assessment pursuant to 2012 Forest Planning Rule. The assessment rapidly evaluates existing information about relevant ecological, economic, cultural and social conditions, trends, and sustainability and their relationship to land management plans within the context of the broader landscape. This information builds a common understanding prior to entering formal plan revision. The development of the assessment will include public engagement.

With this notice, the Santa Fe National Forest invites other governments, non-governmental parties, and the public to contribute in assessment development. The intent of public engagement during development of the assessment is to identify as much relevant information as possible to inform the upcoming plan revision process. We encourage contributors to share material about existing conditions, trends, and perceptions of social, economic, and ecological systems relevant to the planning process. The assessment also supports the development of relationships with key stakeholders that will be used throughout the plan revision process.

As we develop public engagement opportunities to assist with the assessment phase of forest plan revision, public announcements will be made and information will be posted on the Forest's Web site: *www.fs.usda.gov/goto/SantaFeForestPlan.* If you would like to contribute to the process or for more information, please call 505–438–5442, email *SantaFeForestPlan@fs.fed.us,* or contact Jennifer Cramer, Forest Planner, Santa Fe National Forest, 505–438–5449.

#### Responsible Official

The responsible official for the revision of the land management plan for the Santa Fe National Forest is Maria T. Garcia, Forest Supervisor, Santa Fe National Forest, 11 Forest Lane, Santa Fe, New Mexico 87508.

Dated: February 21,2014.

**Maria T. Garcia,**

*Forest Supervisor.*

[FR Doc. 2014–04906 Filed 3–5–14; 8:45 am]

BILLING CODE 3410–11–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Illinois Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules

and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Illinois Advisory Committee (Committee) will hold a meeting on Thursday, March 20, 2014, for the purpose of gathering information and hearing statements regarding corporate, nonprofit, and government initiatives on addressing food deserts in Chicago. The Committee will receive testimony from leaders of Chicago corporations, nonprofits and governments. The Committee issued a report in 2011 on Food Deserts in Chicago. The testimony presented at this meeting will address the initiatives that have begun since that report and how well these initiatives are addressing the problem.

Members of the public are invited and welcomed to make statements into the record at the meeting starting at 1:45 p.m. Member of the public are also entitled to submit written comments; the comments must be received in the regional office by April 20, 2014. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8311, or emailed to Administrative Assistant, Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Midwestern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Illinois Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

**Agenda**

*Welcome and Introductions*

11 a.m. to 11:10 a.m. Barbara Abrajano, Chairman, Illinois Advisory Committee.

*Business Meeting*

11:10 a.m. to 12 p.m. Illinois Advisory Committee.

*Panel Discussion*

12 p.m. to 1:45 p.m.

Moderator: Malik Nevels, Health Disparities Subcommittee Chair, Illinois Advisory Committee.

Panelists: Dr. Bechara Choucair, Commissioner, Chicago Department of Public Health; Sonya Harper, Growing Home; Trinita Logue, IFF; Rafael Malpica, Walgreens; Sheelah Muhammad, IMAN; Connie Spreen, Experimental Station; Terri Zhu, Louis' Groceries.

*Open Session*

1:45 p.m. to 2 p.m.

*Adjournment*

2 p.m.

**DATES:** The meeting will be held on Thursday, March 20, 2014, at 11 a.m. for a business meeting with panel discussion beginning at 12 p.m.

**ADDRESSES:** The meeting will be held at Kennedy-King College, Mini Great Hall, 740 W. 63rd St., Chicago, IL 60621.

Dated: February 28, 2014.

**David Mussatt,**

*Acting Chief, Regional Programs Coordination Unit.*

[FR Doc. 2014–04871 Filed 3–5–14; 8:45 am]

BILLING CODE 6335–01–P

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Notice

**AGENCY:** United States Commission on Civil Rights.

**ACTION:** Notice of briefing and business meeting.

**DATE AND TIME:** Friday, March 14, 2014; 9:30 a.m. EST

**PLACE:** 1331 Pennsylvania Ave NW., Suite 1150, Washington, DC 20425.

**Briefing Agenda—9:30 a.m.–1:05 p.m.**

This briefing is open to the public.

Topic: *Patient Dumping.*

I. Introductory Remarks by Chairman

II. Panel I—9:30 a.m.–10:45 a.m.: Government Panel

Speakers' Remarks and Questions from Commissioners

III. Panel II—10:45 a.m.–12:00 p.m.: Advocate/Practitioner Panel

Speakers' Remarks and Questions from Commissioners

IV. Panel III—12:05 p.m.–1:05 p.m.: Scholar Panel

Speakers' Remarks and Questions from Commissioners

V. Adjourn Briefing

**Meeting Agenda—2:00 p.m.**

I. Approval of Agenda

II. Program Planning

- Discussion and vote on two proposed Commission letters to POTUS and Congress on the introduction of two new national days of commemoration
- Discussion and vote to reschedule the pending briefings for April and May
- Discussion and vote on issuing a report on the 2012 State Immigration Enforcement briefing

III. Management and Operations

- Staff Director Report

IV. Approval of State Advisory Committee Slates

- Alabama
- District of Columbia
- Hawaii
- Nevada
- Washington

V. Adjourn Meeting

**CONTACT PERSON FOR FURTHER INFORMATION:** Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the briefing and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: March 3, 2014.

**David Mussatt,**

*Acting Chief, Regional Programs Coordination Unit.*

[FR Doc. 2014–04944 Filed 3–4–14; 11:15 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[Application No. 85–18A018]**

### Export Trade Certificate of Review

**ACTION:** Notice of Application to amend the Export Trade Certificate of Review Issued to U.S. Shippers Association (''USSA'') Application No. 85–18A018.

**SUMMARY:** The Office of Trade and Economic Analysis (''OTEA'') of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Joseph Flynn, Director, Office of Trade

and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7025–X, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 85–18A018.''

U.S. Shippers Association (''USSA'') original Certificate was issued June 3, 1986 (51 FR 20873, June 9, 1986). A summary of the current application for an amendment follows.

**Summary of the Application**

*Applicant:* U.S. Shippers Association, 17202 Pleasant Road, Needville, TX 77461

*Contact:* Beverly Altimore, Telephone: (979) 793–7375

*Application No.:* 85–18A018

*Date Deemed Submitted:* February 26, 2014

*Proposed Amendment:* USSA seeks to amend its Certificate to:

1. Add the following company as a new Member of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): PeroxyChem LLC (Philadelphia, PA)

2. Delete the following companies as Members of USSA's Certificate: AKZO Nobel Chemicals Inc. (Chicago, IL); Cray Valley (Exton, PA); AlphaPharma Inc. (Bridgewater, NJ); DeSantis & Associates, Inc. (Missouri City, TX); Rhodia Inc. (Cranbury, NJ); George Avery; JWC and Company, LLC (Canton, Michigan); and Salvatore Di Paola.

USSA's *proposed application for amendment of its Export Trade Certificate of Review would result in the following membership list:*

Air Products and Chemicals, Inc., Allentown, PA
AMCOL International Corporation, Arlington Heights, IL
Altimore Consultants LLC, Needville, TX
FMC Corporation, Philadelphia, PA
Guardian Industries Corp., Auburn Mills, MI
LyondellBasell Industries A.F.S.C.A., Rotterdam
PeroxyChem LLC, Philadelphia, PA
Phibro Animal Health Corporation, Teaneck, NJ
Sekisui Specialty Chemicals America, LLC, Dallas, TX
Solvay Chemicals, Inc., Houston, TX
Thomas M. Johnson, Park Ridge, NJ

Dated: February 26, 2014.

**Emily Kilcrease,**

*Acting Director, Office of Trade and Economic Analysis, International Trade Administration.*

[FR Doc. 2014–04911 Filed 3–5–14; 8:45 am]

BILLING CODE 3510–DR–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Caribbean Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Caribbean Fishery Management Council's Scientific and Statistical Committee (SSC) will hold meetings.

**DATES:** The SSC meetings will be held on March 25, 26 and 27, 2014.

**ADDRESSES:** The meetings will be held at the Caribbean Fishery Management Council Headquarters, located at 270 Muñoz Rivera Avenue, 4th Floor, Suite 401, San Juan, Puerto Rico 00918.

**FOR FURTHER INFORMATION CONTACT:** Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918; telephone: (787) 766–5926.

**SUPPLEMENTARY INFORMATION:** The SSC will meet to discuss the items contained in the following agenda:

**March 25, 2014, 9 a.m.–5 p.m.**

1. Evaluating criteria for inclusion of non-federally managed species into Island based FMPs.
   a. Meeting MSA obligations: MSA mandates/definitions
   b. Draft criteria
   c. Non-MSA considerations
   d. Evaluation of test (target) species
   i. Lobster (managed)
   ii. Ballyhoo
   iii. Mullet
   iv. Octopus
   v. Mahi
   vi. Mackerel
   e. Other criteria for consideration

**March 26, 2014, 9 p.m.–5 p.m.**

Continuation of discussion on the evaluation of criteria from Day 1

2. Evaluating criteria for inclusion/exclusions of federally managed species into Island based FMPs.
3. Five Year Research Plan

**March 27, 2014, 9 a.m.–12 p.m.**

Continuation of discussion from previous day
   (1) Bajo de Sico-Tourmaline-Abrir La Sierra: Compatibility in the EEZ of the 3 areas and recommendations to the CFMC.
   (2) Guidelines for peer-review of external stock assessments
   (3) Federal Permits

Other Business

Adjourn

The SSC will convene on March 25, from 9 a.m. until 5 p.m., on March 26, 2014, from 9 a.m. to 5 p.m., and on March 27, 2014, from 9 a.m. to 12 noon.

The meetings are open to the public, and will be conducted in English.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and

Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: March 3, 2014.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2014–04936 Filed 3–5–14; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities Under OMB Review—Notice of Intent To Renew Collection 3038–0049; Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

**DATES:** Comments must be submitted on or before April 7, 2014.

**ADDRESSES:** Comments may be submitted to OMB within 30 days of the notice's publication. Comments, identified by ''Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters (OMB Control No. 3038–0049),'' should be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503.

Comments may be also be submitted, regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, identified by ''Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters (OMB Control No. 3038–0049),'' by any of the following methods:

- Agency Web site, via its Comments Online process: *http://comments.cftc.gov*. Follow the instructions for submitting comments through the Web site.
- Mail: Send to Christopher J. Kirkpatrick, Deputy Secretary, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.
- Hand Delivery/Courier: Same as Mail, above.
- Federal eRulemaking Portal: *http://www.regulations.gov/search/index.jsp*. Follow the instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov*. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in section 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** Christopher W. Cummings, Special Counsel, Division of Swap Dealer and Intermediary Oversight, (202) 418–5445, FAX: (202) 418–5407, email: *ccummings@cftc.gov;* Jocelyn Partridge, Special Counsel, Division of Clearing and Risk, (202) 418–5926, email: *jpartridge@cftc.gov;* or Riva Spear Adriance, Senior Special Counsel, Division of Market Oversight, (202) 418–5494, email: *radriance@cftc.gov,* and refer to OMB Control No. 3038–0049. These contacts can also provide a copy of the ICR.

**SUPPLEMENTARY INFORMATION:**

*Title:* Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters (OMB Control No. 3038–0049). This is a request for extension of a currently approved information collection.

*Abstract:* Commission Regulation 140.99 requires persons submitting requests for exemptive, no-action, and interpretative letters to provide specific written information, certified as to completeness and accuracy, and to update that information to reflect material changes. Regulation 140.99 was promulgated pursuant to the Commission's rulemaking authority contained in section 8a(5) of the Commodity Exchange Act, 7 U.S.C. 12a(5) (2000). Regulation 41.3 requires securities brokers and dealers submitting requests for exemptive orders to provide specified written information in support of such requests. Regulation 41.3 was promulgated in response to the requirement in the Commodity Futures Modernization Act of 2000 that the Commission establish procedures for requesting such orders.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on December 30, 2013 (78 FR 79408).

*Burden Statement:* The respondent burden for this collection is estimated to average 0.91 hours per response, ranging from 0.75 hours for preparation of a notice to 9 hours for preparation and submission of a request for a no-action, exemptive, or interpretative letter. These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Futures Commission Merchants, Introducing Brokers, Commodity Pool

[1] Commission regulations referred to herein are found at 17 CFR Ch. 1 (2010). Commission regulations are accessible on the Commission's Web site, *www.cftc.gov.*

Operators, Commodity Trading Advisors, Associated Persons, Floor Brokers, Floor Traders, Securities Brokers and Dealers, Retail Foreign Exchange Dealers, Swap Dealers, Major Swap Participants, Designated Contract Markets, Derivatives Clearing Organizations, Swap Execution Facilities, Swap Data Repositories.

*Estimated number of respondents:* 12,428.

*Estimated total annual burden on respondents:* 28,478 hours.

*Frequency of collection:* On occasion.

**Authority:** 44 U.S.C. 3501 *et seq.*

Dated: February 28, 2014.

**Christopher J. Kirkpatrick,**

*Deputy Secretary of the Commission.*

[FR Doc. 2014–04919 Filed 3–5–14; 8:45 am]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2013–ICCD–0157]**

### Agency Information Collection Activities; Comment Request; The Impact of Professional Development in Fractions for Fourth Grade

**AGENCY:** Institute of Education Sciences/National Center for Education Statistics (IES), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

**DATES:** Interested persons are invited to submit comments on or before April 7, 2014.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0157 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Sandra Garcia, 202–219–1597.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* The Impact of Professional Development in Fractions for Fourth Grade.

*OMB Control Number:* 1850—NEW.

*Type of Review:* A new information collection.

*Respondents/Affected Public:* Individuals or households.

*Total Estimated Number of Annual Responses:* 4,923.

*Total Estimated Number of Annual Burden Hours:* 595.

*Abstract:* OMB clearance is requested for a randomized control trial study of the impact of professional development in fractions for fourth grade teachers on student achievement and teacher knowledge in 84 elementary schools from Georgia and South Carolina for one academic year. Schools below the state median on the respective state assessment will be recruited. Random assignment will be conducted at the school-level. Teachers in the treatment schools will participate in 8 three-hour training sessions during the Fall semester with additional homework lessons. Teachers in control schools will receive business-as-usual professional development. Teachers will participate in the following data collection activities: consent and demographic form, teacher knowledge measure of fractions (pre- and post-test), and 9 monthly professional development surveys. Grade 4 students will be assessed with a fractions measure. REL Southeast will conduct the study. This OMB clearance request is to collect data from approximately 252 teachers.

Dated: February 28, 2014.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2014–04903 Filed 3–5–14; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* PR14–23–000.

*Applicants:* Kansas Gas Service, A Division of ONE Gas, Inc.

*Description:* Tariff filing per 284.123(b)(1),: Kansas Gas Service Notice of Name Change and Revision of SOC to be effective 2/19/2014; TOFC: 1330.

*Filed Date:* 2/19/14.

*Accession Number:* 20140219–5186.

*Comments Due:* 5 p.m. ET 3/12/14.

*284.123(g) Protests Due:* 5 p.m. ET 4/21/14.

*Docket Numbers:* PR14–24–000.

*Applicants:* Kansas Gas Service, A Division of ONE Gas, Inc.

*Description:* Tariff filing per 284.123(g)/.224: Notice of Termination of SOC of Kansas Gas Service, a division of ONEOK, Inc. effective 2/19/2014; TOFC: 1290.

*Filed Date:* 2/19/14.

*Accession Number:* 20140219–5193.

*Comments Due:* 5 p.m. ET 3/12/14.

*284.123(g) Protests Due:* 5 p.m. ET 4/21/14.

*Docket Numbers:* RP13–184–000.

*Applicants:* Wyoming Interstate Company, L.L.C.

*Description:* Amendment to February 5, 2014 Wyoming Interstate Company, L.L.C. tariff filing per 154.501: Refund Report.

*Filed Date:* 2/14/14.

*Accession Number:* 20140214–5088.

*Comments Due:* 5 p.m. ET 2/28/14.

*Docket Numbers:* RP14–148–000.

*Applicants:* Wyoming Interstate Company, L.L.C.

*Description:* Amendment to February 5, 2014 Wyoming Interstate Company, L.L.C. tariff filing per 154.501: Refund Report.

*Filed Date:* 2/14/14.

*Accession Number:* 20140214–5088.

*Comments Due:* 5 p.m. ET 2/28/14.

*Docket Numbers:* RP14–509–000.

*Applicants:* Gulf South Pipeline Company, LP.

*Description:* PAL Neg Rate Agmts (42046, 42047, 42054) to be effective 2/25/2014.

*Filed Date:* 2/25/14.

*Accession Number:* 20140225–5025.

*Comments Due:* 5 p.m. ET 3/10/14.

*Docket Numbers:* RP14–510–000.

*Applicants:* Millennium Pipeline Company, L.L.C.

*Description:* Annual Operational Transaction Report of Millennium Pipeline Company, L.L.C. pursuant to Section 41.3 of the General Terms and Conditions of Millennium's Tariff.

*Filed Date:* 2/25/14.

*Accession Number:* 20140225–5035.

*Comments Due:* 5 p.m. ET 3/10/14.

*Docket Numbers:* RP14–511–000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* EOG Resources' Negotiated Rate to be effective 4/1/2014.

*Filed Date:* 2/25/14.

*Accession Number:* 20140225–5049.

*Comments Due:* 5 p.m. ET 3/10/14.

*Docket Numbers:* RP14–512–000.

*Applicants:* Texas Gas Transmission, LLC.

*Description:* PAL Neg Rate Agmts (33737, 33755, 33764, 37736, 37756) to be effective 2/20/2014.

*Filed Date:* 2/25/14.

*Accession Number:* 20140225–5110.

*Comments Due:* 5 p.m. ET 3/10/14.

*Docket Numbers:* RP14–513–000.

*Applicants:* Iroquois Gas Transmission System, L.P.

*Description:* 02/25/14 Negotiated Rates—JP Morgan Ventures Energy Corp (HUB) 6025–89 to be effective 2/24/2014.

*Filed Date:* 2/25/14.

*Accession Number:* 20140225–5118.

*Comments Due:* 5 p.m. ET 3/10/14.

*Docket Numbers:* RP14–514–000.

*Applicants:* Guardian Pipeline, L.L.C.

*Description:* PAL Negotiated Rate Agreement—Exelon Generation Company, L.L.C. to be effective 2/25/2014.

*Filed Date:* 2/25/14.

*Accession Number:* 20140225–5123.

*Comments Due:* 5 p.m. ET 3/10/14.

*Docket Numbers:* RP14–515–000.

*Applicants:* Midwestern Gas Transmission Company.

*Description:* Negotiated Rate PAL Agreement—MIECO, Inc. to be effective 2/26/2014.

*Filed Date:* 2/25/14.

*Accession Number:* 20140225–5128.

*Comments Due:* 5 p.m. ET 3/10/14.

*Docket Numbers:* RP14–516–000.

*Applicants:* Gavilon, LLC, Tenaska Marketing Ventures.

*Description:* Joint Petition for Temporary Waiver of Capacity Release Regulations and Policies and Related Pipeline Tariff Provisions of Gavilon, LLC and Tenaska Marketing Ventures.

*Filed Date:* 2/25/14.

*Accession Number:* 20140225–5147.

*Comments Due:* 5 p.m. ET 3/4/14.

*Docket Numbers:* RP14–517–000.

*Applicants:* Viking Gas Transmission Company.

*Description:* Semi-Annual FLRP—Spring 2014 to be effective 4/1/2014.

*Filed Date:* 2/26/14.

*Accession Number:* 20140226–5028.

*Comments Due:* 5 p.m. ET 3/10/14.

*Docket Numbers:* RP14–518–000.

*Applicants:* Southeast Supply Header, LLC.

*Description:* Negotiated Rate Capacity Release 4/01/2014 to be effective 4/1/2014.

*Filed Date:* 2/26/14.

*Accession Number:* 20140226–5061.

*Comments Due:* 5 p.m. ET 3/10/14.

*Docket Numbers:* RP14–519–000.

*Applicants:* Iroquois Gas Transmission System, L.P.

*Description:* 02/26/14 Negotiated Rates—Tenaska Gas Storage, LLC (HUB) 1175–89 to be effective 2/25/2014.

*Filed Date:* 2/26/14.

*Accession Number:* 20140226–5091.

*Comments Due:* 5 p.m. ET 3/10/14.

*Docket Numbers:* RP14–520–000.

*Applicants:* Guardian Pipeline, L.L.C.

*Description:* Revision to OSS and LBS Form of Service Agreements to be effective 4/1/2014.

*Filed Date:* 2/26/14.

*Accession Number:* 20140226–5214.

*Comments Due:* 5 p.m. ET 3/10/14.

*Docket Numbers:* RP14–521–000.

*Applicants:* Gulf South Pipeline Company, LP.

*Description:* Cap Rel Neg Rate Agmt (JW 34690 to QWest 42068) to be effective 3/1/2014.

*Filed Date:* 2/27/14.

*Accession Number:* 20140227–5021.

*Comments Due:* 5 p.m. ET 3/11/14.

*Docket Numbers:* RP14–522–000.

*Applicants:* Iroquois Gas Transmission System, L.P.

*Description:* 02/27/14 Negotiated Rates—United Energy Trading, LLC (HUB) 5095–89 to be effective 2/26/2014.

*Filed Date:* 2/27/14.

*Accession Number:* 20140227–5026.

*Comments Due:* 5 p.m. ET 3/11/14.

*Docket Numbers:* RP14–523–000.

*Applicants:* Guardian Pipeline, L.L.C.

*Description:* EPC Semi-Annual Adjustment—Spring 2014 to be effective 4/1/2014.

*Filed Date:* 2/27/14.

*Accession Number:* 20140227–5033.

*Comments Due:* 5 p.m. ET 3/11/14.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP14–262–001.

*Applicants:* Dominion Transmission, Inc.

*Description:* DTI—RP14–262 Settlement Compliance to be effective 1/1/2014.

*Filed Date:* 2/26/14.

*Accession Number:* 20140226–5023.

*Comments Due:* 5 p.m. ET 3/10/14.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated February 27, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–04901 Filed 3–5–14; 8:45 am]

**BILLING CODE 6717–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**AGENCY:** Federal Election Commission.

**DATE & TIME:** *Tuesday March 4, 2014 At 10:00 a.m.*

**PLACE:** 999 E Street NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

*Changes in the Meeting*—The meeting has been cancelled.

*Items to be Discussed:*

Compliance matters pursuant to 2 U.S.C. 437g.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Shelley E. Garr,**

*Deputy Secretary of the Commission.*

[FR Doc. 2014–04980 Filed 3–4–14; 4:15 pm]

**BILLING CODE 6715–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: HHS–OS–20883–30D]**

### Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new collection. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

**DATES:** Comments on the ICR must be received on or before April 7, 2014.

**ADDRESSES:** Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the Information Collection Request Title and document identifier HHS–OS–20883–30D for reference.

*Information Collection Request Title:* Support and Services at Home (SASH) Participant Survey.

*Abstract:* The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is requesting approval from the Office of Management and Budget (OMB) to conduct a survey of Support And Services at Home (SASH) participants to assess the impact of the SASH program on health outcomes. Information collected includes general health status, functional status, quality of life, medication problems and dietary issues. The SASH program operates in Vermont and links staff based in housing properties with a team of community-based health and supportive services providers to help older adults coordinate and manage their care needs. SASH services include: Assessment by a multidisciplinary team, creation of an individualized care plan, on-site nursing and care coordination with team members and other local partners, and community activities to support health and wellness. SASH is anchored in affordable senior housing properties, serving residents in the property and seniors living in the surrounding community.

The goal of this project is to conduct a comprehensive evaluation of the SASH program. The evaluation will assess whether the SASH model of coordinated health and supportive services in affordable housing improves quality of life, health and functional status of participants. The evaluation has been designed to comprehensively address the research questions while minimizing the burden placed on the SASH program staff, their partners (e.g., service providers), and Medicare and dually eligible Medicare and Medicaid beneficiaries. The mail survey is designed to collect outcomes that cannot be measured from claims data or other sources. We will use brief, standardized scales with demonstrated reliability and validity in older adults. Information collected in the survey is not of a sensitive nature. Questions in the beneficiary survey are confined to health outcomes. RTI International will conduct and analyze the survey. RTI has experience doing similar work for ASPE and other government clients.

*Need and Proposed Use of the Information:* To determine the impact of the SASH program on quality of life, health and functional status of participants. Care has been taken to ensure that there is no overlap between other ongoing state evaluations. Through discussions with SASH program staff and other state officials in Vermont, we determined that the information we seek to collect is not already being collected from our proposed sample, nor can it be measured from claims data. As a result of these efforts, the information collected through the survey will not duplicate any other effort and is not obtainable from any other source.

*Likely Respondents:* The target population for the survey is Medicare beneficiaries participating in the Support and Services at Home (SASH) demonstration. SASH provides integrated, home-based services to beneficiaries in selected housing properties throughout Vermont. At this point, 1,685 intervention beneficiaries have been identified in 37 SASH sites.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

| Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|
| SASH Participant Survey | 669 | 1 | 20/60 | 223 |
| Total | 669 | 1 | 20/60 | 223 |

**Darius Taylor,**

*Deputy, Information Collection Clearance Officer.*

[FR Doc. 2014–04939 Filed 3–5–14; 8:45 am]

**BILLING CODE 4150–05–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**[Document Identifier: HHS–OS–21524–60D]**

### Agency Information Collection Activities; Proposed Collection; Public Comment Request

**AGENCY:** Office of the Secretary for Health, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary, Department of Health and Human Services (HHS), announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for extending the use of the approved information collection assigned OMB control number 0990–0278, which expires on June 30, 2014. Prior to submitting that ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on the ICR must be received on or before May 5, 2014.

**ADDRESSES:** Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

**FOR FURTHER INFORMATION CONTACT:** Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the document identifier HHS–OS–21524–60D for reference.

*Information Collection Request Title:* Federalwide Assurance Form—Extension OMB No. 0990–0278, Assistant Secretary for Health, Office for Human Research Protections.

*OMB No.:* 0990–0278

*Abstract:* The Office for Human Research Protections is requesting a three year extension of the Federalwide Assurance (FWA). The FWA is designed to provide a simplified procedure for institutions engaged in HHS-conducted or supported research to satisfy the assurance requirements of Section 491(a) of the Public Health Service Act and HHS Regulations for the protection of human subjects at 45 CFR 46.103. The respondents are institutions engaged in human subjects research that is conducted or supported by HHS.

*Need and Proposed Use of the Information:* The information collected by OHRP through the FWA is the minimum necessary to satisfy the assurance requirements of the Public Health Service Act and the requirements of HHS regulations at 45 CFR 46.103.

*Likely Respondents:* Research institutions engaged in HHS-conducted or -supported research involving human subjects.

*Burden Statement:* The estimate of the hours per response assumes that virtually all respondents will complete the FWA form via the internet on an interactive page on the OHRP Web site. The time estimate includes an estimate of the time needed to (i) read and understand the instructions for completing the FWA; (ii) read and understand the FWA terms of assurance; and (iii) enter the information requested on the FWA form. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

| Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|
| Federalwide Assurance (FWA) | 11,050 | 2 | 30/60 | 11,050 |
| Total | | | | 11,050 |

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Darius Taylor,**

*Deputy, Information Collection Clearance Officer.*

[FR Doc. 2014–04933 Filed 3–5–14; 8:45 am]

**BILLING CODE 4150–28–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: HHS–OS–20762–30D]**

### Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

**AGENCY:** Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy and Accountability, Division of Acquisition, Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new collection. There were no comments received during the first public review of this ICR. OMB will accept further comments from the public on this ICR during the review and approval period.

**DATES:** Comments on the ICR must be received on or before April 7, 2014.

**ADDRESSES:** Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the Information Collection Request Title and document identifier HHS–OS–20762–30D for reference.

*Information Collection Request Title:* HHSAR 352.227–11 Patent Rights—Exceptional Circumstances and 352.227–14 Rights in Data—Exceptional Circumstances

*Abstract:* HHS found that systematically, over a period of several years, when Determinations of Exceptional Circumstances (DECs) were executed, additional legal protection for the patent and data rights of third parties beyond those covered by FAR were necessary. A decision was made to add two clauses—352.227–11 Patent Rights—Exceptional Circumstances and 352.227–14 Rights in Data—Exceptional Circumstances—to the HHS supplement to the FAR, the HHS Acquisition Regulation (HHSAR), to provide the additional legal protection required. These clauses would ensure that providers of proprietary material(s) to the government will retain all their preexisting rights to their material(s), and rights to any inventions made under a contract or subcontract (at all tiers), when a DEC has been executed. Rights in data regulations concern the rights of the Government, and organizations with which the Government contracts, to information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data and to insure that non-proprietary data developed with public funds is available to the public. As these HHSAR clauses would be used in lieu of the related FAR clauses, the clauses also address the patent and data rights currently covered in FAR clauses 52.227–11 and 52.227–14 prescribed under FAR part 27. It is the policy and objective of the Government to: (1) Use the patent system to promote the use of inventions arising from federally supported research or development; (2) Encourage maximum participation of industry in federally supported research and development efforts; (3) Ensure that these inventions are used in a manner to promote free competition and enterprise without unduly encumbering future research and discovery; (4) Promote the commercialization and public availability of the inventions made in the United States by United States industry and labor; (5) Ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and (6) Minimize the costs of administering patent policies.

*Need and Proposed Use of the Information:* In order to accomplish the objectives described above through the clauses, it will be necessary to collect the information described below. All submissions are considered critical to the Government ensuring the patent and data rights of the Contractor, Government and third parties are protected appropriately.

*Likely Respondents:* It is anticipated that the respondents to the collection of information will be the prime contractor(s), subcontractor(s) and third party providers for contracts awarded that include the two clauses 352.227–11 Patent Rights—Exceptional Circumstances and 352.227–14 Rights in Data—Exceptional Circumstances.

*Identify type of respondents:* It is anticipated that technical, legal, management and administrative personnel from the prime contractor(s), subcontractor(s) and providers of third party materials for contracts awarded that include the two clauses 352.227–11 Patent Rights—Exceptional Circumstances and 352.227–14 Rights in Data—Exceptional Circumstances will provide the responses to the information collection required.

*Burden Statement:* Clause 352.227–11 contains the following information collections.

(a) A request for a determination of whether the Contractor or the employer inventor is entitled to retain such greater rights must be submitted to the Agency Contracting Officer;

(b) The Contractor shall disclose in writing each Subject Invention to the Agency Contracting Office and to the Director, Division of Extramural Inventions and Technology Resources (DEITR);

(c) The Contractor agrees to execute or to have executed and promptly deliver to the Agency all instruments necessary to: 1. Establish or confirm the rights the Government has throughout the world in Subject Inventions . . . and 2. convey title to a Third party assignee . . . and enable the Third party assignee to obtain patent protection throughout the world in that Subject Invention;

(d) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each Subject Invention made under contract;

(e) The Contractor agrees to provide a final invention statement and certification prior to the close-out of the contract listing all Subject Inventions or stating that there were none;

(f) The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees when a request under subparagraph b.3. has been granted by the Agency; and

(g) All invention disclosures and requests for greater rights shall be sent to the Agency Contracting officer. Additionally, a copy of all disclosures, confirmatory licenses to the Government, face page of the patent applications, waivers and other routine communications under this funding agreement at all tiers must be sent to . . . *http://www.iEdison.gov*. Clause 352.227–14 contains the following two collections of information.

(h) ''Accordingly, the Contractor will provide the Contracting Officer a copy of any proposed publication or other public disclosure relating to the proposed publication or other public disclosure relating to the work performed under this contract at least 30 days in advance of the disclosure.'' This information collection is being done to insure that the Contractor does not prematurely publish information concerning possible inventions made under this contract so that the ability to obtain patent protection on such inventions is adversely affected.

(i) ''The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings.'' This information collection is being done to preserve the Government's right to cancel or ignore the markings at any time after the stated period, making the data no longer subject to any disclosure prohibitions.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

| Information collection (see above list "Burden statement" for legend) | Number of Respondents | Number of responses per respondent | Average burden per response (hours) | Total burden hours |
|---|---|---|---|---|
| (a) | 63 | 1 | 8 | 504 |
| (b) | 63 | 1 | 12 | 756 |
| (c) | 63 | 3 | 12 | 2268 |
| (d) | 63 | 3 | 14 | 2646 |
| (e) | 63 | 1 | 10 | 630 |
| (f) | 63 | 1 | 8 | 504 |
| (g) | 63 | 3 | 8 | 1512 |
| (h) | 63 | 3 | 3 | 567 |
| (i) | 63 | 3 | 8 | 1512 |
| Total | 63 | 19 | 83 | 10,899 |

**Darius Taylor,**

*Deputy, Information Collection Clearance Officer.*

[FR Doc. 2014–04931 Filed 3–5–14; 8:45 am]

BILLING CODE 4150–24–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Clinical Laboratory Improvement Advisory Committee, Centers for Disease Control and Prevention: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Clinical Laboratory Improvement Advisory Committee, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS), has been renewed for a 2-year period through February 19, 2016.

For information, contact Devery Howerton, Ph.D., Designated Federal Officer, Clinical Laboratory Improvement Advisory Committee, 1600 Clifton Road NE., Mailstop E–56, Atlanta, Georgia 30333, telephone 404–498–2602 or via email at *dxh7@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2014–04935 Filed 3–5–14; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–N–0237]**

### Report to Congress; Report on the Food and Drug Administration's Policy To Be Proposed Regarding Premarket Notification Requirements for Modifications to Legally Marketed Devices; Notice to Public of Web Site Location of Report to Congress

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) is announcing the Web site location where the Agency has posted the report entitled "Report to Congress; Report on FDA's Policy to be Proposed Regarding Premarket Notification Requirements for Modifications to Legally Marketed Devices." In addition, FDA has established a docket where stakeholders may provide comments.

**DATES:** Submit either electronic or written comments by June 4, 2014.

**ADDRESSES:** Submit electronic comments on this document to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Mike Ryan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1615, Silver Spring, MD 20993–0002, 301–796–6283.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144) became law on July 9, 2012. FDASIA added section 510(n)(2) to the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360(n)(2)). This new provision requires, no later than 18 months after enactment of FDASIA, the Secretary of Health and Human Services to submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on when a premarket notification under section 510(k) of the FD&C Act (or a "510(k)") should be submitted for a modification to a legally marketed 510(k) device. This report fulfills that requirement.

This notice announces the Web site location of "Report to Congress; Report on FDA's Policy to be Proposed Regarding Premarket Notification Requirements for Modifications to Legally Marketed Devices." FDA invites interested persons to submit comments on this report. FDA has established a docket where comments may be submitted (see **ADDRESSES**). FDA believes this docket is an important tool for receiving information from interested parties and for sharing this information with the public. To access "Report to Congress; Report on FDA's Policy to be Proposed Regarding Premarket Notification Requirements for Modifications to Legally Marketed Devices," visit FDA's Web site *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDRH/CDRHReports/ucm269873.htm.*

### II. Request for Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received

comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

Dated: February 28, 2014.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2014–04930 Filed 3–5–14; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Start-Up Exclusive Evaluation License: Live Attenuated Codon-Deoptimized Respiratory Syncytial Virus Vaccines

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209 and 37 CFR 404, that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of a worldwide exclusive evaluation option license to practice the inventions embodied in: HHS Ref. No. E–080–2013/0 and /1, ''Attenuation Of Human Respiratory Syncytial Virus By Genome Scale Codon-Pair Deoptimization,'' US Provisional Patent Applications 61/762,768 filed February 8, 2013 and 61/794,155 filed March 15, 2013, and PCT/US2014/015274 filed February 7, 2014, to Codagenix, Inc., having its principle place of business in Stony Brook, New York.

The United States of America is an assignee to the patent rights of these inventions.

The contemplated exclusive license may be limited to a live attenuated codon-deoptimized respiratory syncytial virus vaccine. Upon the expiration or termination of the start-up exclusive evaluation license, Codagenix will have the right to execute a start-up exclusive patent commercialization license with no greater field of use and territory than granted in the evaluation license.

**DATES:** Only written comments and/or applications for a license that are received by the NIH Office of Technology Transfer on or before March 21, 2014 will be considered.

**ADDRESSES:** Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Michael Shmilovich, Esq., Senior Licensing and Patent Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5019; Facsimile: (301) 402–0220; Email: *shmilovm@mail.nih.gov.*

**SUPPLEMENTARY INFORMATION:** The invention pertains to live attenuated respiratory syncytial viruses that can be used in prophylactic vaccines. The viruses are generated using codon-pair deoptimization techniques, resulting in attenuation based on hundreds or thousands of nucleotide substitutions with no differences at the amino acid level. The most notable strain has mutations in the NS1, NS2, N, P, M, SH, G, F, or L genes and referenced by the designation RSV MinFLC (SEQ ID No: 5 in the patent application). Experimental growth data for representative viruses in mice and in African Green Monkeys demonstrated in vivo growth attenuation.

The prospective exclusive evaluation option license is being considered under the small business initiative launched on October 1, 2011 and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404. The prospective exclusive evaluation option license, and a subsequent exclusive patent commercialization license, may be granted unless within fifteen (15) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 3, 2014.

**Richard Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2014–04929 Filed 3–5–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Start-Up Exclusive Evaluation License: Caval-Aortic Devices for Aortic Valve Replacement

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209 and 37 CFR 404, that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of a worldwide exclusive evaluation option license to practice the inventions embodied in: HHS Ref. No. E–553–2013/0, U.S. Provisional Patent Application No. 61/863,071, filed August 7, 2013; International Patent Application PCT/US2013/072344 filed November 27, 2013 entitled ''Transvascular And Transcameral Device Access And Closure,'' to Mehr Medical LLC, having its principle place of business in Andover Massachusetts.

The contemplated exclusive license may be limited to caval-aortic devices for aortic valve replacement. Upon the expiration or termination of the start-up exclusive evaluation license, Mehr will have the right to execute a start-up exclusive patent commercialization license with no greater field of use and territory than granted in the evaluation license.

**DATES:** Only written comments and/or applications for a license that are received by the NIH Office of Technology Transfer on or before March 21, 2014 will be considered.

**ADDRESSES:** Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Michael Shmilovich, Esq. Senior Licensing and Patent Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5019; Facsimile: (301) 402–0220; Email: *shmilovm@mail.nih.gov.*

**SUPPLEMENTARY INFORMATION:** The invention pertains to devices and methods for transcatheter correction of cardiovascular abnormalities and most specifically for the delivery of prosthetic valves to the heart. Featured is a device implant for closing a caval-aortic iatrogenic fistula created by the introduction of a transcatheter device from the inferior vena cava into the abdominal aorta. The occlusion device

includes an expandable transvascular implant with an elastomeric surface capable of extending between a vein and artery which conforms to the boundaries of an arteriovenous fistula tract between the artery and vein. A guidewire channel is disposed within the occlusion device wherein the channel also has elastomeric wall surfaces that conform or can be expanded to the area so that it occludes the channel when the guidewire is not present. The implant is resiliently deformable into a radially compressed configuration for delivery through the catheter but when not deformed into the radially compressed configuration at least the distal end of the device is radially enlarged relative to the intermediate neck whereby the distal end forms an enlarged distal skirt, such as a disk or button shaped member. A polymer coating on the radially enlarged distal end conforms to the endoluminal aortic wall for deployment against an internal wall of the artery.

The prospective exclusive evaluation option license is being considered under the small business initiative launched on October 1, 2011 and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404. The prospective exclusive evaluation option license, and a subsequent exclusive patent commercialization license, may be granted unless within fifteen (15) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 3, 2014.

**Richard Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2014–04928 Filed 3–5–14; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK Ancillary Studies.

*Date:* March 24, 2014

*Time:* 12 p.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Elena Sanovich, Ph.D. Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 28, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–04877 Filed 3–5–14; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the PubMed Central National Advisory Committee.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* PubMed Central National Advisory Committee.

*Date:* June 10, 2014.

*Time:* 9:30 a.m. to 3:00 p.m.

*Agenda:* Review and Analysis of Systems.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* David J. Lipman, MD, Director, National Center for Biotechnology Information, National Library of Medicine, Building 38, Room 8N805, Bethesda, MD 20894, 301–435–5985, *dlipman@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.pubmed.central.nih.gov/about/nac/html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 28, 2014.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–04873 Filed 3–5–14; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Cognitive Fitness Ancillary Study.

*Date:* March 20, 2014.

*Time:* 4 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Robert Wellner, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–4721, *rw175w@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 28, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–04876 Filed 3–5–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Sustained Release of Antivirals for Treatment or Prevention of HIV.

*Date:* March 21, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

*Contact Person:* Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Program Project: Pharmaceutical Plants Biosynthesis.

*Date:* April 1–2, 2014.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 28, 2014.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–04878 Filed 3–5–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel Multi-site Clinical Trials (PA13–302).

*Date:* March 18, 2014.

*Time:* 12 p.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Jose F. Ruiz, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, (301) 451–3086, *ruizjf@nida.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel Cutting-Edge Basic Research Awards (CEBRA) (R21).

*Date:* March 19, 2014.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

*Contact Person:* Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, NIH Pathway to Independence Award (K99/R00).

*Date:* March 25, 2014.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4245, MSC 9550, Bethesda, MD 20892–9550, 301–451–4530, *el6r@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 28, 2014.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–04879 Filed 3–5–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, PAR13–305 R24 Collaborative Interdisciplinary Team Science in Diabetic Nephropathy.

*Date:* March 21, 2014.

*Time:* 11 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Ann A Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ChiLDReN Applications.

*Date:* March 24, 2014.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Jian Yang, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Time-Sensitive Obesity Review.

*Date:* March 24, 2014.

*Time:* 11 a.m.to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Renal Function Program Projects.

*Date:* March 25, 2014.

*Time:* 11 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

*Date:* April 3–4, 2014.

*Time:* 6 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 28, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–04875 Filed 3–5–14; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The other and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the other, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel; NIDCR Review of L30 and L40 Loan Repayment Applications.

*Date:* March 28, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate loan Repayment.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

*Contact Person:* Victor Henriquez, Ph.D., Scientific Review Officer, DEA/SRB/NIDCR, 6701 Democracy Blvd., Room 668, Bethesda, MD 20892–4878, 301–451–2405, *henriquv@nidcr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 28, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–04874 Filed 3–5–14; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2014–0010; OMB No. 1660–0010]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; Implementation of Coastal Barrier Legislation

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning applications for National Flood Insurance Program (NFIP) insurance for buildings located in Coastal Barrier Resources System (CBRS) communities.

**DATES:** Comments must be submitted on or before May 5, 2014.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2014–0010. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mary Chang, Insurance Examiner, Risk Insurance Division, Mitigation Directorate, (202) 212–4712 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

**SUPPLEMENTARY INFORMATION:** The Coastal Barrier Resources Act (16 U.S.C. 3501, et seq.; Pub. L. 97–348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591) are Federal laws that were enacted on October 18, 1982, and November 16, 1990, respectively, as part of a Department of the Interior (DOI) initiative to preserve the ecological integrity of areas DOI designates as coastal barriers and otherwise protected areas. The laws provide this protection by prohibiting all Federal expenditures or financial assistance, including flood insurance, for residential or commercial development in areas identified with the system. The Federal Emergency Management Agency's (FEMA) regulations at Title 44 of the Code of Federal Regulations (CFR) Part 71 implement section 11 of the Coastal Barrier Resources Act and section 9 of the Coastal Barrier Improvement Act of 1990, as those Acts amend the National Flood Insurance Act of 1968 (42 U.S.C. 4001, et seq.). When an application for flood insurance is submitted to FEMA, the owner of a structure located in an area identified as being in the Coastal Barrier Resource System (CBRS) or an otherwise protected area is required to provide documentation to FEMA in accordance with 44 CFR 71.4 to show that the structure is eligible for flood insurance.

### Collection of Information

*Title:* Implementation of Coastal Barrier Legislation.

*Type of Information Collection:* Extension, without change, of a currently approved information collection.

*FEMA Forms:* None.

*Abstract:* When an application for flood insurance is submitted for buildings located in a CBRS or an otherwise protected area, one of the following types of documentation must be submitted as evidence of eligibility: (a) Certification from a community official stating the building is not located in a designated CBRS area; (b) A legally valid building permit or certification from a community official stating that the start date of a building's construction preceded the date that the community was identified in the CBRS; or (c) Certification from the governmental body overseeing the area indicating that the building is used in a manner consistent with the purpose for which the area is protected.

*Affected Public:* Individuals or households; Businesses or other for profits; Not-for-profit institutions; Farms; and State, local or Tribal governments.

*Number of Respondents:* 2690.

*Number of Responses:* 2690.

*Estimated Total Annual Burden Hours:* 672.5.

*Estimated Cost:* The estimated annual operations and maintenance costs for technical services is $2690.00. There is no annual start-up or capital costs.

### Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: February 21, 2014.

**Charlene D. Myrthil,**

*Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2014–04915 Filed 3–5–14; 8:45 am]

**BILLING CODE 9110–11–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2013–0049; OMB No. 1660–0102]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request; Federal Emergency Management Agency Housing Inspection Services Customer Satisfaction Survey

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

**DATES:** Comments must be submitted on or before April 7, 2014.

**ADDRESSES:** Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell

Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or email address *FEMA-Information-Collections-Management@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## Collection of Information

*Title:* Federal Emergency Management Agency Housing Inspection Services Customer Satisfaction Survey.

*Type of information collection:* Revision of a currently approved information collection.

*Form Titles and Numbers:* FEMA Form 007–0–1 and FEMA Form 007–0–1S.

*Abstract:* Federal Emergency Management Agency Housing Inspection Services Customer Satisfaction Survey, FEMA Forms 007–0–1 and 007–0–1S, are used to survey individuals who have contacted FEMA for disaster assistance. FEMA Inspection Services Managers and Task Monitors use the survey results to measure disaster inspector customer service and make improvements to disaster services that increase customer satisfaction and inspection program effectiveness. The information is shared with Regional staff specific to the Federal declaration for which the survey is conducted to further assist in enhancing customer service to those affected by disasters and other incidents that result in a declaration.

*Affected Public:* Individuals and Households.

*Estimated Number of Respondents:* 9,441.

*Estimated Total Annual Burden Hours:* 2,360.

*Estimated Cost:* There are no record keeping, capital, start-up or maintenance costs associated with this information collection.

Dated: February 21, 2014.

**Charlene D. Myrthil,**

*Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2014–04914 Filed 3–5–14; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2013–0054; OMB No. 1660–0015]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request; Revisions to National Flood Insurance Program Maps: Application Forms and Instructions for (C)LOMAs and (C)LOMR-Fs.

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

**DATES:** Comments must be submitted on or before April 7, 2014.

**ADDRESSES:** Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or email address *FEMA-Information-Collections-Management@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## Collection of Information

*Title:* Revisions to National Flood Insurance Program Maps: Application Forms and Instructions for (C)LOMAs and (C)LOMR-Fs.

*Type of information collection:* Revision of a currently approved information collection.

*Form Titles and Numbers:* FEMA Form 086–0–26, Property Information; FEMA Form 086–0–26A, Elevation Form; FEMA Form 086–0–26B, Community Acknowledgement Form; FEMA Form 086–0–22 and FEMA Form 086–0–22A (Spanish), Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps.

*Abstract:* FEMA collects scientific and technical data submissions to determine whether a specific, single-lot property is located within or outside of a Special Flood Hazard Area (SFHA). If the property is determined not to be within a SFHA, FEMA provides a written determination and the appropriate map is modified by a Letter of Map Amendment (LOMA) or a Letter of Map Revision—Based on Fill (LOMR–F). The owner or lessee of a property uses a LOMA or LOMR–F to show that a property is not located within the SFHA, making it possible for the lending institution to waive the flood insurance requirement. If the policyholder decides to maintain insurance on the property, the new determination should result in lower rates.

*Affected Public:* Individuals and Households; and Business or Other for-Profit Institutes.

*Estimated Number of Respondents:* 97,503.

*Estimated Total Annual Burden Hours:* 150,725.

*Estimated Cost:* The property owner is required to hire a surveyor or engineer at an average cost of $450 to provide certified elevation data. Therefore the total annual cost burden to respondents is estimated to be $47,465,100.

Dated: February 28, 2014.

**Charlene D. Myrthil,**

*Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2014–04910 Filed 3–5–14; 8:45 am]

**BILLING CODE 9111–52–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2013–0055; OMB No. 1660–0016]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request; Revision to National Flood Insurance Program Maps: Application Forms and Instructions for LOMRs and CLOMRs

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

**DATES:** Comments must be submitted on or before April 7, 2014.

**ADDRESSES:** Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or email address *FEMA-Information-Collections-Management@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## Collection of Information

*Title:* Revision to National Flood Insurance Program Maps: Application Forms and Instructions for LOMRs and CLOMRs.

*Type of information collection:* Revision of a currently approved information collection.

*Form Titles and Numbers:* FEMA Form 086–0–27, Overview and Concurrence form; FEMA Form 086–0–27A, Riverine Hydrology and Hydraulics Form; FEMA Form 086–0–27B, Riverine Structures Form; FEMA Form 086–0–27C, Coastal Analysis Form; FEMA Form 086–0–27D, Coastal Structures Form; FEMA Form 086–0–27E, Alluvial Fan Flooding Form.

*Abstract:* The forms in this information collection are used to determine if the collected data will result in the modification of Base Flood Elevations (BFEs), Special Flood Hazard Area (SFHA), or floodway. Once the information is collected, it is submitted to FEMA for review and is subsequently included on the National Flood Insurance Program (NFIP) maps. These maps are used by FEMA to set insurance rates and to determine the applicability of the floodplain management requirements, as well as by lenders to determine the applicability of the mandatory purchase requirenents.

*Affected Public:* State, Local and Tribal Government and Business or Other for-Profit Institutes.

*Estimated Number of Respondents:* 3,520.

*Estimated Total Annual Burden Hours:* 16,060.

*Estimated Cost:* The cost to developers for engineer's services include scoping, surveying cross-sections, developing hydrologic and hydraulic analysis, and preparing work maps and reports documenting the engineering analysis and results is estimated to be $19,800,000.00.

Dated: February 28, 2014.

**Charlene D. Myrthil,**

*Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2014–04913 Filed 3–5–14; 8:45 am]

BILLING CODE 9111–52–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1356]**

### Proposed Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

**DATES:** Comments are to be submitted on or before June 4, 2014.

**ADDRESSES:** The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1356, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium

rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

| Community | Community map repository address |
|---|---|
| **Stephenson County, Illinois, and Incorporated Areas** | |
| Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata* | |
| City of Freeport | Freeport City Hall, 524 West Stephenson Street, Freeport, IL 61032. |
| Unincorporated Areas of Stephenson County | Stephenson County Planning and Zoning Department, 295 West Lamm Road, Freeport, IL 61032. |
| Village of Ridott | Ridott Village Hall, 200 East 3rd Street, Ridott, IL 61067. |
| Village of Winslow | Winslow Village Hall, 501 School Street, Winslow, IL 61089. |
| **Whitley County, Indiana, and Incorporated Areas** | |
| Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata* | |
| City of Columbia City | Columbia City/Whitley County Joint Planning and Building Department, Whitley County Government Center, Suite 204, 220 West Van Buren Street, Columbia City, IN 46725. |
| Town of South Whitley | Columbia City/Whitley County Joint Planning and Building Department, Whitley County Government Center, Suite 204, 220 West Van Buren Street, Columbia City, IN 46725. |
| Unincorporated Areas of Whitley County | Columbia City/Whitley County Joint Planning and Building Department, Whitley County Government Center, Suite 204, 220 West Van Buren Street, Columbia City, IN 46725. |
| **Jones County, Iowa, and Incorporated Areas** | |
| Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata* | |
| City of Monticello | City Hall, 200 East 1st Street, Monticello, IA 52310. |
| Unincorporated Areas of Jones County | Jones County Engineer's Office, 19501 Highway 64, Anamosa, IA 52205. |
| **Ringgold County, Iowa, and Incorporated Areas** | |
| Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata* | |
| City of Benton | Ringgold County Courthouse, 109 West Madison Street, Mount Ayr, IA 50854. |
| City of Diagonal | City Hall, 601 West Eight Street, Diagonal, IA 50854. |
| City of Maloy | City Hall, 204 Carter Street, Maloy, IA 50836. |
| City of Mount Ayr | City Hall, 200 South Taylor Street, Mount Ayr, IA 50854. |
| City of Shannon City | City Hall, 302 Union Street, Shannon City, IA 50861. |
| Unincorporated Areas of Ringgold County | Ringgold County Courthouse, 109 West Madison Street, Mount Ayr, IA 50854. |
| **Suffolk County, Massachusetts (All Jurisdictions)** | |
| Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata* | |
| City of Boston | City Hall, One City Hall Square, Boston, MA 02201. |
| City of Chelsea | City Hall, 500 Broadway, Chelsea, MA 02150. |
| City of Revere | City Hall, 281 Broadway, Revere, MA 02151. |
| Town of Winthrop | Town Hall, One Metcalf Square, Winthrop, MA 02152. |

| Community | Community map repository address |
|---|---|
| **Allen County, Ohio, and Incorporated Areas** | |
| Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata* | |
| Unincorporated Areas of Allen County | Allen County Courthouse, 301 North Main Street, Lima, OH 45801. |
| Village of Bluffton | Village Hall, 154 North Main Street, Bluffton, OH 45817. |
| Village of Lafayette | Village Hall, 225 East Sugar Street, Lima, OH 45801. |
| **Licking County, Ohio, and Incorporated Areas** | |
| Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata* | |
| City of Heath | Municipal Building, 1287 Hebron Road, Heath, OH 43056. |
| City of Newark | City Hall, 40 West Main Street, Newark, OH 43055. |
| City of Pataskala | City Hall, 621 West Broad Street, Pataskala, OH 43062. |
| City of Reynoldsburg | City Hall, 7232 East Main Street, Reynoldsburg, OH 43068. |
| Unincorporated Areas of Licking County | The Donald D. Hill County Administration Building, 20 South Second Street, Newark, OH 43055. |
| Village of Alexandria | Village Office, 4 West Main Street, Alexandria, OH 43001. |
| Village of Granville | Village Office, 141 East Broadway, Granville, OH 43023. |
| Village of Hanover | Village Office, 200 New Home Drive NE, Newark, OH 43055. |
| Village of Hartford | Hartford Village Town Hall, 2 North High Street, Croton, OH 43013. |
| Village of Hebron | Village Office, 934 West Main Street, Hebron, OH 43025. |
| Village of Johnstown | Village Office, 599 South Main Street, Johnstown, OH 43031. |
| Village of Kirkersville | Kirkersville Mayor's Office, 135 North Fourth Street, Kirkersville, OH 43033. |
| Village of Utica | Village Office, 39 Spring Street, Utica, OH 43080. |
| **Marion County, Ohio, and Incorporated Areas** | |
| Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata* | |
| Unincorporated Areas of Marion County | Marion County Building, 222 West Center Street, Marion, OH 43302. |
| Village of Waldo | Village Hall, 102 North Marion Street, Waldo, OH 43356. |
| **King County, Washington, and Incorporated Areas** | |
| Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata* | |
| City of Seattle | City Hall, 600 4th Avenue, Seattle, WA 98124. |
| **Rock County, Wisconsin, and Incorporated Areas** | |
| Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata* | |
| City of Beloit | City Hall, 100 State Street, Beloit, WI 53511. |
| City of Brodhead | City Hall, 1111 West 2nd Avenue, Brodhead, WI 53520. |
| City of Edgerton | City Hall, 12 Albion Street, Edgerton, WI 53534. |
| City of Evansville | City Hall, 31 South Madison Street, Evansville, WI 53536. |
| City of Janesville | City Hall, 18 North Jackson Street, Janesville, WI 53545. |
| City of Milton | City Hall, 430 East High Street, Milton, WI 53563. |
| Unincorporated Areas of Rock County | Rock County Courthouse, 51 South Main Street, Janesville, WI 53545. |
| Village of Clinton | Village Hall, 301 Cross Street, Clinton, WI 53525. |
| Village of Footville | Village Hall, 156 Depot Street, Footville, WI 53537. |
| **Washington County, Wisconsin, and Incorporated Areas** | |
| Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata* | |
| City of Hartford | City Hall, 109 North Main Street, Hartford, WI 53027. |
| Unincorporated Areas of Washington County | Washington County Government Center, 432 East Washington Street, West Bend, WI 53095. |
| Village of Richfield | Village Hall, 4128 Hubertus Road, Hubertus, WI 53033. |
| Village of Slinger | Village Hall, 300 Slinger Road, Slinger, WI 53086. |

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 31, 2014.

**Roy E. Wright,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2014–04909 Filed 3–5–14; 8:45 am]

BILLING CODE 9110–12–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[OMB Number 1117–0046]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested: Self-Certification, Training, and Logbooks for Regulated Sellers of Scheduled Listed Chemical Products

**ACTION:** 60-Day notice.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until May 5, 2014. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ruth A. Carter, Chief, Policy Evaluation Analysis Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Self-Certification, Training, and Logbooks for Regulated Sellers of Scheduled Listed Chemical Products.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 597. Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: CMEA mandates that retail sellers of scheduled listed chemical products maintain a written or electronic logbook of sales, retain a record of employee training, and complete a self-certification form verifying the training and compliance with CMEA provisions regarding retail sales of scheduled listed chemical products.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 60,043 persons are self-certified. It is estimated that 410,000 new employees of regulated sellers receive training regarding the requirements of the Combat Methamphetamine Epidemic Act of 2005 due to annual employee turnover. It is estimated that there are 25.5 million transactions involving the sale of scheduled listed chemical products annually. The table below shows the activities and time burdens associated with this collection.

| Activity | Unit burden hour | Number of activities | Total burden hours |
|---|---|---|---|
| Training record | 0.05 hour (3 minutes) | 410,000 | 20,500 |
| Self-certification | 0.25 hour (15 minutes) | 60,043 | 15,011 |
| Transaction record | 0.033 hour (2 minutes) | 25,500,000 | 850,000 |
| Customer time | 0.033 hour (2 minutes) | 25,500,000 | 850,000 |
| Total | | | 1,735,511 |

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 1,735,511 annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., 3W–1407B, Washington, DC 20530.

Dated: February 28, 2014.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2014–04912 Filed 3–5–14; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Foreign Claims Settlement Commission

**[F.C.S.C. Meeting and Hearing Notice No. 03–14]**

### Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b),

hereby gives notice in regard to the scheduling of open meetings as follows:

*Friday, March 14, 2014:* 10:00 a.m.—Issuance of Proposed Decisions in claims against Iraq.

*Status:* Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975.

**Brian M. Simkin,**

*Chief Counsel.*

[FR Doc. 2014–05007 Filed 3–4–14; 4:15 pm]

**BILLING CODE4410–BA–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Regulation D Rule 506(e) Felons and Other Bad Actors Disclosure Statement; OMB Control No. 3235–704, SEC File No. 270–654.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') the following request for an extension of the previously approved collection of information discussed below.

Regulation 506(e) of Regulation D (17 CFR 230.506(e)) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires the issuer to furnish to each purchaser, a reasonable time prior to sale, a description of any matters that would have triggered disqualification under Rule 506(d)(1) of Regulation D, except that these disqualifying events occurred before September 23, 2013. The written disclosure statement required under Rule 506(e) is not filed with the Commission, but serves as an important investor protection tool to inform investors of an issuer's and its covered persons, involvement in past ''bad actor'' disqualifying events such as pre-existing criminal convictions, court injunctions, disciplinary proceedings, and other sanctions enumerated in Rule 506(d). Without the mandatory written statement requirements set forth in Rule 506(e), purchasers may have the impression that all bad actors are disqualified from participation in Rule 506 offerings.

We estimate there are 19,908 respondents that will conduct a one-hour factual inquiry to determine whether the issuer and its covered persons have had pre-existing disqualifying events before September 23, 2013. Of those 19,908 respondents, we estimate that 220 respondents with disqualifying events will spend ten hours to prepare a disclosure statement describing the matters that would have triggered disqualification under 506(d)(1) of Regulation D, except that these disqualifying events occurred before September 23, 2013, the effective date of the Rule 506 amendments. An estimated 2,200 burden hours are attributed to the 220 respondents with disqualifying events in addition to the 19,908 burden hours associated with the one-hour factual inquiry. In sum, the total annual increase in paperwork burden for all affected respondents to comply with the Rule 506(e) disclosure statement is estimated to be approximately 22,108 hours of company personnel time.

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

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 28, 2014.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–04926 Filed 3–5–14; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549.

*Extension:*

Form S–11, OMB Control No. 3235–0067, SEC File No. 270–064.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form S–11 (17 CFR 239.18) is the registration statement form used to register securities issued in real estate investment trusts by issuers whose business is primarily that of acquiring and holding investment interest in real estate under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The information filed with the Commission permits verifications of compliance with securities law requirements and assures public availability. We estimate that Form S–11 takes approximately 779.04 hours per response and is filed by approximately 100 issuers annually. In addition, we estimate that 25% of the 779.04 hours per response (194.76 hours) is prepared by the issuer for annual reporting burden of 19,476 hours (194.76 hours per response × 100 responses).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information collection information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless it displays a currently valid control number.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 28, 2014.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–04925 Filed 3–5–14; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 15c2–5; SEC File No. 270–195; OMB Control No. 3235–0198.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15c2–5 (17 CFR 240.15c2–5) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15c2–5 prohibits a broker-dealer from arranging or extending certain loans to persons in connection with the offer or sale of securities unless, before any element of the transaction is entered into, the broker-dealer: (1) Delivers to the person a written statement containing the exact nature and extent of the person's obligations under the loan arrangement; the risks and disadvantages of the loan arrangement; and all commissions, discounts, and other remuneration received and to be received in connection with the transaction by the broker-dealer or certain related persons (unless the person receives certain materials from the lender or broker-dealer which contain the required information); and (2) obtains from the person information on the person's financial situation and needs, reasonably determines that the transaction is suitable for the person, and retains on file and makes available to the person on request a written statement setting forth the broker-dealer's basis for determining that the transaction was suitable. The collection of information required by Rule 15c2–5 is necessary to execute the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers.

The Commission estimates that there are approximately 50 respondents that require an aggregate total of 600 hours to comply with Rule 15c2–5. Each of these approximately 50 registered broker-dealers makes an estimated six annual responses, for an aggregate total of 300 responses per year. Each response takes approximately two hours to complete. Thus, the total compliance burden per year is 600 burden hours. The approximate cost per hour is $53.00 for clerical labor, resulting in a total internal compliance cost of $31,800 (600 hours @$53.00 per hour). These reflect internal labor costs; there are no external labor, capital, or start-up costs.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number. Please direct your written comments to: Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov*.

Dated: February 28, 2014.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–04924 Filed 3–5–14; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–30971]**

### Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

February 28, 2014.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of February 2014. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 25, 2014, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

*For Further Information Contact:* Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE., Washington, DC 20549–8010.

**Perritt MicroCap Opportunities Fund Inc. [File No. 811–5308]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to a series of Perritt Funds, Inc., and on February 28, 2013, made a distribution to its shareholders based on net asset value. Expenses of $15,000 incurred in connection with the reorganization were paid by Perritt Capital Management, Inc., investment adviser to the acquired and the acquiring funds.

*Filing Date:* The application was filed on February 13, 2014.

*Applicant's Address:* 300 South Wacker Dr., Suite 2880, Chicago, IL 60606.

**AllianzGI International & Premium Strategy Fund [File No. 811–21724]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On October 28, 2013, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $68,000 incurred in connection with the liquidation were paid by applicant.

*Filing Date:* The application was filed on January 24, 2014.

*Applicant's Address:* 1633 Broadway, New York, NY 10019.

**UBS Master Series Inc. [File No. 811–4448]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On June 20, 2013, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $40,430 incurred in connection with the liquidation were paid by UBS Global Asset Management (Americas) Inc., applicant's investment adviser.

*Filing Date:* The application was filed on January 23, 2014.

*Applicant's Address:* 1285 Avenue of the Americas, 12th Floor, New York, NY 10019–6028.

**RiverSource Selected Series, Inc. [File No. 811–4132]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to Columbia Energy and Natural Resource Fund, a series of Columbia Funds Series Trust I, and on May 31, 2011, made a distribution to its shareholders based on net asset value. Expenses of $90,927 incurred in connection with the reorganization were paid by applicant and Columbia Management Investment Advisers, LLC, applicant's investment adviser.

*Filing Date:* The application was filed on January 29, 2014.

*Applicant's Address:* 901 Marquette Ave. South, Suite 2810, Minneapolis, MN 55402–3268.

**Thai Capital Fund Inc. [File No. 811–6062]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On August 23, 2013 and September 30, 2013, applicant made liquidating distributions to its shareholders, based on net asset value. Applicant has 91 shareholders of record. Undistributed funds are being held by American Stock Transfer & Trust Company (''AST''), pending ongoing efforts to locate remaining shareholders. If AST is unable to locate these shareholders, the remaining funds will be held for the period of time specified by state law and will escheat to the state after that time. Applicant has retained $96,300 in cash to pay outstanding liabilities. Expenses of $69,410 incurred in connection with the liquidation were paid by applicant.

*Filing Dates:* The application was filed on November 4, 2013, and amended on February 14, 2014.

*Applicant's Address:* c/o Aberdeen Asset Management Inc., 1735 Market St., 32nd Floor, Philadelphia, PA 19103.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–04927 Filed 3–5–14; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71637; File No. SR–NSCC–2013–12]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Provide Members With a Risk Management Tool That Will Enable Members To Monitor Trading Activity and Receive Notifications When Pre-Set Trading Limits Are Reached

February 28, 2014.

### I. Introduction

On November 15, 2013, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2013–12 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published in the **Federal Register** on December 3, 2013.[3] NSCC voluntarily extended the Commission's period of review of the Proposed Rule Change on January 9, 2014. The Commission received one comment letter to the Proposed Rule Change [4] and one response letter from NSCC.[5] This order approves the Proposed Rule Change.

### II. Description

NSCC filed the Proposed Rule Change to amend its Rules & Procedures (''Rules'') in order to implement DTCC Limit Monitoring, a risk management tool.[6] As discussed below, the tool will enable NSCC's members (''Members'') [7] to view their trading exposure across markets and at the CUSIP and individual trade levels through Risk Entities created by the Member. DTCC Limit Monitoring will then alert the Member when trading limits for Risk Entities are approached and when limits are reached. Members have discretion to determine whether to take action in response to an alert.

#### *A. Trading Data Captured*

Through DTCC Limit Monitoring, Members will be able to monitor the intraday, post-trade [8] clearing activity of their own trading desks, their correspondents, and their clients.[9] The clearing activity captured by DTCC Limit Monitoring will include: (i) Post-trade data relating to unsettled equity and fixed income securities trades that were compared or recorded through NSCC's trade capture mechanisms [10] on that day (''LM Trade Date Data''), and (ii) other applicable trade positions that the Member chooses to input at the start of or throughout the day (''LM Member-Provided Data'') (collectively, ''LM Transaction Data'').[11]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Release No. 34–70946 (Nov. 26, 2013), 78 FR 72737 (Dec. 3, 2013).

[4] Letter to Elizabeth M. Murphy, Secretary, Commission, from Manisha Kimmel, Executive Director, Financial Information Forum (''FIF'') (Dec. 23, 2013) (hereinafter ''FIF Letter'').

[5] Letter to Elizabeth M. Murphy, Secretary, Commission, from Murray C. Pozmanter, Managing Director, Depository Trust and Clearing Corporation (''DTCC'') (Jan. 15, 2014) (hereinafter ''NSCC Response'').

[6] DTCC Limit Monitoring is separate from and will operate independently of other risk management tools developed by other market participants (e.g., registered securities exchanges). Release No. 34–70946, *supra* note 3, at 2 n.3.

[7] Members that clear trades for others or participate in special representative transactions will be required to use DTCC Limit Monitoring. Approximately 85 percent of Members are in this category.

[8] For the purposes of this Proposed Rule Change, ''post-trade'' refers to the period in a transaction lifecycle after it is submitted to NSCC for clearing and settlement. Release No. 34–70946, *supra* note 3, at 2 n.4.

[9] In compliance with NSCC Rule 49, Members are only able to view trading activity with respect to their own clearing account(s).

[10] Such mechanisms include NSCC's Universal Trade Capture and Real-Time Trade Matching trade capture and comparisons systems.

[11] NSCC states that, since NSCC will not be the originator of the information made available through DTCC Limit Monitoring, NSCC will not be responsible for: (i) The completeness or accuracy of LM Trade Date Data; (ii) other information or data that it receives from Members or third parties and that is used in DTCC Limit Monitoring or received and compared or recorded by NSCC; or (iii) any errors, omissions, or delays that may occur in the transmission of such data or information, as provided in the Rules. Release No. 34–70946, *supra*

*B. Establishing Risk Entities*

A Member that uses DTCC Limit Monitoring will create Risk Entities for its own trading desks, each correspondent firm, and each client for which the Member clears trades. The Member will define each Risk Entity's rules for aggregating LM Trade Date Data and LM Member-Provided Data and set trading limits [12] based on the net notional value [13] of the aggregated LM Transaction Data. DTCC Limit Monitoring will provide Members a screen-based view of their LM Transaction Data for a given day, aggregated and organized according to trading limits set by the Member.

*C. Trading Limits*

DTCC Limit Monitoring will alert a Member when a pre-set trading limit with respect to the trading activity of one of its Risk Entities is approached and when it is reached. Specifically, DTCC Limit Monitoring will alert a Member when the net notional value of aggregated LM Transaction Data for a Member's Risk Entity is:

- 50 percent of the trading limit set by the Member for that Risk Entity;
- 75 percent of the trading limit set by the Member for that Risk Entity;
- 90 percent of the trading limit set by the Member for that Risk Entity; and
- 100 percent of the trading limit set by the Member for that Risk Entity.[14]

Members may elect to receive such alerts through the DTCC Limit Monitoring interface, email, and/or an automated electronic message. Members have the discretion to decide whether to take action pursuant to an alert.[15] Alerts do not trigger a block by NSCC on any trading activity processed through NSCC.

*D. Risk Entity Reports*

Risk Entity information, such as alert history, characteristics, and end-of-day positions, will be provided to Members in both an end-of-day report and a monthly report.[16] Members will be required to identify primary and secondary contacts within their firm to receive alerts and reports. Additionally, Members will be required to review their Risk Entities' alerts and reports on an on-going basis and, as deemed appropriate by the Member, modify trading limits to reflect current trading activities within each of their Risk Entities. Changes made by Members with respect to trading limits will be made in real-time. All other updates and changes made by Members to their Risk Entities will take effect overnight.

*E. Mandatory Use*

Although DTCC Limit Monitoring will be available to all Members,[17] NSCC will require the following Members to use the tool: (1) Any NSCC full-service Member that clears for others; (2) any NSCC full-service Member that submits transactions to NSCC's trade capture system either as a Qualified Special Representative (''QSR'') or Special Representative, pursuant to Procedure IV (Special Representative Service) of the Rules; and (3) any NSCC full-service Member that has established a 9A/9B relationship in order to allow another Member (either a QSR or Special Representative) to submit locked-in trade data on its behalf.[18] However, NSCC will not charge a fee for the use of DTCC Limit Monitoring, whether voluntary or mandatory, and, according to NSCC, implementation and use of the tool will require minimal, if any, changes to Members' current systems.

**III. Comment Letter and Response**

The Commission received one comment letter to the Proposed Rule Change [19] and one response letter from NSCC.[20] Below is a summary of the concerns raised by the commenter regarding the Proposed Rule Change and NSCC's responses to those concerns.

*A. Completeness of Trading Data*

The commenter argues that DTCC Limit Monitoring will have incomplete trading information.[21] Specifically, the commenter claims that the tool will not capture Institutional Delivery (''ID'') trades, options trades, or futures trades that may hedge or offset positions captured by the tool.[22] The commenter also states that certain information identifying the parties to a trade is not always required or validated by certain exchanges or other venues that submit trades to NSCC for clearing; thus, DTCC Limit Monitoring may not accurately account for such trades.[23] Furthermore, the commenter points out that not all trades are submitted to NSCC for clearance in real-time.[24] The commenter argues that these issues may result in DTCC Limit Monitoring presenting incomplete and/or inaccurate trade positions to Members.[25]

In response, NSCC acknowledges that certain transactions, such as ID trades, options trades, and futures trades are not within the scope of DTCC Limit Monitoring, but it believes that Members will take that fact into consideration when setting trading limits and responding to alerts received.[26] Moreover, NSCC believes that implementation of DTCC Limit Monitoring should not be delayed in order to discuss the expansion of the tool to incorporate transactions outside the purview of NSCC, which would likely be a complex endeavor.[27] NSCC also states that it has recently implement a previously approved rule that requires all locked-in trade data submitted to NSCC for trade recording be submitted in real-time.[28] Although that rule does not apply to correspondent clearing trades, nor is there a rule that requires all information identifying parties to a transaction be included with each trade submission, NSCC explains that Members are

note 3, at 7–8. Additionally, because not all transactions are submitted to NSCC in real-time, NSCC can only provide Members using DTCC Limit Monitoring with LM Trade Date Data as it is compared or recorded through NSCC; accordingly, LM Trade Date Data may not reflect all transactions. *Id.*

[12] The rules governing DTCC Limit Monitoring will refer to such trading limits also as ''parameters.'' *Id.* at 5.

[13] For purposes of DTCC Limit Monitoring, ''net notional'' will mean the sum of the absolute value of exposure for each security ticker symbol. For example, a firm that is net-long in Company X for $50,000 and net-short in Company Z for $100,000 has a net notional exposure of $150,000. *Id.* at 5 n.5.

[14] DTCC Limit Monitoring will also alert a Member when the trading activity of a Risk Entity returns below an alert threshold.

[15] NSCC may discuss a Member's use of DTCC Limit Monitoring, including the trading limits set by that Member, with the Member.

[16] NSCC states that reports and data provided to Members through DTCC Limit Monitoring are not intended to impact the timing or status of NSCC's guaranty of any transaction in NSCC's Continuous Net Settlement or Balance Order Securities. Release No. 34–70946, *supra* note 3, at 7. Furthermore, the issuance of information or data, or the lack thereof, to Members through DTCC Limit Monitoring will not in and of itself indicate or have any bearing on the status of any trade, including, but not limited to, the status of a trade as compared, locked-in, validated, guaranteed, or not guaranteed trades. *Id.*

[17] NSCC states that since the information provided by DTCC Limit Monitoring is to be used by the Member at the Member's discretion, the Proposed Rule Change provides that any Member that registers for DTCC Limit Monitoring shall indemnify NSCC, and any of NSCC's employees, officers, directors, shareholders, agents, and participants who may sustain any loss, liability, or expense as a result of a third party claim related to any act or omission by the Member made in reliance upon data or information transmitted to the Member through DTCC Limit Monitoring. *Id.* at 8.

[18] Members that are required to use DTCC Limit Monitoring will be required to create a Risk Entity for their own trading desks, as well as for all correspondents and clients for which the Members clear trades through NSCC.

[19] *See* FIF Letter, *supra* note 4.

[20] *See* NSCC Response, *supra* note 5.

[21] FIF Letter, *supra* note 4, at 1–2.

[22] *Id.* at 2.

[23] *Id.*

[24] *Id.*

[25] *See id.* at 1–2.

[26] NSCC Response, *supra* note 5, at 4.

[27] *Id.*

[28] *See id.*

permitted and encouraged to take such action and often do, given the associated benefits.[29] Accordingly, NSCC argues that DTCC Limit Monitoring, as currently structured, will offer Members significant risk management benefits by providing a single, centralized, and aggregated view of all equity transactions submitted to NSCC for clearance.[30]

*B. Benefits of Trade Alerts*

The commenter states that there are variable benefits offered by DTCC Limit Monitoring's post-trade alerts.[31] For example, the commenter argues that some Members have dedicated significant resources to proprietary risk management platforms based on pre-trade and/or post-trade alerts, and such existing platforms may not incorporate the data provided by DTCC Limit Monitoring.[32] The commenter also asserts that Members with sophisticated risk management tools are capable of measuring, monitoring, and aggregating such trade data in more detail than DTCC Limit Monitoring.[33] Similarly, the commenter argues that DTCC Limit Monitoring does not provide sufficient granularity because it aggregates trades by clearing numbers or Market Participant Identifiers (''MPID''); thus, where a Member has multiple trading desks associated with a single MPID, it may prove difficult for the Member to identify the specific source that triggered a DTCC Limit Monitoring alert.[34] Accordingly, the commenter suggests that Members should have flexibility within the tool to determine the level of granularity of the sources with respect to Risk Entities, in accordance with each Member's risk management preferences.[35] Therefore, the commenter contends that the benefits of DTCC Limit Monitoring are limited, especially for self-clearing Members with no correspondents.[36]

In response, NSCC states that DTCC consulted with its Members and other industry participants when developing DTCC Limit Monitoring. Industry participants indicated that pre-trade monitoring, as a stand-alone risk management tool at the Member level, may not provide adequate protection for firms or against systemic risk.[37] NSCC also states that DTCC Limit Monitoring was not developed to replace pre-trade and real-time risk management tools, but as an independent, standardized, post-trade surveillance tool that would contribute to a multi-layered risk management system, in efforts to avoid a single point of failure within such a system.[38] Additionally, NSCC highlights that Members will be able to integrate the data and information provided by DTCC Limit Monitoring with their own risk management processes as they see fit.[39] Finally, NSCC states that DTCC Limit Monitoring uses the MPID to allocate transactions because the MPID is the standard industry identifier used by exchanges and other execution platforms for identifying the origin of an executed trade.[40] Therefore, NSCC believes that each of its Members, including those with sophisticated, internal risk management tools, will benefit from using DTCC Limit Monitoring.[41] The commenter acknowledges that some Members ''believe post-trade alerts disseminated by DTCC would increase market stability by offering an added level of protection against clearing firm failure.'' [42]

*C. Operational Burdens*

The commenter argues that the requirement to set and maintain trading limits imposes a significant operational burden on Members.[43] Specifically, the commenter states that establishing meaningful trading limits is not a trivial task and will require the input of staff from operations, ''front office,'' risk, and compliance.[44] Accordingly, the commenter contends that sufficient implementation time would be required in order to set meaningful trading limits that are consistent with the Member's existing risk management platforms.[45] Furthermore, the commenter states that there will be costs associated with the maintenance of trading limits, including communications with NSCC regarding the reasonableness of such limits.[46]

In response, NSCC states that Members should not incur a significant burden in initiating and maintaining their Risk Entities in DTCC Limit Monitoring.[47] For example, NSCC states that subscribing to the tool will not require any system changes for Members.[48] NSCC also states that it has made available various information documents, conducted numerous webinars, held group and one-on-one information and training sessions, and met with industry groups and individual Members to discuss DTCC Limit Monitoring and to support Members in anticipation of implementing the tool and reducing efforts needed to maintain it.[49] NSCC asserts that it will continue to provide such support.[50] NSCC also states that many Members already have risk management staff in place to manage proprietary risk management platforms, but NSCC acknowledges that the use of DTCC Limit Monitoring will require additional time and effort by such staff.[51] Nevertheless, NSCC believes that any time spent using DTCC Limit Monitoring is justified by the risk management benefits offered by the tool to Members and the industry.[52]

*D. Consistency of Mandatory Requirement With Industry Practice*

The commenter argues that the mandatory use of DTCC Limit Monitoring for certain Members is inconsistent with other risk management tools offered by other self-regulatory organizations (''SRO'').[53] For example, the commenter references risk management tools by NYSE [54] and BATS,[55] neither of which are mandatory for their respective members.[56] However, the commenter acknowledges the unique position of NSCC as an industry-wide utility that impacts a greater breadth of participants than any single exchange.[57]

In response, NSCC highlights that trading activity processed through those SROs is subject to other mandatory risk management requirements (e.g., exchange rules regarding ''clearly erroneous'' trades).[58] NSCC also notes that those SROs do not assume the same level of risks as NSCC, which, as a central counterparty (''CCP''), has a greater stake in ensuring that its Members implement effective risk management tools.[59] NSCC believes that Members that clear for others or participate in special representative transactions must use DTCC Limit

[29] *Id.* at 4–5.
[30] *Id.* at 4.
[31] FIF Letter, *supra* note 4, at 2.
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.* at 3.
[36] *Id.* at 2.
[37] *See* NSCC Response, *supra* note 5, at 5.
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *See id.*
[42] FIF Letter, *supra* note 4, at 2.
[43] *Id.* at 3.
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] NSCC Response, *supra* note 5, at 6.
[48] *Id.*
[49] *Id.*
[50] *See id.*
[51] *Id.*
[52] *Id.*
[53] FIF Letter, *supra* note 4, at 3.
[54] *See* Release No. 34–71164 (Dec. 20, 2013), 78 FR 79044 (Dec. 27, 2013) (SR–NYSE–2013–08).
[55] *See* Release No. 34–68330 (Nov. 30, 2012), 77 FR 72894 (Dec. 6, 2012) (SR–BATS–2012–045).
[56] FIF Letter, *supra* note 4, at 3.
[57] *Id.*
[58] NSCC Response, *supra* note 5, at 7.
[59] *Id.*

Monitoring for it to be maximally effective because those Members have less control when clearing and settling trading activity that is executed by another firm.[60]

*E. Additional Time To Discuss*

Finally, given the concerns it raises, the commenter believes that additional discussion is necessary before use of DTCC Limit Monitoring is required and that an opportunity exists for a phased implementation of the tool that will balance the needs of the Members.[61]

NSCC responded that it does not believe the concerns raised by the commenter warrant additional discussion before making DTCC Limit Monitoring a requirement for certain Members.[62] NSCC states that the launch of DTCC Limit Monitoring will be followed by a six-month phase-in period, during which Members can seek additional support from NSCC in establishing any internal procedures with respect to DTCC Limit Monitoring.[63]

## IV. Discussion and Commission Findings

Section 19(b)(2)(C)(i) of the Act[64] directs the Commission to approve a proposed rule change of an SRO if the Commission finds the proposed rule change consistent with the requirements of the Act and the rules and regulations thereunder applicable to such an organization. After a thorough review and careful consideration of the comments received, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act, and the applicable rules and regulations thereunder.[65] Specifically, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act[66] and Commission Rule 17Ad–22(b)(1),[67] as discussed below.

*A. Assessment of the Commenter's Concerns and NSCC's Responses*

The Commission fully considered the comment letter and NSCC's response as it carefully assessed the Proposed Rule Change for consistency with the Act. The commenter raises no issues, as detailed above and addressed below, that convinced the Commission that the Proposed Rule Change is inconsistent with the Act and the applicable rules and regulations thereunder—the standard by which the Commission must evaluate proposed rule changes.[68] Additionally, the Commission believes that NSCC articulates colorable arguments in its response to the concerns expressed by the commenter,[69] thus satisfying NSCC's burden to demonstrate that the Propose Rule Change is adequately designed to comply with the Act.

First, the Commission understands that the trading information captured by DTCC Limit Monitoring will not reflect every trade or every detail of every trade made by Members, as identified by the commenter and acknowledged by NSCC.[70] Nevertheless, the Commission believes that the information captured is sufficiently extensive to provide a useful risk management tool for Members. Furthermore DTCC Limit Monitoring permits Members to input LM Member-Provided Data.

Second, the Commission recognizes that Members may disagree on the usefulness of DTCC Limit Monitoring. The Commission believes that DTCC Limit Monitoring will serve as a practical risk management tool for Members that do not currently employ such a tool. Alternatively, for Members that already use an internal risk management system, DTCC Limit Monitoring can serve as a meaningful backstop to that system in the event of failure, thus increasing market stability, as acknowledged by the commenter.[71]

Third, regarding the operational costs that DTCC Limit Monitoring may impose on Members, the Commission understands that: (i) Access to the tool will require little, if any, changes to a Member's systems; (ii) NSCC has provided and will continue to provide support for all Members implementing and using the tool; and (iii) a six-month ''phase-in'' period will follow the enactment of the tool, in order to accommodate Members that need additional time or assistance. Consequently, the Commission believes that Members should experience minimal additional costs, either in time or money, in implementing and maintaining DTCC Limit Monitoring.

Fourth, the Commission understands that NSCC will require approximately 85 percent of its Members to use DTCC Limit Monitoring. Given the unique risks carried by NSCC as a prominent CCP, which the commenter acknowledges,[72] and given that there will be no fee charged for using DTCC Limit Monitoring, the Commission finds that the mandatory nature of the tool for Members that clear trades for other firms or allow special representative transactions is reasonable and appropriate.[73]

Finally, the Commission does not believe that further discussions are needed prior to approving the Proposed Rule Change and the implementation of DTCC Limit Monitoring because the Commission finds the Proposed Rule Change consistent with the Act, even in consideration of the concerns raised by the commenter, and because DTCC Limit Monitoring will be phased in over a six-month period.

*B. Compliance With Section 17A(b)(3)(F) of the Act*

Section 17A(b)(3)(F) of the Act[74] requires, among other things, that the rules of a registered clearing agency ''are designed to promote the prompt and accurate clearance and settlement of securities transactions . . ., to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.''[75]

As a CCP, NSCC occupies an important role in the securities settlement system by interposing itself between counterparties to financial transactions, thereby reducing certain risks faced by Members and contributing to global financial stability. In this role, NSCC is necessarily subject to certain risks in the event of a Member default—risks that could also affect other Members and the marketplace as a whole. DTCC Limit Monitoring is designed to help mitigate the risk of a Member default by providing all Members with a tool to monitor their aggregated net notional trading activity, via Risk Entities, for transactions submitted to NSCC and any other transactions included by the Member as LM Member-Provided Data. By enabling all Members to monitor intraday trading activity for their Risk Entities and by alerting a Member when its activity approaches and breaches Member-set

[60] *Id.* at 3, 7.

[61] FIF Letter, *supra* note 4, at 4.

[62] NSCC Response, *supra* note 5, at 7.

[63] *Id.* at 6.

[64] 15 U.S.C. 78s(b)(2)(C)(i).

[65] 15 U.S.C. 78q–1. In approving the Proposed Rule Change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[66] 15 U.S.C. 78q–1(b)(3)(F).

[67] 17 CFR 240.17Ad–22(b)(1).

[68] 15 U.S.C. 78s(b)(2)(C)(i).

[69] *See generally* NSCC Response, *supra* note 5.

[70] *See* FIF Letter, *supra* note 4, at 1–2; NSCC Response, *supra* note 5, at 3–4.

[71] *See* FIF Letter, *supra* note 4, at 2.

[72] FIF Letter, *supra* note 4, at 3.

[73] The Commission notes that other SROs have implemented mandatory risk management tools. *See, e.g.,* Release Nos. 34–70132 (Aug. 7, 2013), 78 FR 49311 (Aug. 13, 2013) (SR–ISE–2013–38) and 34–71252 (Jan. 7, 2014), 79 FR 2224 (Jan. 13, 2014) (SR–NYSEMKT–2013–106).

[74] 15 U.S.C. 78q–1(b)(3)(F).

[75] *Id.*

trading limits, DTCC Limit Monitoring can notify a Member of trading abnormalities that could threaten the stability of the Member and, potentially, NSCC's ability to clear and settle transactions or safeguard securities in its possession. Therefore, the Commission finds the Proposed Rule Change compliant with Section 17A(b)(3)(F) of the Act.[76]

*C. Compliance With Commission Rule 17Ad–22(b)(1)*

Commission Rule 17Ad–22(b)(1) regarding measurement and management of credit exposure requires a CCP to establish, implement, maintain, and enforce written policies and procedures reasonably designed to measure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants under normal market conditions so that the operations of the CCP would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control.[77]

DTCC Limit Monitoring will enable Members to monitor intraday trading activity for each of their Risk Entities and will alert Members when such activity approaches and breaches Member-set trading limits. At NSCC, that trading activity manifests as credit risk borne by NSCC. Therefore, by providing Members notification of possible trading abnormalities, DTCC Limit Monitoring serves as an NSCC risk management tool. Moreover, absent the tool's alert feature, particularly where a Member lacks an internal risk management system or such system has failed, trading abnormalities may go unnoticed, which could increase the likelihood of a Member default, including NSCC's and non-defaulting Members' risk. As such, the Commission finds the Proposed Rule Change consistent with Rule 17Ad–22(b)(1).[78]

**V. Conclusion**

On the basis of the foregoing, the Commission finds the Proposed Rule Change consistent with the requirements of the Act, particularly with the requirements of Section 17A of the Act,[79] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[80] that the proposed rule change SR–NSCC–2013–12 be and hereby is *approved* as of the date of this order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[81]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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[76] 15 U.S.C. 78q–1(b)(3)(F).

[77] 17 CFR 240.17Ad–22(b)(1). Commission Rule 17Ad–22(b)(1) was adopted as part of the Clearing Agency Standards. Release No. 34–68080 (Oct. 22, 2012), 77 FR 66219 (Nov. 2, 2012).

[78] *Id.*

[79] 15 U.S.C. 78q–1.

[80] 15 U.S.C. 78s(b)(2).

[81] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71636; File No. SR–FINRA–2013–036]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, Relating to Wash Sale Transactions and FINRA Rule 5210 (Publication of Transactions and Quotations)

February 28, 2014.

On August 15, 2013, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add Supplementary Material .02 to FINRA Rule 5210 (Publication of Transactions and Quotations) to emphasize that wash sale transactions are generally non-bona fide transactions and that members have an obligation to have policies and procedures in place to review their trading activity for, and prevent, wash sale transactions. The proposed rule change was published for comment in the **Federal Register** on September 4, 2013.[3] The Commission received five comment letters on the proposed rule change.[4] On October 4, 2013, the Commission extended the time period for Commission action to December 3, 2013.[5] On December 2, 2013, FINRA submitted a response to the comment letters[6] and filed Amendment No. 1 to the proposed rule change. On December 3, 2013, the Commission published for comment both Amendment No. 1 and an order instituting proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8] The Commission received three comment letters on the Notice of Filing of Amendment No. 1 and Order Instituting Proceedings.[9] On February 24, 2014, FINRA submitted a response to the comment letters.[10]

Section 19(b)(2)(B)(ii)(I) of the Act provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving a proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change.[11] The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70276 (August 28, 2013), 78 FR 54502 (''Notice'').

[4] *See* letter from Anonymous to Elizabeth M. Murphy, Secretary, Commission, dated September 9, 2013 (''Anonymous Letter''); letter from William A. Jacobson, Clinical Professor of Law, and Director, Cornell Securities Law Clinic, and Jimin Lee, Cornell University Law School, to Elizabeth M. Murphy, Secretary, Commission, dated September 25, 2013 (''Cornell Letter''); letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Elizabeth M. Murphy, Secretary, Commission, dated September 25, 2013 (''MFA Letter''); letter from Manisha Kimmel, Executive Director, Financial Industry Forum, to Elizabeth M. Murphy, Secretary, Commission, dated September 25, 2013 (''FIF Letter''); and letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, Commission, dated October 4, 2013 (''SIFMA Letter'').

[5] *See* Securities Exchange Act Release No. 70613 (October 4, 2013), 78 FR 62784 (October 22, 2013).

[6] *See* letter from Brant K. Brown, Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated December 2, 2013 (''FINRA Response 1'').

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 70966 (December 3, 2013), 78 FR 73900 (December 9, 2013) (''Notice of Filing of Amendment No. 1 and Order Instituting Proceedings'').

[9] *See* letter from Manisha Kimmel, Executive Director, Financial Industry Forum, to Elizabeth M. Murphy, Secretary, Commission, dated December 23, 2013 (''FIF Letter 2''); letter from Mary Ann Burns, Chief Operating Officer, Futures Industry Association, to Elizabeth M. Murphy, Secretary, Commission, dated January 6, 2014 (''FIA PTG Letter''); and letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, Commission, dated January 13, 2014 (''SIFMA Letter 2'').

[10] *See* letter from Brant K. Brown, Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated February 24, 2014 (''FINRA Response 2'').

[11] 15 U.S.C. 78s(b)(2)(B)(ii)(I).

determination.[12] The proposed rule change was published for comment in the **Federal Register** on September 4, 2013. The 180th day after that publication is March 3, 2014.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change, as amended, so that it has sufficient time to consider the amended proposal, the issues raised in the comment letters on the amended proposal, and FINRA's response to the comments.

Accordingly, the Commission, pursuant to Section 19(b)(2)(B)(ii)(II) of the Act,[13] designates May 2, 2014, as the date by which the Commission should either approve or disapprove the proposed rule change (SR–FINRA–2013–036).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–04922 Filed 3–5–14; 8:45 am]

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[12] 15 U.S.C. 78s(b)(2)(B)(ii)(II).

[13] *Id.*

[14] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 71634; File No. SR–MIAX–2014–08]**

## Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing of Proposed Rule Change To Modify Price Protection Provisions for the Execution of Orders

February 28, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 14, 2014, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rules 515 and 529 to modify price protection provisions for the execution of orders.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Exchange Rules 515 and 529 to modify price protection provisions for the execution of orders to provide market participants additional flexibility to designate the level of price protections for their orders. The Exchange proposes to: (i) Amend Rule 515(c) to establish a new price protection for market participants; (ii) amend Rule 529 to allow for immediate routing in an additional situation; and (iii) make corresponding technical changes including deleting the language in current Rule 515(c).

Specifically, the Exchange proposes to amend Rule 515 to: (a) Amend price protection functionality as described in Rule 515(c) to be flexible and customizable by market participants and allow for the execution of a non-Market Maker order at multiple price points instead of a one-size-fits-all system that permits executions at a maximum of two price-points; (b) amend the handling of incoming routable non-Market Maker orders as described in Rule 515(c) to account for the flexibility of the proposed price protection functionality; (c) amend the handling of incoming non-routable non-Market Maker orders as described in Rule 515(c) to account for the flexibility of the proposed price protection functionality; (d) amend the Liquidity Refresh Pause to account for the proposed price protection functionality which would allow orders to trade at multiple price-points; (e) amend the Liquidity Refresh message to include the exhausted MBBO price instead of the original NBBO price; (f) amend the Liquidity Refresh Pause so that a new quote or order received during a Liquidity Refresh Pause on the same side of the market as the initiating order's remaining contracts that locks or crosses the original NBBO will terminate the Liquidity Refresh Pause instead of joining the initiating order to wait for the end of the Pause; (g) amend the handling of Immediate or Cancel and Fill or Kills orders during a Liquidity Refresh Pause so that the Liquidity Refresh Pause will terminate early if such orders improve the same side of the market as the initiating order; (h) amend the handling of Immediate or Cancel orders to apply a price protection system similar to that for non-Market Maker orders; (i) amend the handling of Fill-or-Kill orders to apply a price protection system similar to that for non-Market Maker orders; and (j) provide a new Interpretation and Policy to Rule 515 to codify how the managed interest is priced when there are multiple possible execution prices. In addition, the Exchange proposes to amend Rule 529 to allow resting Public Orders to route in a specific scenario. Finally, the Exchange proposes to make corresponding technical changes including deleting the language in current Rule 515(c) and replacing references in Rules 516 and 520.

Non-Market Market Orders That Could Not Be Executed or Could Not Be Executed in Full at the Original NBBO Upon Receipt

Rule 515(c) currently details the execution of non-Market Market orders that could not be executed or could not be executed in full at the original NBBO upon receipt. Proposed Rule 515(c) continues to address the execution of such non-Market Maker orders. However, the Exchange proposes to add language to explain that such orders, depending upon the order's specific price protection instructions, may be reevaluated for executions at additional price-points. Specifically, non-Market Maker orders that are reevaluated by the System for execution pursuant to an order's price protection instructions that could not be executed or could not be executed in full at the NBBO at the time of reevaluation will be handled in accordance with the provisions of Proposed Rule 515(c). The subparagraphs of Proposed Rule 515(c) will apply to orders both (i) upon receipt by the System, and (ii) upon reevaluation by the System for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

execution and according to the price protections designated on the order. The term ''initiating order'' will be used in the subparagraphs of Proposed Rule 515(c) to refer to (i) the incoming order that could not be executed, (ii) the order reevaluated by the System for execution that could not be executed, or (iii) the remaining contracts of the incoming order or reevaluated order could not be executed in full. The term ''original NBBO'' will be used in the following paragraphs to refer to the NBBO that existed at time of receipt of the initiating order or the NBBO at time of reevaluation of an order pursuant to Rule 515. The language added to Proposed Rule 515(c) is necessary to accommodate the possibility of a non-Market Maker executing at multiple price-points in accordance with the proposed price protection functionality.

Price Protection

Rule 515(c) currently provides a detailed price protection process that includes a managed interest process and liquidity refresh pause. Rule 515(c) currently imposes a fixed, one Minimum Price Variation (MPV) price protection scheme in which incoming non-Market Maker orders can, at a maximum, trade at two price-points—at the original NBBO and one MPV away from the original NBBO upon receipt.[3] Thereafter, the System will cancel the remaining portion of any order that can potentially trade at a price more than one MPV away from the original NBBO.[4]

The Exchange believes that the current price protection functionality is too rigid and does not meet the needs of all market participants. Since commencing operations over one year ago, both the Exchange and its participants have gained in knowledge and experience in the use of the Exchange System and stand ready for the next step in its evolution—a more flexible system of price protection. The Exchange believes that the additional flexibility of the proposed price protection provides market participants with an invaluable level of protection on the Exchange in the wake of recent industry-wide market events. The Exchange also proposes the functionality as part of its broader response to the Commission's initiative regarding such industry-wide market events.

The Exchange proposes to amend Rule 515(c) to provide more flexibility in the price protections offered to market participants by replacing the rigid price protection system with a customizable one where market participants may specify the level of price protection by the number of price-points at which an order may trade. The current price protection functionality does not offer flexibility and caps the execution of every incoming non-Market Maker order with a maximum of two price-points—at the original NBBO at the time of receipt and one MPV away from the original NBBO. The Exchange proposes to replace this rigidity with flexibility and choice. Specifically, the Exchange proposes to open up the price protection functionality so that market participants may designate, on an order by order basis, price protection instructions that are expressed in units of MPV away from the NBBO at the time of the order's receipt, or the MBBO if the ABBO is crossing the MBBO. Price protection prevents an order from being executed beyond the price designated in the order's price protection instructions (the ''price protection limit''). If a market participant does not provide such price protection instructions, the Exchange proposes implementing a default price protection consistent with the current price protection functionality—one MPV away from the NBBO at the time of receipt, or the MBBO if the ABBO is crossing the MBBO. Currently all incoming non-Market Marker orders are subject to price protection functionality. However in contrast the Exchange now proposes providing market participants, if they so choose, with the ability to elect to disable price protection on an order by order basis.[5] To sum, the proposed price protection system provides market participants with greater control over how their order is executed and allows for greater interaction with liquidity both on MIAX and away markets, all while retaining the protective benefits of the current system that prevents incoming non-Market Maker orders from executing beyond a certain price-point. As proposed, an order will be able to execute up or down to its price protection—which would be fully customizable and no longer a one-size-fits-all approach of the current functionality. When triggered, price protection will cancel an order or the remaining contracts of an order. Consistent with current functionality, the System will not execute incoming orders at prices inferior to the NBBO.[6]

The following example describes the price protection functionality when a non-Market Maker limit order trades until it reaches its price protection instruction limit.[7] In this situation, the remaining contracts will be cancelled because the price protection instructions have been triggered. Price protection prevents the order in this example from receiving an execution beyond the price protection limit, calculated as a specified number of MPVs away from the NBBO at the time of receipt, or the MBBO if the ABBO is crossing the MBBO, by canceling the order back to the market participant. Upon receipt of the cancellation, a market participant may then elect to resubmit the order.

EXAMPLE 1: LIMIT PRICE EXCEEDS PRICE PROTECTION—ORDER TRADED UNTIL PRICE PROTECTION LIMIT AND IS CANCELED

| Market | Bid | Ask |
|---|---|---|
| ABBO | 1.00 (10) | 1.20 (10) |
| Order 1 | | 1.10 (10) |
| Order 2 | | 1.12 (10) |
| Order 3 | | 1.15 (10) |
| Order 4 | | 1.16 (10) |
| PLMM | 1.00 (10) | 1.20 (10) |

- Order 5: Buy limit of 1.13 for 100 contacts with a price protection instruction of 2 MPVs
- MBBO at time of arrival = 1.00 (10) × 1.10 (10)
- NBBO at time of arrival = 1.00 (20) × 1.10 (10)
- Order 5 is price protected at 1.12 (which is 1.10 + 2 MPV = 1.12)
- Order 5 trades 10 contracts with Order 1 @ 1.10
- Order 5 trades 10 contracts with Order 2 @ 1.12
- Order 5's remaining contracts are then cancelled because there is no more interest to trade against at Order 5's price protection level of 1.12. Order 5's remaining contracts are cancelled and not placed on the Book because limit price of 1.13

[3] The Exchange does not propose to amend the provisions regarding the execution of orders and quotes described in Rules 515(b), 515(d), and 515(f)–(h). *See* Exchange Rules 515(b), (d), (f)–(h). As discussed below, the Exchange does propose to amend Rule 515(a), 515(c), and 515(e).

[4] *See* current Exchange Rules 515(c)(1)(ii)(A), (c)(1)(ii)(B)(1)(b), (c)(1)(ii)(B)(2)(b), (c)(1)(iii)(A)(1)(a)2), (c)(1)(iii)(A)(1)(b)2), (c)(1)(iii)(B)(1)(b), and (c)(1)(iii)(B)(2)(b) (instances where the System cancels orders that are priced more than one MPV away from the NBBO).

[5] The Exchange notes that orders will still be subject to the other price protections systematically enforced for all orders, *e.g.,* Exchange Rule 503(f)(5), Expanded Quote Range, Exchange Rule 519, MIAX Order Monitor.

[6] *See* both current and Proposed Exchange Rule 515(a)—this point is unchanged.

[7] The non-Market Maker limit order in this example could be either a Routable or Non-Routable order as this distinction does not matter because the order is never subjected to being routed as the ABBO exceeds the order's limit. Upcoming examples will demonstrate the difference between Routable and Non-Routable orders.

exceeds its price protection limit of 1.12

The following example describes the price protection functionality when a limit order reaches its limit price and can be displayed.[8] Price protection does not factor into this example as the limit price is reached before the price protection price.

EXAMPLE 2: PRICE PROTECTION EXCEEDS LIMIT PRICE—LIMIT PRICE REACHED AND ORDER IS BOOKED

| Market | Bid | Ask |
|---|---|---|
| ABBO | 1.00 (10) | 1.20 (10) |
| Order 1 | | 1.10 (10) |
| Order 2 | | 1.12 (10) |
| Order 3 | | 1.15 (10) |
| Order 4 | | 1.16 (10) |
| PLMM | 1.00 (10) | 1.20 (10) |

- Order 5: Buy limit of 1.13 for 100 contacts with a price protection instruction of 4 MPVs
- MBBO at time of arrival = 1.00 (10) × 1.10 (10)
- NBBO at time of arrival = 1.00 (10) × 1.10 (10)
- Order 5 is price protected at 1.14 (which is 1.10 + 4 MPV = 1.14)
  - Order 5 trades 10 contracts with Order 1 @ 1.10
  - Order 5 trades 10 contracts with Order 2 @ 1.12
  - Order 5's remaining contracts are then placed on the MIAX Book @ 1.13 as Order 5 has reached its limit price of 1.13

The following example describes the price protection functionality when a limit order reaches its limit price and can be displayed.[9] In this example, the order's limit price and the price protection price are equal. In these scenarios, the order will be displayed at its limit price rather than be canceled.[10]

EXAMPLE 3: PRICE PROTECTION EQUALS LIMIT PRICE—LIMIT PRICE REACHED AND ORDER IS BOOKED

| Market | Bid | Ask |
|---|---|---|
| ABBO | 1.00 (10) | 1.20 (10) |
| Order 1 | | 1.10 (10) |

EXAMPLE 3: PRICE PROTECTION EQUALS LIMIT PRICE—LIMIT PRICE REACHED AND ORDER IS BOOKED—Continued

| Market | Bid | Ask |
|---|---|---|
| Order 2 | | 1.12 (10) |
| Order 3 | | 1.15 (10) |
| Order 4 | | 1.16 (10) |
| PLMM | 1.00 (10) | 1.20 (10) |

- Order 5: Buy limit of 1.13 for 100 contacts with a price protection instruction of 3 MPVs
- MBBO at time of arrival = 1.00 (10) × 1.10 (10)
- NBBO at time of arrival = 1.00 (10) × 1.10 (10)
- Order 5 is price protected at 1.13 (which is 1.10 + 3 MPV = 1.13)
  - Order 5 trades 10 contracts with Order 1 @ 1.10
  - Order 5 trades 10 contracts with Order 2 @ 1.12
  - Order 5's remaining contracts are then placed on the MIAX Book @ 1.13 as Order 5 has reached its limit price of 1.13

*Routable Non-Market Maker Orders*

The Exchange proposes amending the rules governing routable non-Market Maker orders (''routable orders'') to accommodate for the greater flexibility of the proposed price protection functionality described above. Rule 515(c) currently allows routable orders to, at a maximum, trade at two price-points—at the original NBBO and one MPV away from the original NBBO upon receipt. Currently, an execution at the second price point can only occur on MIAX[11] because after executing at this second price point at MIAX any remaining balance[12] will be handled by the managed interest process[13] rather than be routed to away markets which may also be displaying this second price-point.[14] Specifically, if interest is not available at MIAX at this second price point, the System will, depending on the order's price, either (i) handle any remaining according to the managed interest process rather than routing to an away market that may be displaying interest at this second price-point,[15] or (ii) cancel the remaining balance.[16]

The Exchange proposes adding greater flexibility to the price protection functionality as applied to routable orders. As proposed, the System will seek to trade routable orders to the extent possible at MIAX first before routing to the ABBO. The System will trade and/or route a routable order until the first of: The order is fully executed; the order has traded or routed to and including its price protection limit; or the order has traded or routed to and including its limit price. A routable order that would otherwise trade and/or route through its price protection limit will be canceled. For a routable order that has traded or routed to and including its limit price, the System will display and book the order at its limit price to await further execution in accordance with Rule 515. As current, the System will not execute such orders at prices inferior to the current NBBO. Consistent with the current rule, the routing of routable orders will be handled in accordance with Rule 529.

The following example describes the how the price protection will handle routable non-Market Maker orders. In this example, the order routes at multiple price-points, with each price point triggering a Route Timer,[17] and the order's remaining contracts eventually get cancelled because it has routed at prices up to and including its price protection instructions. Price protection prevents an order from receiving an execution beyond a specific price, calculated as a specified number of MPVs away from the NBBO at the time of receipt, or the MBBO if the ABBO is crossing the MBBO, by canceling the order back to the market participant. The Exchange notes that after each route, the System will reevaluate the order to consider any

[8] The non-Market Maker limit order in this example could be either a Routable or Non-Routable order as this distinction does not matter because the ABBO exceeds the order's limit. Upcoming examples will demonstrate the difference between Routable and Non-Routable orders.

[9] The non-Market Maker limit order in this example could be either a Routable or Non-Routable order as this distinction does not matter because the ABBO exceeds the order's limit. Upcoming examples will demonstrate the difference between Routable and Non-Routable orders.

[10] *See* Proposed Rule 515(c)(1)(i)(C) and (c)(1)(ii)(C).

[11] *See* current Exchange Rule 515(c)(1)(ii)(B)(1) (the Exchange System will execute such an order against the MIAX bid or offer one MPV beyond the original NBBO).

[12] Remaining balance of a limit order with a limit price at this second price-point are handled according to the managed order process. *See* current Exchange Rule 515(c)(1)(ii)(B)(1)(a). Market orders or orders with a limit price beyond this second price-point are cancelled. *See* current Exchange Rule 515(c)(1)(ii)(B)(1)(b).

[13] Managed interest process allows the System, *inter alia,* to display an order at a price that avoids locking or cross the NBBO. *See* current Exchange Rule 515(c)(2).

[14] *See* current Exchange Rule 515(c)(1)(ii)(B)(1)(a).

[15] Orders that cross the original NBBO are handled according to the managed interest process in these scenarios. *See* current Exchange Rule 515(c)(1)(ii)(B)(2)(a).

[16] Market orders and orders with a limit price that crosses the original NBBO by more than one MPV are canceled in these scenarios. *See* current Exchange Rule 515(c)(1)(ii)(B)(2)(b).

[17] The System will handle any routing of a routable order according to Exchange Rule 529. *See* Proposed Rule 515(c)(1)(i). Currently, such routable orders are only eligible to route once—to away markets displaying the NBBO upon receipt—with any remaining balance either being handled according to the managed interest process or cancelled. *See* current Exchange Rule 515(c)(1)(ii)(B). Since the proposed price protection functionality allows routable orders to trade and route at multiple price-points, it is possible for Route Timers to be triggered at multiple price-points.

updates to the away market quotes in the next decision.

EXAMPLE 4: ROUTABLE ORDER—PRICE PROTECTION LIMIT REACHED AND ORDER CANCELED

| Market | Bid | Ask |
|---|---|---|
| MIAX | 1.00 (10) | 1.20 (10) |
| MKT1 | 1.00 (10) | 1.10 (10) |
| MKT2 | 1.00 (10) | 1.12 (10) |
| MKT3 | 1.00 (10) | 1.15 (10) |
| MKT4 | 1.00 (10) | 1.16 (10) |

- Order 1: Buy limit of 1.13 for 100 contacts with a price protection instruction of 2 MPVs
- NBBO at time of arrival = 1.00 (50) × 1.10 (10)
  - Order 1 is price protected at 1.12 (which is 1.10 + 2 MPV = 1.12)
  - Route Timer is triggered as Order 1 is eligible to route to MKT1
  - MBBO is updated: 1.09 (100) × 1.20 (10)
  - Route Timer expires and 10 contracts of Order 1 are routed to MKT1 @ 1.10
  - The System will reevaluate Order 1 pursuant to Rule 515 to trade, post, route, or cancel considering any updates to the away market quotes—assume for the example that no market has updated it quote
  - NBO at time of reevaluation: 1.12 (10) (MKT 2)
  - The NBO of 1.12 is within Order 1's price protection limit of 1.12
  - Route Timer is triggered as Order 1 is eligible to route to MKT2
  - MBBO is updated: 1.11 (90) × 1.20 (10)
  - Route Timer expires and 10 contracts of Order 1 are routed to MKT2 @ 1.12
  - The System will reevaluate Order 1 pursuant to Rule 515 to trade, post, route, or cancel considering any updates to the away market quotes—assume for the example that no market has updated it quote
  - NBO at time of reevaluation: MKT 3's 1.15 (10) (MKT 3)
  - The NBO of 1.15 is outside of Order 1's price protection limit of 1.12
  - Order 1's remaining 80 contracts are then cancelled because it has been routed until its price protection limit of 1.12. Order 1 cannot displayed at its limit of 1.13 because this could allow Order 1 to be execution at a price (1.13) exceeding its price protection limit (1.12)

EXAMPLE 5: ROUTABLE ORDER—QUOTE UPDATE AND ORDER IS FULLY EXECUTED

| Market | Bid | Ask |
|---|---|---|
| MIAX | 1.00 (10) | 1.20 (10) |
| MKT1 | 1.00 (10) | 1.10 (10) |
| MKT2 | 1.00 (10) | 1.12 (10) |
| MKT3 | 1.00 (10) | 1.15 (10) |
| MKT4 | 1.00 (10) | 1.16 (10) |

- Order 1: Buy limit of 1.13 for 100 contacts with a price protection instruction of 2 MPVs
- NBBO at time of arrival = 1.00 (50) × 1.10 (10)
- Order 1 is price protected at 1.12 (which is 1.10 + 2 MPV = 1.12)
  - Route Timer is triggered as Order 1 is eligible to route to MKT1
  - MBBO is updated: 1.09 (100) × 1.20 (10)
  - Route Timer expires and 10 contracts of Order 1 are routed to MKT1 @ 1.10
- The System will reevaluate Order 1 pursuant to Rule 515 to trade, post, route, or cancel considering any updates to the away market quotes—assume for the example that MKT 4 has updated its quote: 1.00 (10) × 1.12 (80)
  - NBO at time of reevaluation: 1.12 (90) (MKT 2 and MKT 4)
  - The NBO of 1.12 is within Order 1's price protection limit of 1.12
  - Route Timer is triggered as Order 1 is eligible to route to MKT 2 and MKT 4
  - Route Timer expires and 10 contracts are routed to MKT 2 @ 1.12 and 80 contracts of Order 1 are routed to MKT4 @ 1.12
  - Order 1 has been fully executed

EXAMPLE 6: ROUTABLE ORDER—LIMIT PRICE REACHED AND ORDER IS BOOKED

| Market | Bid | Ask |
|---|---|---|
| MIAX | 1.00 (10) | 1.20 (10) |
| MKT1 | 1.00 (10) | 1.10 (10) |
| MKT2 | 1.00 (10) | 1.12 (10) |
| MKT3 | 1.00 (10) | 1.15 (10) |
| MKT4 | 1.00 (10) | 1.16 (10) |

- Order 1: Buy limit of 1.12 for 100 contacts with a price protection instruction of 2 MPVs
- NBBO at time of arrival = 1.00 (50) × 1.10 (10)
  - Order 1 is price protected at 1.12 (which is 1.10 + 2 MPV = 1.12)
  - Route Timer is triggered as Order 1 is eligible to route to MKT1
  - MBBO is updated: 1.09 (100) × 1.20 (10)
  - Route Timer expires and 10 contracts of Order 1 are routed to MKT1 @1 1.10
  - The System will reevaluate Order 1 pursuant to Rule 515 to trade, post, route, or cancel considering any updates to the away market quotes—assume for the example that no market has updated it quote
  - NBO at time of reevaluation: 1.12 (10) (MKT 2)
  - The NBO of 1.12 is within Order 1's price protection limit of 1.12
  - Route Timer is triggered as Order 1 is eligible to route to MKT2
  - MBBO is updated: 1.11 (90) × 1.20 (10)
  - Route Timer expires and 10 contracts of Order 1 are routed to MKT2 @ 1.12
  - The System will reevaluate Order 1 pursuant to Rule 515 to trade, post, route, or cancel considering any updates to the away market quotes—assume for the example that no market has updated its quote
  - Order 1's remaining 80 contracts are placed on the Book at its limit price of 1.12
  - MBBO is updated: 1.12 (80) × 1.20 (10)

Non-Routable Non-Market Maker Orders

The Exchange proposes amending the rules governing non-routable non-Market Maker orders (''non-routable orders'') to accommodate for the greater flexibility of the proposed price protection functionality described above. Rule 515(c) currently allows non-routable orders to, at a maximum, trade at two price-points—at the original NBBO and one MPV away from the original NBBO upon receipt. Thereafter, the System will cancel the remaining portion of any order that can potentially trade at a price more than one MPV away from the original NBBO.[18]

Consistent with the current price protections, a non-routable order will never be routed outside of the Exchange regardless of prices displayed by away markets and can trade on the Exchange at a price equal to or better than, but not inferior to, the ABBO. As current, the System will not execute such orders at prices inferior to the current NBBO. The Exchange proposes adding flexibility to the price protection functionality as applied to non-routable orders by allowing the System to trade a non-routable order until the first of: The order is fully executed; the order has traded to and including its price

[18] *See* current Exchange Rule 515(c)(1)(ii)(A), (c)(1)(iii)(A)(1)(a)(2), (c)(1)(iii)(A)(1)(b)(2), (c)(1)(iii)(B)(1)(b), and (c)(1)(iii)(B)(2)(b) (instances where the System cancels non-routable orders that are priced more than one MPV away from the NBBO).

protection limit; or the order has traded to and including its limit price. A non-routable order that reaches its price protection limit before its limit price will be canceled. If a non-routable order reaches its limit price, the System will attempt to display this non-routable order at its limit price. However, if its limit price would lock or cross the current opposite side NBBO, the System will display the order one MPV away from the current opposite side NBBO, and book the order at a price that will lock the current opposite side NBBO. Should the NBBO price change to an inferior price level, the order's Book price will continuously re-price to lock the new NBBO and the managed order's displayed price will continuously re-price one MPV away from the new NBBO until the order's has traded to and including its limit price, has traded to and including its price protection limit at which any remaining contracts are cancelled, is fully executed, or is cancelled. If the Exchange receives a new order or quote on the opposite side of the market from the managed order that can be executed, the System will immediately execute the remaining contracts from the initiating order to the extent possible at the order's current Book price, provided that the execution price does not violate the current NBBO. If unexecuted contracts remain from the initiating order, the order's size will be revised and the MBBO disseminated to reflect the order's remaining contracts.

The following example describes how the price protection will handle non-routable non-Market Maker orders. In this example, the non-routable order trades at multiple price-points on MIAX until it reaches the ABBO. The order is then managed as to avoid locking or crossing the ABBO. Subsequently, an incoming opposite side order trades with the managed order at the MIAX Book price.

EXAMPLE 7: PRICE PROTECTION-NON-ROUTABLE ORDER GETS MANAGED

| Market | Bid | Ask |
|---|---|---|
| ABBO | 1.00 (10) | 1.12 (10) |
| Order 1 | | 1.10 (10) |
| Order 2 | | 1.12 (10) |
| Order 3 | | 1.15 (10) |
| Order 4 | | 1.16 (10) |

- Order 5: Do Not Route Buy limit of 1.13 for 100 contacts with a price protection instruction of 3 MPVs
- NBBO at time of arrival = 1.00 (10) × 1.10 (10)
- Order 5 is price protected at 1.13 (which is 1.10 + 3 MPV = 1.13)
  - Order 5 trades 10 contracts with Order 1 @ 1.10
  - Order 5 trades 10 contracts with Order 2 @ 1.12
  - Order 5's remaining contracts are then displayed in the MIAX Bid @ 1.11 as to not lock the Away Best Offer of 1.12, but remain available to trade on the MIAX Book @ 1.12
- Order 6: Sell limit of 1.10 for 10 contracts
- Order 5 trades 10 contracts with Order 6 @ 1.12

*Liquidity Refresh Pause*

The Liquidity Refresh Pause, as proposed, will continue to operate in substantially the same manner as today, except where noted below. The Liquidity Refresh Pause will continue to apply in the following situation: (A) Either the initiating order is a limit order whose limit price crosses the NBBO or the initiating order is a market order, and the limit order or market order could only be partially executed; (B) a Market Maker quote was all or part of the MBBO when the MBBO is alone at the NBBO; and (C) and the Market Maker quote was exhausted. However, the Liquidity Refresh Pause mechanism, as proposed, will apply either upon receipt or reevaluation of an initiating order. This change is consistent with the new price protection functionality described above, which can allow an order to trade at multiple price-points—not just at the price-point of the NBBO upon the receipt of an order. Allowing orders to trade at multiple price-points necessitates a change in the language describing the Liquidity Refresh Pause as it too can apply at multiple price-points. Hence the proposed rule adopts the term ''reevaluation'' together with ''upon receipt,'' with the latter applying to the first price-point and the former applying to subsequent price-points.

The System will continue to broadcast a liquidity refresh message in largely the same manner as today. In addition to providing a description of the option and the size and side of the order, the Exchange proposes to include the exhausted MBBO price in the liquidity refresh message broadcast to subscribers of the Exchange's data feeds.[19] Consistent with this, the Exchange proposes to display the remainder of the initiating order at ''the exhausted MBBO price'' instead of ''the original NBBO price, which has been exhausted'' as currently described in Rule 515(c)(iii)(A). This change is consistent with the new price protection functionality described above which can allow an order to trade at multiple price-points—not just the original NBBO. Allowing orders to trade at multiple price-points necessitates a change in the language describing the Liquidity Refresh Pause message as the Liquidity Refresh Pause can apply at multiple price-points. Hence the proposed rule adopts the term ''the exhausted MBBO'' in place of ''the original NBBO'' because the latter seems only to apply to the first price-point while the former can apply to the first price-point and any other subsequent price-points.

The Exchange proposes amending the handling of new quotes or orders that arrive during a Liquidity Refresh Pause on the same side of the initiating order's remaining contracts, which locks or crosses the original NBBO. Currently, such orders are added to the MBBO and the Pause continues to run. The Exchange proposes that the Liquidity Refresh Pause terminate early and the System process all quotes and orders in the order in which they were received. The Exchange believes the termination of the Liquidity Pause in these scenarios necessary to allow the displayed opposite side of MBBO to receive an immediate execution. The initiating order and any new order(s) or quote(s) on the same side of the market received during the liquidity refresh pause will be processed in the order in which they were received. Thus, the initiating order will be executed first and any additional order(s) or quote(s) will be executed in order of receipt.

The Exchange proposes that if at the end of the Liquidity Refresh Pause all orders and quotes were not completely filled or cancelled, the System will reevaluate the order for execution pursuant to Rule 515 until exhausted. This change is consistent with the new price protection functionality described above which can allow an order to trade at multiple price-points.

Lastly, the Exchange proposes to amend how Immediate or Cancel (''IOC'') and Fill or Kill (''FOK'') orders interact with the Liquidity Refresh Pause. Currently, if the Exchange receives an Immediate or Cancel (''IOC'') or a Fill or Kill (''FOK'') order on the same side of the market as the initiating order's remaining contracts, the System will immediately cancel the IOC and FOK orders. The Exchange proposes to amend this so that if the Exchange receives an IOC or FOK order on the same side of the market as the initiating order's remaining contracts, the System will immediately cancel the IOC and FOK orders unless the IOC or

[19] The Exchange notes that broadcast message will be sent to subscribers of the Exchange's data feeds and not disseminated to OPRA, in the same manner as today. As such, this broadcast message itself does not qualify as a Protected Bid or Protected Offer. *See* Exchange Rule 1400(o).

FOK order on the same side of the market as the initiating order locks or crosses the opposite side NBBO, in which case the liquidity refresh pause will be terminated early. If the liquidity refresh pause was terminated due to the receipt of an IOC or FOK, the initiating order and any new order(s) or quote(s) on the same side of the market received during the liquidity refresh pause and the IOC or FOK will be processed in the order in which they were received, with the initiating order being processed first and the IOC or FOK being processed last.

The following example describes how the revised Liquidity Refresh Pause will operate in the price protection process. Specifically, this example shows how the System will reevaluate an order which can result in multiple Liquidity Refresh Pauses with the proposed flexibility of the price protection functionality which can allow executions at multiple price-points.

EXAMPLE 8: PRICE PROTECTION—MULTIPLE LIQUIDITY REFRESH PAUSES

| Market | Bid | Ask |
|---|---|---|
| ABBO ..... | 1.00 (10) | 1.14 (10) |
| PLMM ..... | 1.00 (10) | 1.10 (10) |
| LMM 1 ..... | 1.00 (10) | 1.12 (10) |
| LMM 2 ..... | 1.00 (10) | 1.15 (10) |
| RMM 1 ..... | 1.00 (10) | 1.16 (10) |

- Order 1: Buy limit of 1.13 for 100 contacts with a price protection instruction of 3 MPVs
- NBBO at time of arrival = 1.00 (50) × 1.10 (10)
- Order 1 is price protected at 1.13 (which is 1.10 + 3 MPV = 1.13)
- Order 1 trades 10 contracts with PLMM @ 1.10
- Liquidity Refresh Pause is triggered because the MBO of 1.10 was alone at NBBO and PLMM's 1.10 offer was exhausted
- MBBO 1.10 (90) × 1.12 (10)
- Liquidity Refresh message is broadcasted on the Exchange's data feeds: Buy 90 contracts, exhausted MBO of 1.10
- Liquidity Refresh Pause expires
- The System will reevaluate Order 1 pursuant to Rule 515 to trade, post, route, or cancel considering any updates to the away market quotes—assume for the example that there are no updates
- Order 1 trades 10 contracts with LMM1 @ 1.12
- Liquidity Refresh Pause is triggered because the MBO of 1.12 offer was alone at NBBO and LMM1's 1.12 offer was exhausted
- MBBO 1.12 (80) × 1.15 (10)
- Liquidity Refresh message is broadcasted on the Exchange's data feeds: Buy 80 contracts, exhausted MBO of 1.12
- Liquidity Refresh Pause expires
- The System will reevaluate Order 1 pursuant to Rule 515 to trade, post, route, or cancel considering any updates to the away market quotes—assume for the example that there are no updates
- Order 1's remaining contracts are then placed on the MIAX Book @ 1.13 as Order 1 has reached its limit price of 1.13
- MBBO 1.13 (80) × 1.15 (10)

The following examples describes how an order entered during the Liquidity Refresh Pause on the same side as the initiating order's remaining contracts at a price that locks the original NBBO will terminate the Liquidity Refresh Pause early.

EXAMPLE 9: SAME SIDE INTEREST TERMINATES THE LIQUIDITY REFRESH PAUSE EARLY

| Market | Bid | Ask |
|---|---|---|
| ABBO ..... | 1.00 (10) | 1.14 (10) |
| PLMM ..... | 1.00 (10) | 1.10 (10) |
| LMM 1 ..... | 1.00 (10) | 1.12 (20) |
| LMM 2 ..... | 1.00 (10) | 1.15 (10) |
| RMM 1 ..... | 1.00 (10) | 1.16 (10) |

- Order 1: Buy limit of 1.13 for 20 contacts with a price protection instruction of 3 MPVs
- NBBO at time of arrival = 1.00 (50) × 1.10 (10)
- Order 1 is price protected at 1.13 (which is 1.10 + 3 MPV = 1.13)
- Order 1 trades 10 contracts with PLMM @ 1.10
- Liquidity Refresh Pause is triggered because the MBO of 1.10 was alone at NBBO and PLMM's 1.10 offer was exhausted
- MBBO 1.10 (10) × 1.12 (20)
- Liquidity Refresh message is broadcasted on the Exchange's data feeds: Buy 10 contracts, exhausted MBO of 1.10 [20]
- Order 2: Buy limit of 1.12 for 10 contracts
- Liquidity Refresh Pause is terminated early upon the arrival of Order 2 because Order 2 is at a price that would lock the MBO of 1.12
- Order 1 trades 10 contracts with LMM1 @ 1.12. Order 1 has been fully executed. Order 2 traded 10 contracts with LMM1 @ 1.12. Order 2 and LMM1's offer have been fully executed.
- New MBBO: 1.00 (40) × 1.15 (10)

[20] Note that the pricing information contained in the Liquidity Refresh message (Buy 10 contracts, exhausted MBO of 1.10) corresponds to the MBB (1.10 (10)).

EXAMPLE 10: SAME SIDE INTEREST TERMINATES THE LIQUIDITY REFRESH PAUSE EARLY

| Market | Bid | Ask |
|---|---|---|
| ABBO ..... | 1.00 (10) | 1.14 (10) |
| PLMM ..... | 1.00 (10) | 1.10 (10) |
| LMM 1 ..... | 1.00 (10) | 1.12 (10) |
| LMM 2 ..... | 1.00 (10) | 1.15 (10) |
| RMM 1 ..... | 1.00 (10) | 1.16 (10) |

- Order 1: Buy limit of 1.13 for 20 contacts with a price protection instruction of 3 MPVs
- NBBO at time of arrival = 1.00 (50) × 1.10 (10)
- Order 1 is price protected at 1.13 (which is 1.10 + 3 MPV = 1.13)
- Order 1 trades 10 contracts with PLMM @ 1.10
- Liquidity Refresh Pause is triggered because the MBO of 1.10 was alone at NBBO and PLMM's 1.10 offer was exhausted
- MBBO 1.10 (10) × 1.12 (10)
- Liquidity Refresh message is broadcasted on the Exchange's data feeds: Buy 10 contracts, exhausted MBO of 1.10
- Order 2: Buy limit of 1.12 for 10 contracts
- Liquidity Refresh Pause is terminated early upon the arrival of Order 2 because Order 2 is at a price that would lock the MBO of 1.12
- Order 1 trades 10 contracts with LMM1 @ 1.12. Order 1 gets priority over Order 2 as Order 1 was the initiating order. Order 1 has been fully executed and Order 2 is Booked
- New MBBO: 1.12 (10) × 1.15 (10)

*Handling of Immediate-or-Cancel (IOC) Orders*

The Exchange also proposes amending Rule 515(e) to provide that market participants may designate price protection instructions on an order by order basis for IOC orders in the manner described in Rule 515(c)(1). Specifically, this includes: (i) Price protection instructions being expressed in units of MPV away from the NBBO at the time of the order's receipt, or the MBBO if the ABBO is crossing the MBBO; (ii) the default price protection being one MPV away from the NBBO at the time of receipt, or the MBBO if the ABBO is crossing the MBBO; and (iii) market participants being able to elect to disable price protection on an order by order basis. In addition, the Exchange

proposes that IOC orders would be allowed to trade at multiple prices not to exceed the IOC order's limit price or the order's price protection limit, provided the execution does not trade at a price inferior to the current ABBO. This change is consistent with the new price protection functionality described above which will allow orders to trade at multiple price-points until an order's limit price or price protection limit. The Exchange believes that market participants will benefit from the change as such IOC orders will be able to access more liquidity on the Exchange than current functionality that limits the IOC order to just one price-point.

*Handling of Fill-or-Kill (''FOK'') Orders*

The Exchange also proposes amending Rule 515(f) to provide that market participants may designate price protection instructions on an order by order basis for FOK orders in the manner described in Rule 515(c)(1). Specifically, this includes: (i) Price protection instructions being expressed in units of MPV away from the NBBO at the time of the order's receipt, or the MBBO if the ABBO is crossing the MBBO; (ii) the default price protection being one MPV away from the NBBO at the time of receipt, or the MBBO if the ABBO is crossing the MBBO; and (iii) market participants being able to elect to disable price protection on an order by order basis. In addition, the Exchange proposes that if an FOK order is fully executable against orders and quotes in the System and MIAX is at the NBBO when an FOK order is received or reevaluated after the termination of a liquidity refresh pause by the System, the System will execute the FOK order at the NBBO price or better and if the FOK order could not be executed in full at a single price, the FOK order is cancelled. If the MBBO is not at the NBBO at the time the FOK order is received or reevaluated after the termination of a liquidity refresh pause or the FOK order is not fully executable against any orders or quotes in the System, the FOK order will be immediately cancelled. Contracts remaining from an FOK order will not be eligible for automatic resubmission as a new order for Members who have instructed the Exchange in writing to re-enter remaining contracts. The Exchange believes that market participants will benefit from the change as such FOK orders will be provided with an additional opportunity, after the termination of a liquidity refresh pause, to access more liquidity on the Exchange than current functionality that limits the FOK order to just one opportunity upon receipt. The Exchange believes this necessary because an FOK order that arrives during a liquidity refresh pause and causes the liquidity refresh pause to terminate early may not be able to access the contra-side liquidity because it was not the initiating order. However, the FOK order may be able to execute with interest at the next price point on the Exchange after the termination of the liquidity refresh pause.

Finally, the Exchange proposes a technical modification to the language of Rule 515(f). Specifically, the Exchange proposes deleting the phrase ''contracts remaining from'' when discussing that FOK orders will not be eligible for automatic resubmission. The proposed revisions make it clear that the entirety of an FOK order is not eligible for resubmission as there cannot actually be contracts remaining from an FOK order, which by its definition will either be executed in its entirety or cancelled and can never receive a partial execution.

*Interpretation and Policy .02*

The Exchange proposes to add new Interpretation and Policy .02 to Rule 515 to codify how the managed interest is priced when there are multiple possible execution prices. Specifically, during the managed interest process, if managed interest becomes tradable at multiple price points on MIAX due to the ABBO transitioning from a crossed state to an uncrossed state, the midpoint of the MBBO, rounded up to the nearest MPV if necessary, will be used for the initial trade price. If locking or crossing interest remains, the next trade occurs at the Book price of the interest with lesser size. Trades will continue to occur until (a) all locking or crossing interest has been satisfied, (b) the ABBO is reached at which the interest will be managed according to subparagraph (c)(1)(ii), (c) the order's limit price with any remaining contracts being booked, or (d) the order's price protection limit at which any remaining contracts being canceled. This provision regarding midpoint pricing of the execution in this narrow scenario codifies existing functionality during the managed interest process, while updating the functionality to correspond with new price protection functionality described above. The Exchange believes that using the midpoint as the initial execution price in this situation promotes just and equitable principals for trade among parties to the execution.

EXAMPLE 11: MIDPOINT EXECUTION OF MANAGED INTEREST

| Market | Bid | Ask |
|---|---|---|
| MIAX ..... | 1.00 (10) | 1.20 (10) |
| MKT 1 ..... | 1.00 (10) | 1.10 (10) |
| MKT 2 ..... | 1.15 (10) | 1.20 (10) |

- Order 1: Buy limit of 1.20 for 10 contacts with Do Not Route instructions
  - Order 1 cannot route to MKT1 because of its Do Not Route instructions
  - Order 1 will be placed on the MIAX Book @ 1.10, but displayed in the MIAX Bid @ 1.09 as to not lock MKT1's 1.10 ask
- Updated MBBO 2: 1.09 (10) × 1.20 (10)
- Order 2: Sell limit of 1.11 for 10 contracts with Do Not Route instructions
  - Order 2 cannot route to MKT2 because of its Do Not Route instructions
  - Order 2 cannot trade with Order 1 because Order 1 has been placed on the Book at a price of 1.10—which is both inferior to the NBB of 1.15 and below Order 2's limit price of 1.11
  - Order 2 will be placed on the MIAX Book @ 1.15, but displayed in the MIAX Ask @ 1.16 as to not lock MKT2's 1.15 bid
- Updated MBBO 3: 1.09 (10) × 1.16 (10)
- MKT1 and MKT2 display new quotes that no longer cross:
  - MKT 1: 1.00 (10) × 1.20 (10)
  - MKT 2: 1.00 (10) × 1.20 (10)
- MBBO 3 (1.09 (10) × 1.16 (10)) now represents the NBBO
  - Order 1 has been Booked at 1.10, but has an actual limit price of 1.20
  - Order 2 has been Booked at 1.15, but has an actual limit price of 1.11
  - Order 1's buy limit of 1.20 crosses Order 2's sell limit of 1.11 and the two orders can trade an multiple price points—anywhere from 1.11 up to 1.20
  - Order 1 and Order 2 trade 10 contracts at 1.13, which represents the midpoint of the MBBO (1.09 × 1.16 yields a 1.125 midpoint) rounded up to the nearest MPV (1.13)

*Amendments to Rule 529*

Currently the Exchange does not route Public Orders once they are resting on the book. The Exchange proposes to amend Rule 529 to provide that Public Customer orders resting on the book will not initiate a route timer, but may be routed with an incoming Public

Customer order that has initiated a Route Mechanism (''initiating order''). Specifically, if at the time of receipt of the initiating Public Customer order, the opposite side ABBO is also locking or crossing the same side MBBO, the System will immediately route the initiating Public Customer order, together with any routable interest resting at the same side MBBO, to the opposite side ABBO. The initiating Public Customer and any routable resting interest will be processed in the order in which they were received. The Exchange believes that this change will benefit Public Customers by allowing the Public Customer order to immediately access marketable liquidity available at an away market. The immediate routing of routable orders in this instance will also benefit the greater options market system as a whole, in that it may help to resolve undesirable crossed markets.

*Technical Changes*

Consistent with changes described above, the Exchange proposes deleting the current language in Rule 515(c) in whole to replace it with the new provisions described above. The Exchange believes that the language in current Rule 515(c) is repetitive and difficult to follow. In choosing to replace it with the language of proposed Rule 515(c) the Exchange hopes to produce a rule text sufficiently clear to provide members with a better understanding of Exchange functionality.

Additionally, the Exchange proposes technical amendments to Exchange Rule 516(b)(3), and 516(g) and Interpretation and Policy .04 to Rule 520 to accommodate the proposed movement of the language explaining the managed interest process from current Rule 515(c)(2) to proposed Rule 515(c)(1)(ii).

Because of the technology changes associated with this rule proposal, the Exchange will announce the implementation date of the proposal in a Regulatory Circular to be published no later than 30 days after the publication of the approval order in the **Federal Register**. The implementation date will be no later than 30 days following publication of the Regulatory Circular announcing publication of the approval order in the **Federal Register**.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act [21] in general, and furthers the objectives of Section 6(b)(5) of the Act [22] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes the proposed price protection functionality will remove impediments to and perfect the mechanism of a free and open market by providing members with greater flexibility and control over how orders interact with liquidity both on the Exchange and, if routable, on away markets. Instead of imposing a rigid one-size-fits-all price protection mechanism, the proposed functionality allows for customization and choice on the part of a member entering a non-Market Maker order. As proposed, the member can select how many price points beyond the NBBO at the time of the order's receipt the member would like the order to trade. This opens up the possibility of orders to trade on the Exchange and route to away markets at multiple price-points, instead of the more restrictive current maximum of two price-points. This proposal allows market participants to access greater liquidity both on the Exchange, thus benefiting Exchange members, and on away markets, thus benefiting the options market as a whole.

The Exchange believes that proposed changes to Rules 515, specifically the handlings of routable and non-routable orders addressed in this filing, are consistent with the stated goals of and necessary to achieve the proposed expansion of the price protection functionality. Allowing routable and non-routable orders to be reevaluated and trade at multiple price points will allow such orders to access greater liquidity and improve the mechanism of price discovery. Allowing routable orders to be routed away at multiple price points will benefit the options market as a whole as this will improve the chances of market participants at these other options exchanges of receiving an execution. This too will help improve the mechanism of price discovery.

The Exchange believes that the proposed changes to the Liquidity Refresh Pause mechanism addressed in this filing are consistent with the stated goals of and necessary to achieve the proposed expansion of the price protection functionality. Allowing the liquidity refresh pause mechanism to apply at multiple price points will help promote a fair and orderly market as the liquidity refresh pause allows MIAX participants to add liquidity and price stabilization. Allowing MIAX to display ''the exhausted MBBO'' in the liquidity refresh pause message will better inform MIAX participants regarding the price at which to supply additional liquidity and is necessary given a liquidity refresh pause mechanism that can apply at multiple price-points beyond ''the original NBBO.'' The Exchange believes that the change regarding terminating a liquidity refresh pause when a new quote or order is received during a Liquidity Refresh Pause on the same side of the market as the initiating order's remaining contracts that locks or crosses the original NBBO will protect the opposite side interest by allowing the opposite side interest to receive an execution.

The Exchange believes that permitting IOC orders to execute at multiple price-points removes a market impediment as this change will allow IOC orders to access additional liquidity on the Exchange, thus benefiting both the sender of the IOC and the members providing the additional liquidity.

The Exchange believes that permitting FOK orders the additional opportunity for an execution after causing a liquidity refresh pause to terminate early will allow FOK orders to access additional liquidity on the Exchange, thus benefiting both the sender of the FOK and the members providing the additional liquidity.

Finally, the Exchange believes that its proposed modifications to its Immediate Routing mechanism remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest by allowing the Public Customer order to immediately access marketable liquidity available at an away market in a manner that may help to resolve undesirable crossed markets.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. As to inter-market competition, the Exchange notes proposed price protection functionality will benefit competing exchanges because routable orders will be eligible

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

to route to away markets at multiple price-points instead of just the NBBO at the time of the receipt of the order. As to intra-market competition, the Exchange believes the proposal to be fair as it preserves price protection functionality for non-Market Maker orders. Market Maker orders and quotes have their own distinct functionality, which already includes the ability to trade at multiple price-points.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2014–08 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2014–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–MIAX–2014–08 and should be submitted on or before March 27, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–04920 Filed 3–5–14; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71635; File No. SR–NYSEArca–2014–18]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reflect Changes to the Means of Achieving the Investment Objective Applicable to the Newfleet Multi-Sector Income ETF

February 28, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 26, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to reflect changes to the means of achieving the investment objective applicable to the Newfleet Multi-Sector Income ETF (the ''Fund''). The shares of the Fund are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Commission has approved listing and trading on the Exchange of shares (''Shares'') of the Newfleet Multi-Sector Income ETF, which are offered by AdvisorShares Trust (the ''Trust''),[4] under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares of the Fund are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600.

The Shares are offered by the Trust, a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 69061 (March 7, 2013), 78 FR 15990 (March 13, 2013) (SR–NYSEArca–2013–01) (order approving listing and trading on the Exchange of the Newfleet Multi-Sector Income ETF) (''Prior Order''). *See also* Securities Exchange Act Release No. 68666 (January 16, 2013), 78 FR 4960 (January 23, 2013) (SR–NYSEArca–2013–01) (''Prior Notice,'' and together with the Prior Order, the ''Prior Release''). The Fund and the Shares are currently in compliance with the listing standards and other rules of the Exchange and the requirements set forth in the Prior Release.

open-end management investment company.[5] The investment manager to the Fund is AdvisorShares Investments LLC (the ''Adviser''). Newfleet Asset Management, LLC is the sub-adviser to the Fund (''Sub-Adviser'').

In this proposed rule change, the Exchange proposes to reflect changes to the description of the measures the Adviser and Sub-Adviser will utilize to implement the Fund's investment objective, as described below.[6]

The Prior Release stated that the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities and loan participation interests (*e.g.,* bank loans). Going forward, the Fund proposes that the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities and loan participation interests, including bank loans, that are deemed illiquid by the Adviser, consistent with Commission guidance.[7] Thus, only those Rule 144A securities and loan participation interests, including bank loans, that are deemed illiquid by the Adviser would be included in the limitation of 15% of net assets in illiquid assets.[8]

The Adviser has represented that it will invest generally in loan participation interests, including bank loans, that it deems highly liquid, with readily available prices.[9]

In reaching liquidity decisions relating to Rule 144A securities and loan participation interests, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer.)

The Exchange notes that the Commission has approved similar representations relating to issues of Managed Fund Shares proposed to be listed and traded on the Exchange.[10] The Adviser represents that the Adviser and the Trust's Board of Trustees will continue to evaluate each 144A security and loan participation interest based on the Fund's valuation procedures to oversee liquidity and valuation concerns.[11]

The Fund will invest in loan participation interests, including bank loans, rated C or higher by a nationally recognized statistical rating organization (''NRSRO'') or is unrated but considered to be of comparable quality by the Adviser or Sub-Adviser.[12] The Fund will not invest in loan participation interests that are in default at time of purchase. The Fund will only invest in U.S. dollar-denominated loan participation interests. In addition, for investment purposes, a loan participation interest must have a par amount outstanding of U.S. $150 million or greater at the time it is originally issued.

In computing the Fund's net asset value per Share, Rule 144A securities and loan participation interests will be valued based on price quotations and other equivalent indications of value provided by a third party pricing service.

Intra-day and closing price information for Rule 144A securities and loan participation interests is available from major market data vendors.

The Adviser represents that there is no change to the Fund's investment objective. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

Except for the changes noted above, all other facts presented and representations made in the Prior Release remain unchanged.

All terms referenced but not defined herein are defined in the Prior Release.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [13] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will continue to be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. With respect to the 15% limitation on investments in illiquid securities, the Exchange notes that the Commission has approved similar representations relating to issues of Managed Fund Shares proposed to be listed and traded on the Exchange.[14] The Adviser represents that the Adviser and the Trust's Board of Trustees will continue to evaluate each 144A security based on the Fund's valuation procedures to oversee liquidity and valuation concerns. With respect to the proposal that loan participation interests, including bank loans, that are deemed illiquid by the Adviser be

[5] The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act''). On June 25, 2012 the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act''), and under the 1940 Act relating to the ] [sic] Fund (File Nos. 333–157876 and 811–22110) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the1940 Act. *See* Investment Company Act Release No. 29291 (File No. 812–13677) (''Exemptive Order'').

[6] The changes described herein will be effective upon filing with the Commission of another amendment to the Trust's Registration Statement. *See* note 4 [sic], *supra.* The Adviser represents that the Adviser and Sub-Adviser have managed and will continue to manage the Fund in the manner described in the Prior Release, and will not implement the changes described herein until the instant proposed rule change is operative.

[7] *See* note 24 of the Prior Notice.

[8] Currently, Rule 144A securities and loan participation interests, including bank loans, are subject to the Fund's 15% limitation on holdings in illiquid assets, whether or not such loan participation interests are deemed illiquid by the Adviser.

[9] The Exchange notes that the Commission has previously approved listing and trading on the Exchange of the SPDR Blackstone/GSO Senior Loan ETF which principally holds senior loans, including bank loans. *See* Securities Exchange Act Release No. 69244 (March 27, 2013), 78 FR 19766 (April 2, 2013) (SR–NYSEArca–2013–08). The Commission also has recently issued a notice of filing and immediate effectiveness of a proposed rule change relating to investments in leveraged loans by the Peritus High Yield ETF. *See* Securities Exchange Act Release No. 70284 (August 29, 2013), 78 FR 54715 (September 5, 2013) (SR–NYSEArca–2013–83). In each case, loans deemed illiquid by the respective fund adviser are subject to the respective fund's 15% limitation on holdings in illiquid assets. However, the funds may otherwise hold loans not deemed illiquid by the respective fund adviser.

[10] *See, e.g.,* Securities Exchange Act Release No. 70282 (August 29, 2013), 78 FR 54700 (September 5, 2013) (order approving listing and trading on the Exchange of First Trust Inflation Managed Fund).

[11] As noted in the Prior Release, the Fund may invest up to 20% of its total assets in fixed-income securities that are rated below investment grade at the time of purchase. Such securities include bank loans and other securities enumerated in the Prior Release.

[12] In determining whether a security is of ''comparable quality'', the Sub-Adviser will consider, for example, whether the issuer of the security has issued other rated securities; whether the obligations under the security are guaranteed by another entity and the rating of such guarantor (if any); whether and (if applicable) how the security is collateralized; other forms of credit enhancement (if any); the security's maturity date; liquidity features (if any); relevant cash flow(s); valuation features; other structural analysis; macroeconomic analysis and sector or industry analysis.

[13] 15 U.S.C. 78f(b)(5).

[14] *See* note 10, *supra.*

included in the limitation of 15% of net assets in illiquid assets, the Adviser has represented that it will invest generally in participation interests, including bank loans, that it deems highly liquid, with readily available prices. In reaching liquidity decisions relating to Rule 144A securities and loan participation interests, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer). In computing the Fund's net asset value per Share, Rule 144A securities and loan participation interests will be valued based on price quotations and other equivalent indications of value provided by a third party pricing service. Intra-day and closing price information for Rule 144A securities and loan participation interests is available from major market data vendors. The Commission has previously approved or published notice of effectiveness of proposed rule changes for actively-managed exchange-traded funds with respect to which loans are subject to the respective fund's 15% limitation on holdings in illiquid assets.[15]

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Adviser represents that there is no change to the Fund's investment objective. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. The Adviser represents that the purpose of this change is to provide additional flexibility to the Adviser to meet the Fund's investment objective, as discussed above.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that the Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. The Adviser represents that the purpose of this change is to provide additional flexibility to the Adviser to meet the Fund's investment objective, as discussed above. The Adviser represents that there is no change to the Fund's investment objective. Except for the changes noted above, all other representations made in the Prior Release remain unchanged.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes to the Fund's means of achieving the investment objective will permit the Fund to adjust its portfolio to allow the Fund to continue to meet its investment objectives by investing in illiquid assets and bank loans in a manner consistent with other actively-managed exchange-traded funds and will enhance competition among issues of Managed Fund Shares that invest in fixed income securities.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay to accommodate certain investments by the Fund and Exchange trading of the Shares of the Fund without delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[18] As stated in the proposal, the proposed changes do not alter the Fund's investment objective. Under the proposal, the Fund seeks to hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities and loan participation interests, including bank loans, that are deemed illiquid by the Adviser, consistent with Commission guidance. Thus, under the proposal only those Rule 144A securities and loan participation interests, including bank loans, that are deemed illiquid by the Adviser would be included in the limitation of 15% of net assets in illiquid assets, rather than all Rule 144A securities and loan participation interests, as is currently the case. According to the Exchange, the Adviser will invest generally in loan participation interests, including bank loans, that it deems highly liquid, with readily available prices. In addition, the Exchange states that in reaching liquidity decisions relating to Rule 144A securities and loan participation interests, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer). Furthermore, according to the Exchange, the Adviser and the Trust's Board of Trustees will continue to evaluate each 144A security and loan participation interest based on the Fund's valuation procedures to oversee liquidity and valuation concerns. The Exchange represents that, except for the changes in the proposal, all other facts and representations made in the Prior Release remain unchanged and that the Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. The Commission notes that it has approved the listing and trading of shares of other actively managed exchange-traded funds that are permitted to similarly invest in Rule 144A securities and loan participation

[15] *See* note 9, *supra.*

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

interests.[19] Because the proposed changes do not alter the Fund's investment objective and do not raise any novel or unique regulatory issues, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–18 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–18 and should be submitted on or before March 27, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–04921 Filed 3–5–14; 8:45 am]

**BILLING CODE 8011–01–P**

[19] *See, e.g.,* Securities Exchange Act Release No. 69244 (March 27, 2013), 78 FR 19766 (April 2, 2013) (SR–NYSEArca–2013–08) (order granting approval of proposed rule change to list and trade shares of the SPDR Blackstone/GSO Senior Loan ETF).

[20] 17 CFR 200.30–3(a)(12).

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Part II

## Department of the Treasury

Internal Revenue Service

26 CFR Parts 1, 31, and 301

Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons, Information Reporting and Backup Withholding on Payments Made to Certain U.S. Persons, and Portfolio Interest Treatment; Final Rule

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1, 31, and 301**

**[TD 9658]**

**RIN 1545–BL18**

# Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons, Information Reporting and Backup Withholding on Payments Made to Certain U.S. Persons, and Portfolio Interest Treatment

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

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations that revise certain provisions of the final regulations regarding withholding of tax on certain U.S. source income paid to foreign persons, information reporting and backup withholding with respect to payments made to certain U.S. persons, portfolio interest paid to nonresident alien individuals and foreign corporations, and the associated requirements governing collection, refunds, and credits of withheld amounts under these rules. The revisions are necessary to coordinate these regulations with the documentation, withholding, and reporting provisions included in regulations regarding information reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities under chapter 4 of Subtitle A of the Internal Revenue Code (Code). The temporary regulations also revise certain provisions of the final regulations relating to the statutory exemption for portfolio interest in light of amendments to the statute. Moreover, these temporary regulations remove certain transitional documentation rules from the regulations relating to withholding of tax on certain U.S. source income paid to foreign persons. These temporary regulations affect persons making payments of U.S. source income to foreign persons, persons making payments to certain U.S. persons subject to reporting, and foreign persons making claims for refund or credit of income tax withheld or claiming the exclusion from tax provided for portfolio interest. The text of these temporary regulations also serves as the text of the proposed regulations (REG–134361–12) set forth in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective on March 6, 2014.

*Applicability Dates:* For dates of applicability, see §§ 1.1441–1(g), 1.1441–3(j), 1.1441–4(g)(3), 1.1441–5(g)(3), 1.1441–6(i)(3), 1.1441–7(h), 1.1461–1(i), 1.1461–2(e), 1.6041–1(j)(2), 1.6041–4(d)(2), 1.6042–3(b)(5)(ii), 1.6045–1(c)(3)(xv), 1.6049–4(h), 1.6049–5(g)(2).

**FOR FURTHER INFORMATION CONTACT:** John Sweeney, (202) 317–6942 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 871, 1441, 1461, 6041, 6042, 6045, and 6049 of the Code, the Employment Tax Regulations (26 CFR part 31) under section 3406 of the Code, and the Procedure and Administration Regulations (26 CFR part 301) under section 6402 of the Code. These temporary regulations are necessary to coordinate the final regulations under chapters 3 and 61 with the final regulations under chapter 4. Certain of the revisions to the final regulations under chapters 3 and 61 contained in these temporary regulations were previewed in Notice 2013–69, 2013–46 IRB 503 (November 12, 2013), Rev. Proc. 2014–13, 2014–3 IRB 419 (January 13, 2014), and draft forms related to chapter 4.

### *Information Reporting and Withholding Regimes*

A. Chapters 3 and 61

On October 14, 1997, the IRS and the Treasury Department published final and temporary regulations (TD 8734) in the **Federal Register** (62 FR 53387) dealing with the withholding of tax under sections 1441, 1442, and 1443 (contained in chapter 3 of Subtitle A of the Code) on certain U.S. source income paid to foreign persons, the related tax deposit and reporting requirements under section 1461, and the statutory exemptions for portfolio interest under sections 871(h) and 881(c) (1997 final regulations). In addition, the 1997 final regulations finalized changes that were included in proposed regulations applicable to the reporting provisions of sections 6041, 6042, 6044, 6045, and 6049 under chapter 61 of the Code. On May 22, 2000, the IRS and the Treasury Department published final regulations (TD 8881) in the **Federal Register** (65 FR 32152) amending certain provisions of the 1997 final regulations under sections 1441, 1442, 1443, 6041, 6041A, 6042, 6045, and 6049 (collectively the final regulations under chapters 3 and 61 are referred to herein as the final regulations).

1. Chapter 3

Generally, under sections 871(a) and 881(a), foreign persons are subject to tax at a 30-percent rate on the gross amount of certain payments of U.S. source fixed or determinable annual or periodical (FDAP) income, which includes, among other things, interest, dividends, and other similar types of investment income, unless the beneficial owner of the payment is entitled to a reduced rate of, or exemption from, withholding tax under domestic law, including an income tax treaty. This substantive tax liability generally is collected through a withholding tax imposed at source pursuant to chapter 3 and the regulations under chapter 3. The chapter 3 regulations provide comprehensive rules for withholding agents to identify the proper treatment of a payee for information reporting and withholding tax purposes based on documentation provided by the payee. The regulations under chapter 3 generally allow withholding agents to rely on a withholding certificate (for example, Form W–8BEN, ''Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding'') furnished by a payee that certifies the payee's status as a foreign person, and whether such person is entitled to a reduction in or exemption from withholding. The chapter 3 regulations recognize that foreign intermediaries and flow-through entities that receive U.S. source FDAP income payments on behalf of their customers, partners, or beneficiaries may have privacy and competitiveness concerns about sharing beneficial ownership information with other intermediaries (or chains of intermediaries) and competing financial institutions. Accordingly, the chapter 3 regulations permit certain types of foreign persons to assume primary withholding and reporting responsibility with respect to U.S. source FDAP income that is subject to chapter 3 withholding by becoming, respectively, qualified intermediaries, withholding foreign partnerships, or withholding foreign trusts.

A withholding agent generally is required to file an annual income tax return on Form 1042, ''Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,'' to report amounts that are actually withheld under chapter 3, or that would have been withheld but for an applicable exception, and, with respect to each recipient, to file an information return on Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,''

to report each recipient's identifying information, the amount paid, and tax withheld, if any. A copy of Form 1042–S generally is required to be furnished to the recipient. The withholding and information reporting rules under chapter 3 facilitate the compliance of foreign persons with their U.S. tax obligations.

2. Chapter 61 and Section 3406

U.S. persons are subject to U.S. income tax at graduated rates on their worldwide income, regardless of source, and irrespective of whether such U.S. persons reside within or without the United States. Generally, under chapter 61, a payor must report to the IRS certain payments or transactions with respect to U.S. persons that are not exempt recipients (U.S. non-exempt recipients, generally U.S. individuals, partnerships, estates, and trusts) using the appropriate form in the 1099 series (Form 1099) and furnish a copy to the payee. The scope of payments subject to reporting under chapter 61 depends, in part, on whether the payor is a U.S. payor (as defined in § 1.6049–5(c)(5), which generally includes U.S. persons and their foreign branches, as well as controlled foreign corporations within the meaning of section 957(a)) or non-U.S. payor (which is a payor other than a U.S. payor). For a U.S. payor, payments subject to reporting generally include certain gross income, such as dividends and interest (including short-term original issue discount and bank deposit interest), from U.S. and non-U.S. sources, and gross proceeds from, among other things, the disposition of certain securities through a broker. A non-U.S. payor generally is required to report only on payments of certain U.S. source income and, under narrow circumstances, foreign source income and gross proceeds from broker transactions.

Similar to the chapter 3 information reporting and withholding regime, the chapter 61 regime provides comprehensive rules for a payor to identify the proper treatment of a payee for information reporting purposes, which generally are based on documentation or information about the payee. Additionally, a payor that does not have sufficient information with respect to a payee to satisfy its reporting obligations under chapter 61, such as a U.S. taxpayer identification number (TIN), may be required to backup withhold on a payment made to the payee at the statutory backup withholding rate (currently 28 percent) under section 3406.

A payor must file an annual income tax return on Form 945, ''Annual Return of Withheld Federal Income Tax,'' to report amounts withheld under section 3406. A payor must also file a Form 1099 to report payments made to a U.S. non-exempt recipient and any amounts withheld under section 3406. A copy of the Form 1099 must be furnished to the payee.

These information reporting rules assist U.S. taxpayers in complying with their income tax obligations. The information reported under chapter 61 and section 3406 is also an integral part of IRS compliance efforts to identify U.S. taxpayers who fail to properly report income.

B. Chapter 4

On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Public Law 111–147 (the HIRE Act), added to the Code chapter 4 of Subtitle A, comprised of sections 1471 through 1474 (commonly known as FATCA). Chapter 4 generally requires withholding agents to withhold 30 percent on withholdable payments (as defined in § 1.1471–1(b)(136) and sometimes referred to herein as chapter 4 withholdable payments) made to FFIs that do not agree to report certain information to the IRS regarding their U.S. accounts (as defined in § 1.1471–1(b)(134), which generally includes accounts held by specified U.S. persons and U.S. owned foreign entities, as defined in § 1.1471–1(b)(141) and § 1.1471–1(b)(138), respectively), and on withholdable payments made to passive non-financial foreign entities (passive NFFEs, as defined in § 1.1471–1(b)(94)) that do not provide information on their substantial U.S. owners (as defined in § 1.1471–1(b)(128)) to withholding agents. Chapter 4 thus extends the scope of the U.S. information reporting regime to include FFIs that maintain U.S. accounts. In order to avoid withholding tax under chapter 4, FFIs generally must agree to perform prescribed due diligence procedures to identify the chapter 4 status of their account holders, report information on U.S. accounts, and, in certain circumstances, withhold tax on certain account holders. Chapter 4 also imposes on withholding agents certain withholding, documentation, and information reporting requirements with respect to withholdable payments made to passive NFFEs. Amounts withheld under chapter 4 generally may be credited against the U.S. income tax liability of the beneficial owner of the payment to which the withholding is attributable, or refunded to the extent there is an overpayment of tax.

On February 15, 2012, the IRS and the Treasury Department published a notice of proposed rulemaking (REG–121647–10) in the **Federal Register** (77 FR 9022) addressing FATCA's due diligence, withholding, reporting, and associated requirements. On October 24, 2012, the IRS and the Treasury Department advance released Announcement 2012–42, 2012–47 IRB 561 (November 19, 2012) which announced the intention to amend certain provisions of the proposed chapter 4 regulations in final regulations. On January 28, 2013, the IRS and the Treasury Department published final regulations under chapter 4 (TD 9610) in the **Federal Register** (78 FR 5874), and on September 10, 2013, published correcting amendments to these regulations (78 FR 55202) (final chapter 4 regulations). The final chapter 4 regulations include comprehensive due diligence, withholding, and reporting requirements for withholding agents and FFIs that were to begin on January 1, 2014. On July 12, 2013, the IRS and the Treasury Department published Notice 2013–43, 2013–31 I.R.B. 113, which announced, among other things, that withholding agents generally will be required to begin chapter 4 withholding on withholdable payments made after June 30, 2014, and that the requirements of participating FFIs (as defined in § 1.1471–1(b)(91), which includes reporting Model 2 FFIs) under the agreement described in § 1.1471–4 (FFI agreement) will begin after June 30, 2014. On October 29, 2013, the IRS and the Treasury Department published Notice 2013–69 containing a draft of the FFI agreement, which an FFI may enter into with the IRS in order to be treated as a participating FFI that is generally exempt from FATCA withholding under chapter 4. Notice 2013–69 also previewed some of the changes to the final regulations that, among other things, would coordinate the information reporting and backup withholding rules in chapter 61 and section 3406 with the rules under chapter 4. On January 13, 2014, the IRS and the Treasury Department published the final FFI agreement in Revenue Procedure 2014–13. In addition, temporary regulations (temporary chapter 4 regulations) amending the final chapter 4 regulations are being published contemporaneously with these temporary regulations. The temporary chapter 4 regulations amend and revise the final chapter 4 regulations, in part, to coordinate with these temporary regulations.

To address situations where foreign law would prevent an FFI from reporting directly to the IRS the information required by chapter 4, the

Treasury Department, in collaboration with certain foreign governments, developed two alternative model intergovernmental agreements (IGAs) that facilitate the effective and efficient implementation of FATCA information reporting in a manner that removes foreign law impediments to compliance, fulfills the information reporting objectives of chapter 4, and further reduces burdens on FFIs located in partner jurisdictions. Specifically, a partner jurisdiction signing an agreement with the United States based on the first model (Model 1 IGA) generally agrees to adopt rules to require all relevant FFIs located in the jurisdiction (reporting Model 1 FFIs, as defined in § 1.1471–1(b)(114)) to identify U.S. accounts pursuant to due diligence rules specified in the agreement and to report the information required under FATCA for U.S. accounts to the partner jurisdiction, which, in turn, will report the information to the IRS. A partner jurisdiction signing an agreement based on the second model (Model 2 IGA) agrees to direct all relevant FFIs located in the jurisdiction (reporting Model 2 FFIs, as defined in § 1.1471–1(b)(115)) to follow the terms of an FFI Agreement by reporting information about U.S. accounts directly to the IRS in a manner consistent with the final chapter 4 regulations, except as expressly modified by the Model 2 IGA. Under a Model 2 IGA, the information reported to the IRS directly by FFIs is supplemented by government-to-government exchange of information in order to overcome legal impediments to direct FFI reporting with respect to account holders that refuse to consent to having their information reported.

Under the final chapter 4 regulations, a participating FFI (including a reporting Model 2 FFI) generally is required to report information on U.S. accounts to the IRS on Form 8966, ''FATCA Report,'' including the account number, certain payment information, and account balance and, in the case of an account held by a U.S. person, the U.S. person's name, address, and TIN, or, in the case of an account held by a U.S. owned foreign entity, the name of the entity and the name, address, and TIN of each substantial U.S. owner. With respect to accounts held by a U.S. person, an FFI may instead elect to satisfy its chapter 4 reporting obligations by electing to report on Form 1099 the information required under chapter 61, as modified to include the account number. A payor that makes the election must report under chapter 61 as if it were a U.S. payor and each holder of a U.S. account was a U.S. citizen and without regard to whether a payment was made on the account.

Chapter 4 also requires withholding agents to report on Form 8966 information on withholdable payments to passive NFFEs with substantial U.S. owners. A copy of Form 8966 is not currently required to be furnished to the account holder or passive NFFE. Additionally, a withholding agent that withholds on a payment under chapter 4 generally is required to file an annual income tax return on Form 1042 to report the payment and amount of tax withheld, and an information return on Form 1042–S to report, with respect to each recipient or pool, the payment and amount of tax withheld. A copy of Form 1042–S generally is required to be furnished to the recipient, except in cases where the chapter 4 rules allow pooled reporting on Form 1042–S.

The information reporting regime implemented under the final chapter 4 regulations and the IGAs will enhance IRS compliance efforts by enlisting the FFIs, which are in the best position to provide information on their accounts, to report on offshore accounts held by U.S. persons and by passive foreign entities with substantial U.S. owners. Like the Form 1099 reporting that already occurs primarily with respect to domestic accounts, this new information reporting will help the IRS identify U.S. taxpayers that may have failed to properly report and pay taxes on income earned or hidden offshore. This new enforcement tool will also strengthen the integrity of the U.S. voluntary tax compliance system by reassuring compliant taxpayers that the IRS will be able to enforce our tax laws on those who would attempt to avoid paying their fair share of taxes through the use of offshore accounts or offshore entities.

## Explanation of Provisions

### *I. Overview of Changes To Coordinate Chapter 4 (Including Information Reporting Provided by FFIs Under an IGA) With the Regulations Under Chapters 3 and 61*

Payors of payments that are subject to the information reporting and withholding regimes under chapters 3, 4, and 61 and section 3406 play an important role in U.S. tax compliance by providing information about payments made to, and income earned by, U.S. and foreign taxpayers. These temporary regulations provide guidance necessary to coordinate the regulations under chapters 3 and 61 and section 3406 with the final chapter 4 regulations and the IGAs. The preexisting regimes under chapters 3 and 61 were already coordinated to establish an integrated set of rules that enabled payors to identify payments and payees subject to reporting and to determine which of the two information reporting and withholding regimes, chapter 3 (information reporting and withholding on foreign persons) or chapter 61 and section 3406 (information reporting and backup withholding on U.S. non-exempt recipients), applied to a particular payment. The regulations under chapter 4 also provide comprehensive rules for withholding agents and FFIs with respect to the identification of payees and account holders, withholding, and information reporting. The IGAs similarly set forth a framework for FFIs to identify account holders and determine which accounts must be reported as U.S. accounts. These temporary regulations provide guidance coordinating the requirements under chapters 3 and 61 and section 3406 with the requirements under chapter 4 in order to develop a more integrated set of rules that reduces burdens (including certain duplicative information reporting obligations) and conforms the due diligence, withholding, and reporting rules under these provisions to the extent appropriate in light of the separate objectives of each chapter or section.

The remainder of this overview discusses the three main areas in which these temporary regulations revise the final regulations under chapters 3 and 61 and section 3406 in order to coordinate with the final chapter 4 regulations.

#### A. Identification of Payee Status

The documentation requirements (including the applicable presumption rules in the absence of documentation) for withholding agents, participating FFIs (including reporting Model 2 FFIs), and registered deemed-compliant FFIs (as defined in § 1.1471–1(b)(111), which includes reporting Model 1 FFIs) under the final chapter 4 regulations or an applicable IGA differ in certain respects from the corresponding documentation requirements for withholding agents under the final chapter 3 regulations for determining when chapter 3 withholding is required, and from the documentation requirements of payors and middlemen under the final chapter 61 regulations for determining when payments are made to persons for which reporting is required. These temporary regulations remove inconsistencies in the documentation requirements (including inconsistencies regarding presumption rules in the absence of

valid documentation) based, in part, on stakeholder comments to the final chapter 4 regulations. Examples of such coordination rules, discussed in greater detail in sections II and III later in this preamble, include rules that conform the requirements of a valid withholding certificate by requiring that a global intermediary identification number (GIIN) be included on the form if the payee is an FFI (when applicable); provide for indefinite validity periods for certain withholding certificates and extended periods of validity for certain documentation; conform the rules for electronic transmission of withholding certificates and statements; coordinate rules regarding the required content of a withholding statement provided by an FFI or flow-through entity; revise the presumption rules applicable to joint accounts; and provide uniform limits on when a withholding agent will be treated as having reason to know of a payee's U.S. or foreign status.

B. Information Reporting With Respect to U.S. Persons

The final chapter 4 regulations require participating FFIs (including reporting Model 2 FFIs) and, when applicable, registered deemed-compliant FFIs, but excluding reporting Model 1 FFIs, to report their U.S. accounts on Form 8966, irrespective of the type of payments made to the account holders. This reporting and similar reporting received pursuant to Model 1 IGAs may in some cases be duplicative of the information required to be reported on Form 1099 for payments made to the same account holders if they are U.S. non-exempt recipients under chapter 61. As discussed in the Background section of this preamble, FFIs may be able to mitigate this duplication by electing to satisfy their chapter 4 reporting obligations with respect to such accounts by reporting on Form 1099 the information required under chapter 61, as modified to include certain information required under chapter 4. This election, however, is not expected to relieve burden for FFIs that are required to report on U.S. accounts pursuant to local laws implementing a Model 1 IGA. As previewed in Notice 2013–69, in order to further reduce burdens and mitigate instances of duplicative reporting under chapters 4 and 61 and based, in part, on stakeholder comments requesting relief, these temporary regulations provide that non-U.S. payors that are also participating FFIs (including reporting Model 2 FFIs) or registered deemed-compliant FFIs (including reporting Model 1 FFIs) are excepted from the requirement to report on payments made to accounts held by U.S. non-exempt recipients under chapter 61 to the extent the payor reports on the account under chapter 4 or an applicable IGA.

These temporary regulations do not provide a similar exception to reporting under chapter 61 for U.S. payors that are FFIs required to report under chapter 4. While some of the information reported on Form 8966 and Form 1099 may overlap, there are also significant differences. Most notably, the requirement under chapter 61 to furnish a copy of Form 1099 to the payee facilitates voluntary compliance, and there is no equivalent requirement for payee statements under chapter 4. Moreover, U.S. payors generally have well-established systems for reporting and are subject to reporting on a broader range of payments under chapter 61 than non-U.S. payors. In light of these differences, the benefits of chapter 61 reporting by U.S. payors to the voluntary compliance system outweigh the reduction in burden that would be achieved by eliminating this reporting for U.S. payors that report on the same account under chapter 4 or an applicable IGA.

These temporary regulations do provide a limited exception to reporting under chapter 61 for both U.S. payors and for non-U.S. payors that are FFIs required to report under chapter 4 or an applicable IGA with respect to payments that are not subject to withholding under chapter 3 or section 3406 and that are made to an account holder that is a presumed (but not known) U.S. non-exempt recipient. FFIs that are required to report under chapter 4 or an applicable IGA will provide information regarding account holders who are presumed U.S. non-exempt recipients. Moreover, such presumed U.S. non-exempt recipients may not actually be U.S. persons for whom the recipient copy of Form 1099 would be relevant to facilitate voluntary compliance. As a result, the IRS and the Treasury Department believe that reporting under chapter 61 should be eliminated on payments to account holders who are presumed U.S. non-exempt recipients and for whom there is FATCA reporting.

These temporary regulations also provide a new exception from reporting under chapter 61 that will generally benefit U.S. persons acting as stock transfer agents or paying agents of certain passive foreign investment companies (PFICs). This exception is based, in part, on comments suggesting ways to reduce duplicative reporting with respect to PFIC shareholders without significantly impacting taxpayer compliance. Comments indicated that, due to the manner in which shareholders of PFICs are taxed under sections 1291 through 1298, the current Form 1099 reporting performed by transfer agents or paying agents of a PFIC generally does not assist taxpayers in properly reporting PFIC income on their tax returns, although it could remind taxpayers that they may have had a taxable event with respect to the PFIC. In light of the limited benefit of such 1099 reporting and the burden reduction that would result from its elimination, the IRS and the Treasury Department have concluded that this reporting should be eliminated to the extent the PFIC will report information with respect to the payment (or the account to which the payment is made) under chapter 4 or an applicable IGA.

C. Withholding

In certain cases, the payments subject to withholding under chapter 4 are also payments that could be subject to either withholding under chapter 3 or backup withholding under section 3406. These temporary regulations provide rules to address the potential for overwithholding to ensure that payments are not subject to withholding under both chapters 3 and 4, or under both chapter 4 and section 3406. Additionally, as previewed in Notice 2013–69, these temporary regulations also allow participating FFIs (including reporting Model 2 FFIs) and registered deemed-compliant FFIs to satisfy their chapter 4 withholding requirements by electing to continue to perform backup withholding under section 3406 at the statutory backup withholding rate (28 percent) in certain circumstances. A participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI may make the election to continue to apply backup withholding under section 3406 only if it complies with the requirements of chapter 61 and section 3406 with respect to the payment. Thus, for example, if an FFI is unable to report the information required with respect to a payment because local law prohibits payee specific reporting without the consent of the account holder and such consent is not given, the FFI cannot elect to report under chapter 61 or apply backup withholding with respect to such payment. When available, the election allows payors that have preexisting backup withholding systems to continue to perform backup withholding under such systems rather than to switch between withholding systems under chapter 4 and section 3406.

In addition to amending and revising the regulations under chapters 3 and 61

and section 3406 to coordinate with the final chapter 4 regulations, other revisions are included in the temporary regulations. For example, these temporary regulations amend the regulations under section 871 (and make conforming changes to the withholding requirements of the regulations under section 1441) in response to the HIRE Act's repeal of section 163(f)(2)(B) with respect to registration-required obligations and amendment of section 871(h)(2), the regulations under which provided when interest with respect to obligations not in registered form and targeted to foreign markets qualified as deductible interest and portfolio interest.

*II. Changes to Chapter 3 Withholding Provisions*

A. U.S. Agent of a Foreign Person

Under § 1.1441–1(b)(2)(ii) of the final regulations, a withholding agent making a payment to a U.S. person, and who has actual knowledge that the U.S. person receives the payment on behalf of a foreign person, must treat the payment as made to the foreign person, unless the U.S. person is a financial institution (as defined in § 1.165–12(c)(1)(iv)) and the withholding agent has no reason to believe the financial institution will not comply with its obligation to withhold. A similar payee provision is included in the chapter 4 regulations. These temporary regulations revise the scope of U.S. persons that are financial institutions under § 1.1441–1(b)(2)(ii) and that the withholding agent may treat as payees by defining the term financial institution consistent with the chapter 4 definition of a financial institution, which, in addition to depository and custodial institutions, includes certain investment entities and certain insurance companies.

B. U.S. Branch Treated as a U.S. Person

For purposes of the withholding requirements of chapter 3, a U.S. branch of a regulated foreign bank or foreign insurance company (including a territory financial institution) may agree to be treated as a U.S. person if it meets the requirements of § 1.1441–1(b)(2)(iv) of the final regulations. Under the chapter 4 regulations, a U.S. branch of an FFI may be treated as a U.S. person only if it is also a branch of a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) and it meets the requirements of § 1.1441–1(b)(2)(iv). To be consistent with the chapter 4 regulations, these temporary regulations add a new requirement in § 1.1441–1(b)(2)(iv) that a U.S. branch of an FFI must be a branch of a participating FFI or registered deemed-compliant FFI in order for it to be treated as a U.S. person for purposes of chapter 3. In addition, these temporary regulations clarify that a territory financial institution that is a flow-through entity receiving a payment on behalf of its owners or partners may also be treated as a U.S. person (in addition to a territory financial institution that is acting as an intermediary on behalf of third-parties). These temporary regulations also provide a requirement that if a U.S. branch is treated as a U.S. person for purposes of chapter 3, it must also be treated as a U.S. person for purposes of chapter 4. Moreover, as a result of the account documentation requirements in the chapter 4 regulations that apply to a participating FFI (including a reporting Model 2 FFI) that is not treated as a U.S. person, these temporary regulations provide that a U.S. branch that agrees to be treated as a U.S. person must be treated as a U.S. person with respect to all withholding agents from which it receives payments.

Under § 1.1441–1(b)(2)(iv)(B)(*3*) of the final regulations, a withholding agent that makes a payment to a U.S. branch of a foreign person must treat the payment as a payment to a foreign person of income effectively connected with a U.S. trade or business if it cannot reliably associate the payment with a withholding certificate from the branch or with other documentation from another person. These temporary regulations add a requirement that a withholding agent obtain an employment identification number (EIN) from a U.S. branch before it may treat a payment to the branch as effectively connected income. For payments to which this presumption does not apply because no EIN is provided, these temporary regulations require that the withholding agent treat the payment as made to a foreign person of income that is not effectively connected with the conduct of a trade or business in the United States. Further, these temporary regulations include a similar provision under § 1.1441–4 that requires a withholding agent to obtain an EIN from a U.S. branch in order to presume the payment to the branch is effectively connected income. The requirement to obtain an EIN from a U.S. branch is consistent with the requirements under chapter 4.

C. Other Payees (Authorized Foreign Agents)

Under § 1.1441–1(b)(2)(vi) of the final regulations, an authorized foreign agent (as described in § 1.1441–7(c)(2) of the final regulations) of a withholding agent is treated as a payee. The chapter 4 regulations do not have a special provision to treat a foreign agent of a withholding agent as a payee with respect to payments it collects on behalf of the withholding agent. See § 1.1474–1(a)(3). Accordingly, these temporary regulations remove the rules under § 1.1441–1(b)(2)(vi) that treat an authorized foreign agent as a payee, consistent with chapter 4, and the person to whom the authorized agent (as defined in § 1.1441–7(c)(2) of these temporary regulations) is making the payment on behalf of the withholding agent is treated as a payee by applying the payee rules under § 1.1441–1(b)(2) to such person. A series of other revisions have been made by these temporary regulations with respect to the use of authorized agents consistent with chapter 4 and are discussed throughout this preamble. In particular, see section II.S of this preamble for a description of changes to a withholding agent's use of an authorized agent.

D. Reliable Association With Documentation

Section 1.1441–1(b)(2)(vii)(A) of the final regulations generally describes the situations in which a withholding agent can reliably associate a payment with valid documentation to determine when withholding applies. Sections 1.1441–1(b)(2)(vii)(B) through (b)(2)(vii)(F) of the final regulations provide special rules for situations in which a withholding agent can reliably associate a payment with documentation for a payment made to a foreign intermediary (including a qualified intermediary). These temporary regulations revise § 1.1441–1(b)(2)(vii)(B) through (b)(2)(vii)(F) and the examples under those sections consistent with the documentation and withholding requirements of chapter 4.

With respect to nonqualified intermediaries, these temporary regulations revise the rules for reliable association to allow a withholding agent to associate a withholdable payment with a chapter 4 withholding rate pool (as defined in § 1.1441–1(c)(48)) consistent with the reliable association requirements of withholding statements provided by nonqualified intermediaries for chapter 4 purposes. Accordingly, these temporary regulations provide that a withholding agent need not associate a payment with documentation for payees included in any chapter 4 withholding rate pool. These temporary regulations also revise the examples relating to when a withholding agent can reliably associate payments to

nonqualified intermediaries with valid documentation and clarify that each example refers to a payment that is not a withholdable payment under chapter 4. These temporary regulations add an example under § 1.1441–1(e)(3)(iv)(C) that illustrates the requirements of a withholding statement provided by a nonqualified intermediary for a withholdable payment under chapter 4 that is also a payment subject to withholding under chapter 3.

With respect to qualified intermediaries, these temporary regulations revise the rules for reliable association to allow a withholding agent to associate a withholdable payment with a chapter 4 withholding rate pool (in addition to the withholding rate pools provided for chapter 3 purposes) consistent with the reliable association requirements of withholding statements provided by qualified intermediaries for chapter 4 purposes. Under the revised rule, a withholding agent may reliably associate a payment with a chapter 4 withholding rate pool of U.S. payees in a case in which the qualified intermediary does not assume primary Form 1099 and backup withholding responsibilities. A withholding agent that makes a payment to a qualified intermediary that does not elect to assume primary Form 1099 and backup withholding responsibilities must continue to reliably associate the payment to the qualified intermediary with Forms W–9, ''Request for Taxpayer Identification Number and Certification,'' for each U.S. non-exempt recipient not included in a chapter 4 withholding rate pool of U.S. payees on whose behalf the qualified intermediary is receiving the payment. The revised rule further provides that a withholding agent that makes a payment to a qualified intermediary that assumes primary Form 1099 and backup withholding responsibilities and primary withholding responsibility for purposes of both chapters 3 and 4 need not obtain any withholding statement from the qualified intermediary. These temporary regulations also add an example in § 1.1441–1(e)(5)(v)(D) to illustrate when a withholding agent can reliably associate payments made to qualified intermediaries providing chapter 4 withholding rate pools with respect to a withholdable payments under chapter 4.

E. Presumption Rules and Joint Payees

Section 1.1441–1(b)(3) of the final regulations provides presumption rules for withholding agents that apply in the absence of valid documentation and provides that a payment made to an exempt recipient (as determined based on the indicia of such status described in § 1.6049–4(c)(1)(ii) or similar provision under chapter 61 for a payment other than interest) generally is presumed made to a U.S. person unless one of the indicia of foreign status described in § 1.1441–1(b)(3)(iii)(A) is present. These temporary regulations modify what constitutes indicia of foreign status for purposes of the presumption rule applicable to exempt recipients. In particular, these temporary regulations provide that references to the terms *corporation* or *company* in the name of the payee are not indications that the payee is an entity included on the list of per se corporations under § 301.7701–2(b)(8)(i) for purposes of treating the payee as a foreign person. These temporary regulations also remove the term *a payment made outside the U.S.* under new § 1.1441–1(b)(3)(iii)(A)(*1*)(*iv*) and replace it with the term *a payment made with respect to an offshore obligation.* These temporary regulations further coordinate the regulations under chapters 3 and 61 with the regulations under chapter 4 by making a similar change to the term used in § 1.6049–5(c)(1).

In addition, these temporary regulations add a presumption rule under § 1.1441–1(b)(3)(iii)(A)(*2*) consistent with chapter 4 to provide that a payment that is also a withholdable payment under chapter 4 made to specified classes of exempt recipients (that is, generally those without an apparent U.S. status) will be presumed made to a foreign payee absent documentary evidence establishing U.S. status. This presumption will not apply, however, to a withholdable payment made with respect to a preexisting obligation determined by a withholding agent prior to July 1, 2014, to be held by a U.S. exempt recipient. A withholding agent will be allowed to apply this rule to all payments (including payments other than withholdable payments) made with respect to an obligation.

These temporary regulations also modify the presumption rules applicable to payments made to certain payees to coordinate with presumptions that apply under the chapter 4 regulations. These temporary regulations modify § 1.1441–1(b)(3)(iii) to coordinate with the presumptions under § 1.1471–3(f) for withholding agents making withholdable payments subject to the presumption rules of § 1.1441–1(b)(3) and chapter 4. Section 1.1441–1(b)(3)(iii) of the temporary regulations provides that in the case of a withholdable payment under chapter 4, a withholding agent must apply the presumption rules under § 1.1471–3(f) to determine the payee's status for chapter 4 purposes. Furthermore, § 1.1441–1(b)(3)(v)(B) provides that a withholding agent making a withholdable payment to a foreign intermediary should apply the presumption rules of § 1.1471–3(f)(5) to determine whether withholding applies under chapter 4 (instead of applying the presumption rules in § 1.1441–1(b)(3)). For example, if a withholding agent makes a withholdable payment to a foreign intermediary and cannot reliably associate the payment with documentation for a payee, the withholding agent must apply the presumption rule of § 1.1471–3(f)(5) to treat the unidentified payee as a nonparticipating FFI (as defined in § 1.1471–1(b)(82)) and withhold on the payment at a 30-percent rate under chapter 4. Accordingly, no withholding or reporting under chapter 3 would be required to apply with respect to the payment.

Consistent with the chapter 4 presumption rules, these temporary regulations also provide that if a withholding agent makes a withholdable payment to joint payees and one or more of the payees does not appear, by name or other information in the account file, to be an individual, then the payment will be presumed to be made to a nonparticipating FFI. See § 1.1471–3(f)(7).

F. Grace Period

Under § 1.1441–1(b)(3)(iv) of the final regulations, a withholding agent may apply the 90-day grace period provided under § 1.6049–5(d)(2)(ii) to amounts described in §§ 1.1441–6(c)(2) and 1.1441–4(b)(2)(ii) to treat a payee as an undocumented foreign person, and withhold under chapter 3, while waiting for new documentation. The chapter 4 regulations allow a withholding agent to apply a 90-day grace period following a change in circumstances during which the withholding agent may rely on the payee's claimed chapter 4 status. These temporary regulations do not provide a similar allowance for chapter 3 purposes to avoid potential deficits in withholding that could apply during the grace period allowed under chapter 4 because of the different objectives between chapters 3 and 4. These temporary regulations remove the requirement that a withholding agent withhold on payments during the grace period when a form is received by facsimile since these temporary regulations also provide that such forms may be generally relied upon under § 1.1441–1(e)(4)(iv)(C).

G. Exemptions From Chapter 3 Withholding

Section 1.1441–1(b)(4) of the final regulations specifies certain types of payments that may be fully or partially exempt from withholding under chapter 3. To distinguish these exemptions from the withholding exemptions that apply for purposes of chapter 4, these temporary regulations add language to clarify that the exemptions specified under § 1.1441–1(b)(4) apply only for purposes of chapter 3 and that withholding under chapter 4 may still apply. In addition, these temporary regulations add the applicable sunset dates to the descriptions of payments that are portfolio interest to coordinate with the elimination of portfolio interest treatment for foreign-targeted bearer obligations under section 502 of the HIRE Act (for obligations issued after March 18, 2012) and the elimination of portfolio interest treatment for foreign-targeted registered obligations under § 1.871–14(e) for obligations issued on or after January 1, 2016.

H. Establishing Foreign Status Under Chapter 61

These temporary regulations add section 6050W to the list of provisions referenced in § 1.1441–1(b)(5) for which the foreign status of a payee may be established for chapter 61 purposes based on the documentation provided for chapter 3 purposes.

I. Curing Late or Incomplete Documentation

Section 1.1441–1(b)(2) of the final regulations provides that a withholding agent must reliably associate a payment with documentation by the date of the payment. Notwithstanding the general rule under § 1.1441–1(b)(2), § 1.1441–1(b)(7) of the final regulations allows a withholding agent to rely on documentation obtained after the date of a payment to avoid liability for underwithholding during the period that the withholding agent had no documentation. The final regulations also specify that the IRS may require a withholding agent to obtain additional documentation, however, when the IRS determines that delays in obtaining the documentation affect its reliability. The chapter 4 regulations specify the documentation that must be obtained by a withholding agent after the date of a payment to determine a payee's chapter 4 status, depending on the length of the delay. Consistent with the chapter 4 regulations, these temporary regulations incorporate the chapter 4 requirements for documentation obtained after the date of the payment (including documentation to support a claim for treaty benefits). These temporary regulations also add a provision consistent with the chapter 4 regulations that permits a withholding agent to cure a withholding certificate containing inconsequential errors with respect to a claim of status for chapter 3 purposes.

J. Definitions

Section 1.1441–1(c) of the final regulations provides definitions used for purposes of the chapter 3 regulations. First, these temporary regulations modify the definitions in § 1.1441–1(c)(1) through (c)(30) as appropriate to provide consistency with certain definitions in the chapter 4 regulations. For example, the term *financial institution* in § 1.1441–1(c)(5) is amended to be consistent the term financial institution in the chapter 4 regulations.

Second, these temporary regulations also add new terms that are referenced for chapter 3 purposes. These terms are added to § 1.1441–1(c) of these temporary regulations in order to help navigate the regulations and to reflect more completely the terms used throughout these regulations. Finally, these temporary regulations also add new definitions adopted from chapter 4 that are relevant for chapter 3 purposes. For example, § 1.1441–1(c)(48) of these temporary regulations incorporates the term *chapter 4 withholding rate pool* (modified as appropriate for chapter 3 purposes with respect to the chapter 4 withholding rate pool of U.S. payees) in order to provide for situations in which intermediaries may provide withholding statements to withholding agents that include these pools rather than the documentation otherwise required for chapter 3 purposes.

K. Withholding Certificates

1. Beneficial Owner Withholding Certificate

Section 1.1441–1(e)(2)(ii) of the final regulations provides the requirements of a valid beneficial owner withholding certificate. For a payment made to an entity that is a beneficial owner of a withholdable payment, these temporary regulations provide that the withholding certificate must also include the chapter 4 status of the entity on the same form to coordinate with the requirements of the certification provided for chapter 4 purposes.

2. Withholding Certificate Provided by a Qualified Intermediary or Nonqualified Intermediary

Sections 1.1441–1(e)(3)(ii) and (e)(3)(iii) of the final regulations provide the requirements of a valid qualified intermediary (QI) or nonqualified intermediary (NQI) withholding certificate, respectively. These temporary regulations amend these sections to include the information required for purposes of chapter 4 with respect to a QI or an NQI that receives a withholdable payment. Additionally, these temporary regulations add a requirement that a QI or an NQI certify its chapter 4 status and provide its GIIN (if applicable) on the withholding certificate. A GIIN will be required, for example, when a QI or an NQI is also a participating FFI (including a reporting Model 2 FFI) or a registered deemed-compliant FFI (including a reporting Model 1 FFI). These temporary regulations also require a QI or an NQI to certify that it is fulfilling its reporting obligations under chapter 4 with respect to any U.S. persons included in a chapter 4 withholding rate pool of U.S. payees on a withholding statement provided to the withholding agent.

3. Withholding Certificate Provided by a U.S. Branch or Territory Financial Institution

As discussed in section II.B of this preamble, the requirements for a U.S. branch or territory financial institution to be treated as a U.S. person under § 1.1441–1(b)(2)(iv) are modified by these temporary regulations consistent with the chapter 4 regulations. To further coordinate with chapter 4, these temporary regulations amend § 1.1441–1(e)(3)(v), which provides the requirements for a valid U.S. branch withholding certificate provided by a U.S. branch (or territory financial institution treated as a U.S. branch under § 1.1441–1(b)(2)(iv)) that is not the beneficial owner of the income, as well as the requirements for when a withholding agent may treat the branch as a U.S. person. For example, a U.S. branch of an FFI will be required to provide a GIIN on the withholding certificate to certify to its chapter 4 status in order to be treated as a U.S. person when receiving a withholdable payment. In addition, a U.S. branch or territory financial institution will be required to provide its EIN on a withholding certificate in order to be treated as a U.S. person.

4. Who May Sign Withholding Certificates

The chapter 4 regulations provide examples in § 1.1471–3(c)(6)(i) of persons authorized to sign a withholding certificate. To clarify the persons authorized to sign a withholding certificate for chapter 3

purposes consistent with the chapter 4 regulations, these temporary regulations incorporate into § 1.1441–1(e)(4)(i) the examples of persons described in § 1.1471–3(c)(6)(i). The list of persons authorized to sign a withholding certificate includes an officer or director of a corporation, a partner of a partnership, a trustee of a trust, an executor of an estate, any foreign equivalent of the foregoing titles, and any other person authorized in writing to sign documentation on behalf of the individual or entity named on the certificate.

5. Period of Validity of Withholding Certificates

Section 1.1441–1(e)(4)(ii)(A) of the final regulations provides that a withholding certificate or documentary evidence generally remains valid until the last day of the third calendar year following the year in which the withholding certificate is signed or documentary evidence is provided to the withholding agent, or until a change in circumstances makes any information on the withholding certificate incorrect.

Under certain circumstances described in § 1.1441–1(e)(4)(ii)(B) of the final regulations, a withholding certificate or documentary evidence may remain valid indefinitely until a withholding agent knows or has reason to know of a change in circumstances that makes any information on the withholding certificate incorrect. These circumstance include when a withholding agent obtains a TIN for a payee and reports a payment to the payee annually on Form 1042–S, as well as withholding certificates provided by certain foreign entities such as intermediaries, flow-through entities, foreign central banks, and integral parts of foreign governments.

These temporary regulations modify § 1.1441–1(e)(4)(ii)(B) in appropriate cases to coordinate the chapter 3 regulations with the chapter 4 regulations and expand the circumstances under which a withholding agent may treat documentation as having indefinite validity for chapter 3 purposes. These temporary regulations also provide that certain types of documentary evidence may remain valid for purposes of establishing a payee's foreign status for a longer period if the documentary evidence contains an expiration date that is beyond the three-year period, in which case the documentary evidence will remain valid until the expiration date. Because of the changes to the rules for indefinite validity, these temporary regulations remove and replace the allowance that permits a withholding agent to treat a withholding certificate with a TIN as being valid indefinitely provided that the withholding agent reports a payment each year on a Form 1042–S with respect to the person providing the certificate.

Consistent with the chapter 4 regulations and in response to comments requesting further transitional relief during the period when withholding agents will be obtaining documentation for preexisting accounts for both chapter 4 and chapter 3 purposes, these temporary regulations provide that a withholding certificate or documentary evidence that would otherwise expire under § 1.1441–1(e)(4)(ii)(A) on December 31, 2013, will not be treated as invalid until January 1, 2015, unless a change in circumstances occurs before that date. See § 1.1441–1(e)(4)(ii)(D).

6. Change in Circumstances

As discussed in section II.K.5 of this preamble, under § 1.1441–1(e)(4)(ii)(D) of the final regulations, a withholding agent may no longer rely on a withholding certificate or documentation when the withholding agent knows or has reason to know of a change in circumstances that makes the withholding certificate or documentation incorrect. The regulations under chapter 4 adopt a similar requirement for documentation provided for chapter 4 purposes and further provide that an intermediary (including a U.S. branch or territory financial institution not treated as a U.S. person) that becomes aware of a change in circumstances with respect to a person for whom it furnishes documentation to a withholding agent must notify the withholding agent within 30 days of the date the intermediary knows or has reason to know of the change in circumstances. Consistent with the chapter 4 regulations, these temporary regulations revise § 1.1441–1(e)(4)(ii)(D) to adopt this 30-day requirement.

7. Retention of Withholding Certificates or Documentary Evidence

Section 1.1441–1(e)(4)(iii) of the final regulations requires a withholding agent to retain a withholding certificate or documentation for as long as it may be relevant for purposes of determining the withholding agent's liability under section 1461. This paragraph is amended to be consistent with retention requirements applicable to a withholding agent under chapter 4 by permitting a withholding agent to retain an original, certified copy, or scanned version of a withholding certificate. A withholding agent may also retain a withholding certificate by other means (such as microfiche) provided that the withholding agent is able to a produce a hard copy of the form or document and maintains a record of the receipt of the document. For documentary evidence, this paragraph cross references the retention requirements provided in § 1.6049–5(c)(1) (as amended by these temporary regulations), which coordinate with chapter 4 by permitting a withholding agent to retain a photocopy of the documentary evidence.

8. Electronic and Other Transmission of Forms and Documentation

The chapter 4 regulations required a withholding agent to authenticate the identity of a person furnishing a withholding certificate or documentary evidence in the form of a facsimile or scanned documentation. In response to comments, these temporary regulations do not incorporate this requirement. These temporary regulations instead provide that a withholding agent may rely on a signed form or a document received by facsimile or scanned and sent by email unless the withholding agent knows that the person transmitting the form or documentary evidence is not authorized to do so. This rule is intended to apply to a withholding agent that does not receive the document as part of a system established by a withholding agent described in § 1.1441–1(e)(4)(iv)(B), the requirements for which are unchanged by these temporary regulations except for a provision clarifying that the IRS may provide written guidance to its examiners regarding the requirements acceptable for the system. This same rule applies for chapter 4 purposes under a revision made by the temporary chapter 4 regulations (to cross-reference this paragraph).

9. Substitute Certification Forms

A withholding agent may substitute its own certification form for an official Form W–8 or Form 8233, ''Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual,'' so long as the substitute form satisfies the requirements described in § 1.1441–1(e)(4)(vi) of the final regulations. Consistent with the chapter 4 regulations, these temporary regulations allow a withholding agent to use a substitute form written and completed in a language other than English, provided that an English translation is available upon request. In addition, these temporary regulations clarify that, consistent with the current regulations,

a substitute form may omit provisions that are not relevant to the transaction or purpose for which the form is furnished, and specifically provide that a substitute form need not contain a chapter 4 status for a payee when the withholding agent is not required to determine a payee's chapter 4 status. See § 1.1471–3(c)(6)(v). Although the chapter 4 regulations also allow a withholding agent to rely on a non-IRS form in lieu of Forms W–8 or substitute forms for a payee who is an individual, this provision is not incorporated into these temporary regulations for chapter 3 purposes. The IRS and the Treasury Department have determined that an official Form W–8 or Form 8233 (or acceptable substitute form or acceptable documentary evidence when permitted) should be required for a payment subject to chapter 3 withholding.

10. TIN Requirement for Withholding Certificate

In the circumstances described in § 1.1441–1(e)(4)(vii) of the final regulations, a withholding certificate must include a TIN in order for a withholding agent to treat the withholding certificate as valid for purposes of chapter 3, such as a withholding certificate provided for purposes of claiming treaty benefits (other than treaty benefits with respect to publicly traded securities) or a withholding certificate provided by a beneficial owner claiming the income is effectively connected with a U.S. trade or business. To update these circumstances to reflect guidance issued for purposes of chapter 3 after the effective date of the current regulations, these temporary regulations add to the list of withholding certificates requiring a TIN a withholding certificate provided by a withholding foreign trust or by an entity acting as a qualified securities lender with respect to a substitute dividend paid in a securities lending or similar transaction. See Notice 2010–46, 2010–24 IRB 757 (June 14, 2010). These temporary regulations also provide in § 1.1441–6(c)(2) an exception from the TIN requirement for a withholding certificate on which a beneficial owner claims treaty benefits and instead provides its foreign TIN, as an alternative to providing a U.S. TIN for this purpose.

11. Coordinated Account Information Systems

Section 1.1441–1(e)(4)(ix) of the final regulations generally requires a withholding agent that is a financial institution to obtain documentation (including withholding certificates) on an account-by-account basis subject to certain exceptions. Section 1.1441–1(e)(4)(ix)(A) of the final regulations allows a withholding agent to rely on documentation provided by a customer for another account held at the same branch location. If the accounts are not located at the same branch location, § 1.1441–1(e)(4)(ix)(A) of the final regulations allows a withholding agent to rely on documentation for an account held at another branch location of the withholding agent or a related person provided that the withholding agent and related person are part of the same universal account system or a system described in § 1.1441–1(e)(4)(ix)(A)(*3*).

The final chapter 4 regulations generally incorporate the provisions of § 1.1441–1(e)(4)(ix)(A) of the final regulations but modify certain of the requirements for account systems. The final chapter 4 regulations require that the withholding agent treat the accounts as consolidated obligations, a requirement not described in the final regulations, for documentation shared at the same branch location or through a universal account system. For universal account systems and shared account systems, the final chapter 4 regulations require that the withholding agent and the branch with which it is sharing information be part of the same expanded affiliated group (rather than be related persons as under the final regulations). In addition, the final chapter 4 regulations require a withholding agent to produce upon request any documentation upon which it relies for purposes of determining the status of the payee and clarify that a withholding agent is liable for any underwithholding attributable to failing to assign the correct status to the payee based on the available information. Finally, although the final chapter 4 regulations do not require a withholding agent to document how and when it accesses the shared account system, the withholding agent is required to be able to obtain a copy of the documentation.

To provide consistent standards for when withholding agents may share documentation for purposes of both chapters 3 and 4, these temporary regulations delete the existing text of § 1.1441–1(e)(4)(ix) and replace it with a cross-reference to the requirements for documentation sharing in the final chapter 4 regulations. These temporary regulations also replace § 1.1441–1(e)(4)(ix)(A)(*4*) with the rule under the chapter 4 regulations for documentation collected by an agent of the withholding agent. The revised requirements apply to a shared account system other than a shared account system in use by a withholding agent as of July 1, 2014. Section 1.1441–1(e)(4)(ix)(B) allows for a single withholding certificate for shares in multiple mutual funds that have a common investment advisor or common principal underwriter with respect to shares owned or acquired in any of the funds. The chapter 4 regulations address this issue to achieve a similar result through the general principal-agent rule of § 1.1471–3(c)(9)(i), which is incorporated into these temporary regulations.

The final regulations provide other exceptions to the requirement to obtain a withholding certificate for each account that allow a withholding agent to rely on a certification from a U.S. broker stating that the broker holds beneficial owner withholding certificates of payees for which the broker acts as an agent with respect to any readily tradable instrument. The final chapter 4 regulations also provide a similar exception that permits a withholding agent to rely on a certification from a qualified intermediary in addition to a U.S. broker. To coordinate with the final chapter 4 regulations, these temporary regulations add a provision allowing a withholding agent to rely for chapter 3 purposes on a similar certification from a qualified intermediary that receives a payment from the withholding agent.

With respect to accounts acquired in mergers and bulk acquisitions for value, these temporary regulations add a new § 1.1441–1(e)(4)(ix)(D) to clarify that a withholding agent may rely on valid documentation collected by a predecessor or transferor, consistent with the rule that applies for purposes of chapter 4. Also consistent with the chapter 4 regulations, these temporary regulations allow a withholding agent that acquires accounts in a merger or bulk acquisition for value from an unrelated person to rely on the predecessor's or transferor's determination of an account holder's chapter 3 status for a transition period of six months, subject to certain requirements that apply at the end of the transition period. However, this provision is modified to require the predecessor or transferor to be a U.S. withholding agent or qualified intermediary rather than a participating FFI as provided in the chapter 4 regulations in light of the different purposes of chapters 3 and 4.

Finally, the final chapter 4 regulations allow a withholding agent to rely upon documentation collected by a third-party data provider in order to establish the chapter 4 status of an entity. The IRS and the Treasury Department do not believe that this allowance is appropriate for purposes of chapter 3 and instead expect withholding agents

to utilize the other document sharing provisions discussed earlier in this section II.K.11. However, see § 1.1441–7 of these temporary regulations for rules permitting a withholding agent (acting as a principal) to rely on documentation collected by an agent, subject to the qualification that as principal it remains liable for its agent's performance.

L. Withholding Statement of a Nonqualified Intermediary

1. General Requirements Other Than Alternative Procedures

Section 1.1441–1(e)(3)(iv) of the final regulations describes the requirements of a withholding statement provided by an NQI (NQI withholding statement) to a withholding agent with respect to reportable amounts (including amounts subject to chapter 3 withholding). This provision is amended by these temporary regulations to coordinate with the chapter 4 requirements for withholding statements when an NQI receives a withholdable payment by permitting the NQI to include chapter 4 withholding rate pools on the statement in lieu of payee-specific information. To coordinate with the chapter 4 requirements for reporting on Form 1042–S, this provision is further modified to require an NQI receiving a withholdable payment to provide on the withholding statement the chapter 4 status of each payee that is a foreign person not included in a chapter 4 withholding rate pool.

For reportable amounts received by an NQI (including reportable amounts that are not withholdable payments under chapter 4), the requirements for an NQI withholding statement are modified to specify when an NQI may provide to a withholding agent a withholding statement that includes an allocation of the payment to a chapter 4 withholding rate pool of U.S. payees in lieu of providing Forms W–9 for each U.S. non-exempt recipient and identifying each such recipient on the statement. For this purpose, an NQI that is a participating FFI or registered deemed-compliant FFI may include a U.S. payee in the pool to the extent permitted under § 1.6049–4(c)(iii), which coordinates with the allowance for when an NQI that has reporting obligations under chapter 4 need not also report under chapter 61 with respect to a payment.

These temporary regulations also add an example to illustrate when a withholding agent can reliably associate a withholdable payment with a chapter 4 withholding statement that allocates the payment (or portion of the payment) to one or more chapter 4 withholding rate pools.

2. Alternative Procedures for an NQI Withholding Statement

An NQI generally is required to provide payee-specific information (treating a chapter 4 withholding rate pool as a payee) to a withholding agent at the time of payment, as described in section II.L.1 of this preamble. However, the alternative procedures described in § 1.1441–1(e)(3)(iv)(D) of the final regulations permit an NQI to provide a withholding agent with pooled information (by withholding rate) prior to receiving the payment if the NQI will provide information sufficient to allocate the payment to specific payees by January 31 of the year following the payment. These temporary regulations retain the alternative procedures but expand the circumstances under which the procedures may be used in order to coordinate with when a chapter 4 withholding rate pool may be included on a withholding statement provided by an NQI. Section 1.1441–1(e)(3)(iv)(D) of the final regulations is modified in the case of an NQI receiving a reportable amount that is also a chapter 4 withholdable payment to permit the NQI to include payees that are nonparticipating FFIs or recalcitrant account holders includable in a chapter 4 withholding rate pool in a single withholding rate pool that includes payees subject to withholding under chapter 3 at a 30-percent rate for reporting to a withholding agent. Similarly, payees includable in a chapter 4 withholding rate pool of U.S. payees may be included in a zero-percent rate pool with other payees to which no withholding applies. Thus, an NQI may provide withholding rate pools under alternative procedures irrespective of whether withholding is applied under chapter 3 or chapter 4 or when withholding is excepted under chapters 3 and 4 and section 3406.

Because of the allowance to include payees in withholding rate pools under the alternative procedures for purposes of both chapters 3 and 4, these temporary regulations add a provision that, in addition to the allocation information required to be provided by the NQI for each payee for chapter 3 purposes by January 31 following the year of the payment, the NQI must provide the withholding agent with sufficient information to allocate the income to each applicable chapter 4 withholding rate pool and may treat each such pool as a payee for the purpose of determining whether an NQI has provided a withholding agent with sufficient information to allocate the income by such date. See § 1.1441–1(e)(3)(iv)(D)(*3*) and (e)(3)(iv)(D)(*4*). Any payments allocated to a specific payee for whom documentation has not been provided shall be allocated to an undocumented payee in accordance with the presumption rules, and these temporary regulations add a reference to the presumption rule in § 1.1471–3(f)(5) for a case in which an NQI fails to allocate a withholdable payment in the time prescribed.

3. Electronic Transmission of NQI Withholding Statement

As discussed in section II.K.8 of this preamble, these temporary regulations provide new procedures allowing the electronic transmission of withholding certificates and documentary evidence. Section 1.1441–1(e)(3)(iv)(B) is amended to provide that a withholding statement may also be transmitted by email or facsimile under the same procedures provided in § 1.1441–1(e)(4)(iv)(C) for withholding certificates and documentary evidence when the statement is not provided as part of a system established by the NQI or withholding agent.

M. Qualified Intermediaries

1. In General

Section 1.1441–1(e)(5) of the final regulations provides rules for entering into a qualified intermediary agreement (QI agreement) with the IRS, generally describes the requirements of the QI agreement, provides the requirements of a QI withholding statement, and establishes the persons eligible to enter into the QI agreement. Consistent with the intent of chapter 4 that a QI's reporting of U.S. account holders be expanded from the present requirements to report as a payor or middleman for chapter 61 purposes, these temporary regulations provide that, in order to enter into a QI agreement, a QI that is an FFI must assume the chapter 4 reporting obligations of a participating FFI (including a reporting Model 2 FFI), registered deemed-compliant FFI (including a reporting Model 1 FFI), or an FFI treated as certified deemed-compliant pursuant an applicable IGA and that is subject to due diligence and reporting requirements with respect to its accounts similar to those of registered deemed-compliant FFIs under the chapter 4 regulations. Under this new requirement, a QI will be required to report its U.S. accounts without regard to whether the QI designates the account as an account covered by the QI agreement (as applicable under the current QI agreement). Subject to IRS approval, an NFFE may also become a

QI for purposes of presenting claims of benefits under an income tax treaty on behalf of its shareholders or when acting as an intermediary for persons other than its shareholders.

Section 1.1441–1(e)(5)(iii) of these temporary regulations reflects changes to the requirements of the QI agreement. Specifically, these temporary regulations provide that the QI agreement will provide the requirements for a QI acting as a qualified securities lender with respect to the payment of U.S. source substitute dividends. Moreover, to provide compliance procedures generally similar to those applicable to a participating FFI under chapter 4, the QI agreement will provide that the QI must establish procedures to ensure compliance with its agreement, arrange for a periodic review, and provide certain factual information to the IRS. Furthermore, in appropriate cases, the IRS may require that an approved auditor perform review procedures concerning the QI's compliance with its QI agreement in addition to the review procedures performed under the periodic review. In such a case, the IRS may conduct a review of the auditor's findings.

2. Assumption of Primary Withholding Responsibility

The current regulations provide that a QI may assume the primary obligation to withhold, deposit, and report amounts under chapter 3 or under chapter 61 and section 3406 (or under both chapters 3 and 61, including backup withholding under section 3406). These temporary regulations coordinate with chapter 4 with respect to both a QI's chapter 3 and chapter 61 requirements. First, to coordinate with the withholding requirements of chapter 4, a QI assuming primary withholding responsibility under chapter 3 with respect to an account will also be required to assume such responsibility for purposes of chapter 4 with respect to the account. Second, a QI that is an FFI may represent on a withholding certificate provided to a withholding agent that it assumes primary chapter 61 reporting and section 3406 responsibility for an account that it maintains if the QI complies with its obligations as a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) under the chapter 4 regulations or an applicable IGA. See § 1.6049–4(c)(4)(i) and (c)(4)(ii) of these temporary regulations for when an FFI that reports an account under chapter 4 is not required to report a payment made to the account under chapter 61.

3. Withholding Statement Provided by a QI

Section 1.1441–1(e)(5)(v) of the final regulations provides the requirements of a withholding statement provided by a QI. These temporary regulations permit a QI that assumes primary reporting and withholding responsibility under chapters 3, 4, and 61 and section 3406 to provide an intermediary withholding certificate without attaching a withholding statement (including under the circumstances described above when a QI reports under chapter 4). However, if a QI does not assume primary reporting and withholding responsibility under chapters 3 and 4 or under chapter 61 and section 3406, then the QI is required to provide a withholding statement. A QI may provide a withholding statement to allocate the payment to a chapter 4 withholding rate pool of U.S. payees to the extent permitted for a NQI when the QI does not assume primary chapter 61 reporting and backup withholding responsibilities. See section II.L.1 of this preamble.

These temporary regulations modify the requirements for a withholding statement provided by a QI with respect to a withholdable payment. These temporary regulations permit pooled information (for each chapter 3 withholding rate pool by applicable chapter 4 exemption code based on Form 1042–S and the related instructions) with respect to foreign payees subject to withholding under chapter 3 and not subject to chapter 4 withholding. For payments to which chapter 4 withholding applies, these temporary regulations permit a QI that is an FFI to report chapter 4 withholding rate pools for nonparticipating FFIs and recalcitrant account holders on an FFI withholding statement (as described in 1.1471–3(c)(3)(iii)(B)(*2*)), and, for a QI other than an FFI, permit the QI to provide a chapter 4 withholding statement to report payees that are nonparticipating FFIs in a chapter 4 withholding rate pool. The revised QI agreement will further provide the circumstances in which a QI may provide a chapter 4 withholding rate pool on a withholding statement, including a chapter 4 withholding rate pool provided to the QI by another intermediary or flow-through entity.

4. Electronic Transmission of QI Withholding Statement

These temporary regulations provide the same allowances for the electronic transmission of a QI withholding statement as for an NQI withholding statement. See section II.L.3 of this preamble regarding the electronic transmission of an NQI withholding statement.

N. Coordination of § 1.1441–3 With Chapter 4 Withholding

Section 1.1441–3 of the final regulations provides rules for determining the amount to be withheld for purposes of section 1441. These temporary regulations add provisions to coordinate withholding under chapters 3 and 4 by providing that when a payment is both a chapter 4 withholdable payment and an amount subject to withholding under chapter 3, a withholding agent must apply the withholding provisions of chapter 4 to determine whether withholding is required under chapter 4 (and does not need to withhold under chapter 3 to the extent that it has withheld under chapter 4). The coordination rule cross references § 1.1474–6(b)(1), which allows a withholding agent to credit withholding applied on a payment under chapter 4 against any tax liability due under chapter 3 with respect to such payment, and cross references § 1.1474–6(b)(2) for determining when withholding is considered applied by a withholding agent.

These temporary regulations do not, however, include provisions specifically addressing a credit for taxes withheld under chapter 4 in a series of securities lending transactions using the same underlying security. Notice 2010–46 outlines a proposed regulatory framework to address potential overwithholding that may occur in such transactions and provides transition rules applicable until the issuance of regulations to ensure that the withholding does not exceed 30 percent in the aggregate. Under the transition rules, a withholding agent that is obligated to make a substitute dividend payment pursuant to a securities lending transaction may presume that U.S. tax has been paid in an amount equal to the amount implied by the net payment received by the withholding agent provided certain conditions are satisfied, including that the withholding agent does not know or have reason to know that tax was not withheld and deposited or paid. For purposes of the transition rules and pending further guidance, the IRS will permit a withholding agent to apply this presumption absent information on whether the net payment resulted from taxes withheld under chapter 3 or chapter 4. The IRS will, however, treat a withholding agent as having reason to

know that the tax was not withheld and deposited or paid to the extent that (i) the withholding agent knows that withholding was applied under chapter 4 to a dividend or substitute dividend paid to a nonparticipating FFI (which may be the withholding agent) that is entitled to a refund of the tax, and (ii) the nonparticipating FFI participated in such transaction with a purpose of reducing the aggregate amount of gross basis tax that would have otherwise been due had it not participated in the series of transactions. See section 1474(b)(2).

Section 1.1441–3(c)(4) of the final regulations provides rules that coordinate withholding under section 1441 (or 1442 or 1443) with withholding under section 1445 on distributions by U.S. real property holding companies and real estate investment trusts. Under these temporary regulations, the coordination rules also apply to distributions made by qualified investment entities (as defined under section 897(h)(4)). These temporary regulations also clarify that to the extent a payment is subject to withholding under section 1441 (rather than section 1445) under these coordination rules, a withholding agent must apply the withholding provisions of chapter 4 before determining whether withholding is required under chapter 3 (and, therefore, will not need to withhold under this section if withholding is applied under chapter 4).

Section 1.1441–3(d) of the final regulations permits a withholding agent making a payment of an undetermined amount of income to make a reasonable estimate of the amount from U.S. sources or of the taxable amount and place a corresponding amount in escrow until the amount from U.S. sources or the taxable amount can be determined. To coordinate with the chapter 4 regulations, this rule is modified to state that a withholding agent may retain 30 percent of a payment of an undetermined amount of income in escrow until the earlier of the date that the amount from U.S. sources or the taxable amount can be determined or one year from the date the amount is placed in escrow. Upon such date, the withholding becomes due or, to the extent that withholding under chapter 3 has been determined not to apply, the escrowed amount must be paid to the payee.

O. Presumption Rule for Payments to U.S. Branches and Removal of Transitional Documentation Rules

Section 1.1441–4 of the final regulations provides an exception to withholding under section 1441 on income that is (or is deemed to be) effectively connected with the conduct of a trade or business within the United States. A presumption rule under the final regulations allows a withholding agent to treat a payment of income as effectively connected income when it is made to a U.S. branch of a foreign bank or foreign insurance company described in § 1.1441–2(b)(iv)(A). These temporary regulations revise the presumption rule to require a withholding agent to obtain an EIN for a U.S. branch before it may presume the payment to the U.S. branch is a payment of effectively connected income. In addition, these temporary regulations remove the transitional documentation provisions that applied to payments made before January 1, 2001.

P. Coordination of § 1.1441–5 With Chapter 4 Withholding and Removal of Transitional Documentation Rules

These temporary regulations revise § 1.1441–5 to coordinate with the documentation, withholding, and reporting requirements of chapter 4 that apply to U.S. and foreign partnerships, trusts, and estates, and they remove a transition rule applicable to withholding certificates.

Section 1.1441–5(b) of the final regulations prescribes withholding rules for U.S. partnerships, trusts, and estates with respect to their partners, beneficiaries, and owners. These temporary regulations add a coordination rule in § 1.1441–5(b) to clarify that a U.S. partnership, trust, or estate that makes a payment of U.S. source FDAP income that is a withholdable payment subject to chapter 4 withholding must apply the special rules included in the final chapter 4 regulations for determining when an amount that is a chapter 4 withholdable payment is treated as paid to a partner, beneficiary, or owner. These temporary regulations also cross reference the general rule coordinating withholding under chapter 3 with withholding under chapter 4 to clarify that, for payments included in the gross income of a partner, beneficiary, or owner, a withholding agent must apply the withholding provisions of chapter 4 before determining whether withholding is required under chapter 3 (and, therefore, does not need to withhold under this section when withholding is applied under chapter 4).

Sections 1.1441–5(c) and (e) of the final regulations include requirements for withholding agents to determine the status of a payee of a payment made to a foreign partnership or to a foreign simple or grantor trust, including the requirements for withholding certificates and withholding statements provided by such entities, the requirements for determining when reduced withholding applies with respect to payments made to such entities, and the presumption rules that apply in the absence of reliable documentation. These temporary regulations amend § 1.1441–5(c) and (e) to include revised rules for determining the status of a partner, beneficiary, or owner as a payee of a payment (and when reduced withholding applies). These temporary regulations also amend § 1.1441–5(c) and (e) consistent with the allowance in the chapter 4 regulations for both nonqualified and qualified intermediaries that are foreign partnerships or trusts to provide withholding statements that report chapter 4 withholding rate pools instead of specific payee information. In addition, these temporary regulations amend § 1.1441–5(c) and (e) to coordinate withholding under chapter 3 with withholding applied under chapter 4 on payments made to foreign partnerships and trusts by permitting a withholding agent that has withheld on a withholdable payment made to the partnership or trust under chapter 4 to not also withhold on the payment under chapter 3. The partnership or trust is also not required to withhold with respect to a partner, beneficiary, or owner if withholding under chapter 4 was applied by a withholding agent based on the status of the partnership or trust for chapter 4 purposes.

Sections 1.1441–5(c) and (e) of the final regulations also describe the requirements of withholding foreign partnerships (WPs) and withholding foreign trusts (WTs). These temporary regulations revise these rules to coordinate with the requirements applicable to these entities under the final chapter 4 regulations by requiring WPs and WTs to assume chapter 4 withholding responsibilities (in addition to their chapter 3 withholding responsibilities) with respect to their partners, beneficiaries, and owners. The temporary regulations also add the requirement that a WP or WT that is an FFI obtain status as a participating FFI, registered deemed-compliant FFI, or an FFI treated as a deemed-compliant FFI under an applicable IGA that is subject to due diligence and reporting requirements with respect to its accounts similar to those applicable to a registered deemed-compliant FFI under § 1.1471–5(f)(1). The requirements for withholding certificates provided by WPs and WTs are amended by these temporary regulations to provide that an FFI that

is a WP or WT receiving a withholdable payment must include its chapter 4 status and GIIN (if applicable) on the certificate, in addition to its WP–EIN or WT–EIN. The temporary regulations also reference certain compliance-related provisions that will be included in the revised WP and WT agreements.

The presumption rules for determining a payee's status applicable to foreign partnerships and trusts in § 1.1441–5(c) and (e) of the final regulations are amended by these temporary regulations consistent with the chapter 4 presumption rules that apply to a withholdable payment made to a partnership or trust. Section 1.1441–5(e)(6)(ii) of the final regulations is also amended to provide a revised presumption rule for determining the classification of a foreign trust. The current presumption rule generally provides that a withholding agent may presume a foreign entity to be a complex trust when it cannot determine the status of the trust. Under the revised rule, a withholding agent that has the U.S. TIN and U.S. address for the settlor of a trust must presume such trust to be a U.S. grantor trust when the settlor is a U.S. person. In such a case, the withholding agent would issue an applicable Form 1099 to the U.S. settlor rather than withhold and report the payment under the requirements of chapter 3.

These temporary regulations remove the transition rule in § 1.1441–5(g)(2), for withholding certifications obtained before January 1, 2001.

Q. Coordination With Chapter 4 Withholding for Payments Subject to Reduced Withholding Under an Income Tax Treaty

Section 1.1441–6 of the final regulations specifies the conditions under which withholding under sections 1441, 1442, and 1443 on a payment to a foreign person may be applied at a reduced rate under the terms of an applicable income tax treaty. These temporary regulations add certain provisions to this section to coordinate with withholding and documentation retention requirements applicable under the final chapter 4 regulations.

First, the allowance for reduced withholding at source under § 1.1441–6 of the final regulations is revised to state that even if the requirements of this section are met, withholding under chapter 4 may still apply to payments that are withholdable payments. Second, for payments to fiscally transparent entities, language is added to indicate that a withholding agent must apply the rules of chapter 4 to determine the payee of a withholdable payment for purposes of determining its withholding obligations under chapter 4. This provision clarifies that even when the interest holders of a fiscally transparent entity are eligible for reduced withholding under an applicable treaty, chapter 4 withholding may still apply to a payment made to such entity depending on its chapter 4 status. Finally, based on comments received, the rules regarding the maintenance of documentary evidence for purposes of this section are revised to clarify that a withholding agent maintains the reviewed documents by retaining the original, certified copy, or photocopy of such documents, without regard to whether the withholding agent notes the person who reviewed the documentation. The revised rule conforms to the documentation-maintenance requirements applicable under the final chapter 4 regulations and the new rules in these temporary regulations for maintaining documentary evidence under § 1.6049–5(c).

R. U.S. TIN Requirement and Removal of Transitional Documentation Rules

For payments of certain types of income, § 1.1441–6 of the final regulations provides that a withholding agent can reliably associate a payment with a beneficial owner withholding certificate to support a claim for treaty benefits only if the certificate contains the beneficial owner's U.S. TIN. These temporary regulations revise this rule to allow a withholding agent to rely on a withholding certificate that contains the beneficial owner's foreign TIN issued by a country with which the United States has in effect an income tax treaty or tax information exchange agreement. The Treasury and the IRS believe that, in such cases, a foreign TIN is an effective alternative to a U.S. TIN for purposes of supporting a claim for treaty benefits with respect to income for which a TIN is required. In addition, these temporary regulations remove the transitional documentation provisions that applied to payments made before January 1, 2001.

S. Coordination of § 1.1441–7 With Chapter 4 Withholding

Section 1.1441–7 of the final regulations provides general provisions regarding when a withholding agent has reason to know that it cannot rely on a claim of status for chapter 3 purposes. These temporary regulations revise § 1.1441–7, primarily to coordinate with the standards of knowledge applicable to withholding agents and participating FFIs for purposes of determining the foreign status of a payee under chapter 4.

Section 1.1441–7(b)(3) of the final regulations provides reason to know standards for financial institutions, which limit when a withholding agent that is a financial institution has a reason to know that documentation is unreliable or incorrect to when certain U.S. indicia are associated with the account holder based on the institution's account information. These temporary regulations define a financial institution for this purpose by reference to the definition of financial institution that applies for chapter 4 purposes. In addition, the temporary regulations define account information to include documentation collected for purposes of AML due diligence (as defined under § 1.1471–1(b)(4)), but provide that a withholding agent will not be considered to have reason to know that documentation collected for AML due diligence conflicts with the account holder's claim until the date that is 30 days after the obligation is executed (or the account is opened, in the case of an obligation that is an account with a financial institution). These temporary regulations also add § 1.1441–7(b)(3)(ii) to provide that a withholding agent that has previously documented a preexisting obligation for purposes of chapter 3 or chapter 61 before July 1, 2014 will not be required to review such documentation or the account information associated with the obligation to search for U.S. indicia. If, however, a withholding agent reviews such documentation and it contains a U.S. place of birth for the account holder, or if there is a change in circumstances, the withholding agent will then have reason to know as of the date of the review or change in circumstances that the documentation is unreliable or incorrect and that it must cure such U.S. indicia in order to continue to treat the account holder as a foreign person. This rule therefore provides withholding agents a transition period to address new U.S. indicia, such as a U.S birthplace for an account holder, which were added in the chapter 4 regulations and are incorporated in these temporary regulations.

Sections 1.1441–7(b)(5) through (b)(9) of the final regulations describe the scope of review by a withholding agent that is a financial institution of withholding certificates and documentary evidence, and are revised to incorporate the same U.S. indicia referenced in the final chapter 4 regulations and the same cures specified in those regulations in order for a withholding agent to continue to treat a

payee as a foreign person notwithstanding such U.S. indicia. Section 1.1441–7(b)(5) of the final regulations describes when a withholding certificate furnished by a direct account holder is unreliable or incorrect for establishing foreign status and is revised to add new U.S. indicia for this purpose. The new indicia are a withholding agent's classification of the account holder as a U.S. person in the withholding agent's account files and a current telephone number for the person in the United States (and no telephone number for the person outside of the United States). The cures to treat a payee as a foreign person notwithstanding these indicia conform to the cures provided under chapter 4 and are the same cures that are applicable to a U.S. address. Specifically, § 1.1441–7(b)(5)(i)(A) and (b)(5)(i)(B) are revised to adopt the chapter 4 definition of documentary evidence required to treat a payee as a foreign person notwithstanding U.S. indicia. For a payment made with respect to an offshore obligation, these temporary regulations modify § 1.1441–7(b)(5)(i)(A)(*2*) to coordinate with the chapter 4 cure rules pertaining to participating FFIs (including reporting Model 2 FFIs) by adding that a withholding agent may treat an account holder as a foreign person if the withholding agent obtains documentary evidence establishing foreign status, even if the documentary evidence contains a U.S. address.

These temporary regulations add § 1.1441–7(b)(5)(ii) to provide that a withholding agent has reason to know that a withholding certificate claiming foreign status provided by an individual is unreliable or incorrect if the withholding agent has an unambiguous indication of a place of birth for the individual in the United States. Section 1.1441–7(b)(5)(ii) is consistent with the chapter 4 rules in providing the same documentation requirements as those provided in § 1.1471–4(c)(5)(iv)(B)(*2*)(*ii*) applicable to a participating FFI (including a reporting Model 2 FFI) to cure a U.S. place of birth in order to treat an account holder as a foreign person.

To coordinate with the chapter 4 regulations, § 1.1441–7(b)(5)(iii) of these temporary regulations (formerly § 1.1441–7(b)(5)(ii)) is revised to allow documentary evidence establishing foreign status as an alternative to providing a reasonable explanation to cure standing instructions with respect to an offshore obligation directing the withholding agent to pay amounts to an address or an account maintained in the United States. Similarly, for purposes of an account holder's claim for treaty benefits, § 1.1441–7(b)(6)(iii) is revised to add documentary evidence establishing residence in a treaty country as a cure for standing instructions provided with respect to an offshore obligation directing the withholding agent to pay amounts to an address or an account maintained outside the country in which the account holder claims benefits under an income tax treaty.

Section 1.1441–7(b)(8) of the final regulations provides the standards of knowledge applicable to documentary evidence used to establish a payee's foreign status. Under § 1.1441–7(b)(8) of the final regulations, a withholding agent may not rely on documentary evidence to treat a payee as a foreign person if the withholding agent has U.S. indicia for the payee. These temporary regulations revise § 1.1441–7(b)(8)(ii), consistent with the chapter 4 regulations, to include as U.S. indicia: (i) a classification in the withholding agent's account files that the recipient is a U.S. person, and (ii) a current telephone number for the person in the United States as part of the withholding agent's customer information, provided that the customer information does not include a telephone number for the person outside of the United States. In addition, these temporary regulations revise § 1.1441–7(b)(8)(iii) to add a U.S. place of birth as U.S. indicia. Section 1.1441–7(b)(8)(iii) also provides the same documentation requirements as those in the chapter 4 regulations for treating an account holder as a foreign person notwithstanding a U.S. place of birth. These temporary regulations also add § 1.1441–7(b)(8)(iv) (formerly § 1.1441–7(b)(8)(iii) of the final regulations) and (b)(9)(ii), which treat standing instructions to pay amounts to an address or account maintained in the United States or outside of a treaty country as U.S. indicia, to coordinate with the chapter 4 regulations by allowing the account holder to cure the U.S. indicia by providing a valid beneficial owner withholding certificate to establish foreign status or residence in a treaty country (as applicable).

These temporary regulations add § 1.1441–7(b)(11) to provide limits on reason to know for withholding agents that are financial institutions in the case of multiple obligations belonging to a single person, which limits are consistent with those provided in the chapter 4 regulations. Also, in response to comments seeking clarification, § 1.1441–7(b)(12) is added to define what constitutes a reasonable explanation supporting a claim of foreign status (which also applies under the chapter 4 regulations).

Section 1.1441–7(c) of the final regulations provides that a withholding agent may designate an agent to fulfill its obligations under chapter 3. These temporary regulations revise § 1.1441–7(c) to harmonize with the chapter 4 regulations for the requirements of a withholding agent's use of an agent to fulfill its withholding obligations. The revised rules allow a withholding agent to appoint an agent (including a foreign person) if there is a written agreement between the withholding agent and the person acting as agent, the books and records of the agent are available to the withholding agent, and the agent files Form 8655, ''Reporting Agent Authorization,'' with the IRS if the agent (including any sub-agent) is acting as a reporting agent for purposes of filing Form 1042 or making tax deposits and payments. These rules replace the rules that pertained to authorized foreign agents, which required that the foreign agent's books and records be available to the IRS for examination and that the withholding agent notify the IRS of its appointment of a foreign agent. Under the new rules, the withholding agent remains liable for the acts of its agent (including a foreign agent) and thus the withholding agent, rather than its agent, is required to substantiate its compliance with its withholding obligations.

T. Coordination of § 1.1461–1 With Chapter 4 Withholding

Section 1.1461–1(b) of the final regulations provides requirements for making an income tax return on Form 1042 for income paid that the withholding agent is required to report on an information return on Form 1042–S. These temporary regulations revise § 1.1461–1(b) consistent with chapter 4 to allow a withholding agent to file a single Form 1042 to report amounts under chapters 3 and 4.

Section 1.1461–1(c)(1)(i) of the final regulations provides requirements regarding the manner in which withholding agents report information about payments made to foreign persons for purposes of chapter 3. This section states that the Form 1042–S shall be prepared in such manner as the form and accompanying instructions prescribe. The instructions to Form 1042–S (as previewed in draft form on November 1, 2013) are being revised to incorporate the requirements for reporting on Form 1042–S for chapter 4 purposes and to remove language that currently permits a withholding agent to include more than one type of income or other payment on a recipient copy of

the Form 1042–S. To allow sufficient time for withholding agents to adapt to these requirements, however, a withholding agent will be permitted to include more than one type of income or other payment on the recipient copy of the Form 1042–S for calendar year 2014. Starting with calendar year 2015, the Form 1042–S and accompanying instructions will require a separate Form 1042–S for each type of income or other payment.

Section 1.1461–1(c)(1)(ii) of the final regulations lists categories of persons that are treated as recipients with respect to amounts subject to chapter 3 reporting and other categories of persons that are not treated as recipients of such amounts. These temporary regulations amend § 1.1461–1(c)(1)(ii) consistent with chapter 4 to add as recipients: (i) territory financial institutions treated as U.S. persons under § 1.1441–1(b)(2)(iv)(A); (ii) foreign intermediaries and nonwithholding foreign partnerships and trusts that are participating FFIs (including reporting Model 2 FFIs) or registered deemed-compliant FFIs (including reporting Model 1 FFIs) with respect to a chapter 4 withholding rate pool of U.S. payees; and (iii) participating FFIs (including reporting Model 2 FFIs) or registered deemed-compliant FFIs (including reporting Model 1 FFIs) that are recipients of withholdable payments under § 1.1474–1(d)(1)(ii)(A)(*1*)(*iii*). These temporary regulations amend § 1.1461–1(c)(1)(ii) consistent with chapter 4 to treat as persons that are not recipients: (i) payees included in chapter 3 and chapter 4 withholding rate pools; (ii) authorized foreign agents (to coordinate with revised rules for authorized agents under § 1.1441–7(c) of these temporary regulations); (iii) NQIs and flow-through entities unless they are FFIs treated as recipients under § 1.1474–1(d)(1)(ii)(A)(*1*)(*iii*) (because they have identified the payment as allocable to a chapter 4 withholding rate pool); and (iv) certain territory financial institutions that are not treated as U.S. persons under § 1.1441–1(b)(2)(iv)(A). These temporary regulations also add new § 1.1461–1(c)(1)(ii)(C), which provides that, with respect to the reporting of a chapter 4 reportable amount, a withholding agent must report the chapter 4 status of the recipient consistent with § 1.1474–1(d)(1)(ii)(A).

Section 1.1461–1(c)(3) of the final regulations describes the specific information required to be reported on Form 1042–S. These temporary regulations revise § 1.1461–1(c)(3)(i) to require the reporting of a withholding agent's chapter 3 status code. The chapter 3 status codes are listed in the instructions to Form 1042–S for calendar year 2014 and, with respect to an entity, the chapter 3 status code is generally the entity's classification for U.S. tax purposes. These temporary regulations also revise § 1.1461–1(b)(3)(iii) to require that, in the case of a payment subject to withholding under chapter 3 but not subject to withholding under chapter 4, a withholding agent must report the basis for exempting the payment from withholding under chapter 4. The instructions to Form 1042–S for calendar year 2014 will add chapter 4 exemption codes to Form 1042–S for this purpose.

These temporary regulations also add provisions in § 1.1461–1(c)(4)(i) and (c)(4)(ii) to coordinate the reporting requirements for payments to intermediaries and flow-through entities when a withholding agent is provided information for a chapter 4 withholding rate pool. Also, § 1.1461–1(c)(4)(i)(D) is removed by these temporary regulations to coordinate with the removal of the rules pertaining to authorized foreign agents in § 1.1441–7 of these temporary regulations.

Section 1.1461–1(c)(5) of the final regulations provides the magnetic media filing requirements for withholding agents filing Forms 1042–S. These temporary regulations revise this rule for financial institutions consistent with chapter 4 to require financial institutions to file information reports on magnetic media without regard to whether the financial institution files 250 or more information returns annually. See § 301.1474–1(a).

*III. Changes to Information Reporting Provisions Under Chapter 61*

A. General Coordination of Information Reporting Under § 1.6049–4 With Chapter 4

Section 1.6049–4 of the final regulations provides rules for determining whether an information return is required under section 6049 for a payment of interest or for certain original issue discount (OID) and includes definitions of terms used for purposes of section 6049 and other sections of chapter 61.

1. Exceptions to Reporting Under § 1.6049–4(c)(4) To Coordinate With Information Reporting Under FATCA

Section 1.6049–4(c) of the final regulations provides exceptions with respect to whether an information return is required with respect to a payment of interest or certain OID. These temporary regulations add a new exception in § 1.6049–4(c)(4)(i) for a non-U.S. payor that is also a participating FFI (including a reporting Model 2 FFI) or a registered deemed-compliant FFI (including a reporting Model 1 FFI) that reports an account holder of a U.S. account pursuant to the requirements under chapter 4 (or an applicable IGA), provided that such information includes the account holder's TIN. For the requirements to report an account as a U.S. account, see the FFI agreement for participating FFIs (including reporting Model 2 FFIs), § 1.1471–5(f)(1) for registered deemed-compliant FFIs, and the applicable Model 1 IGA for reporting Model 1 FFIs.

These temporary regulations also add a new exception in § 1.6049–4(c)(4)(ii) for a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1FFI), regardless of whether the FFI is a U.S. payor or non-U.S. payor, from the requirement to report a payment of interest for the year in which the interest is paid. The exception applies if the account holder of an account maintained by the FFI receives a payment of interest that is not subject to withholding under chapter 3 or backup withholding under section 3406 and either the FFI reports the account consistent with the pools described in § 1.1471–4(d)(6) (referring to recalcitrant account pools) or, in the case of a reporting Model 1 FFI, the account holder has not provided information sufficient for the FFI to confirm the U.S. or non-U.S. status of the account holder and the FFI treats and reports the account as a U.S. reportable account under an applicable IGA. This new exception to reporting may apply to payments made by an FFI to an account holder that it must presume to be a U.S. non-exempt recipient if the payment is not subject to withholding under chapter 3 and is not subject to backup withholding under section 3406 because the amount is paid outside the United States with respect to an offshore obligation.

Finally, the temporary regulations add § 1.6049–4(c)(4)(iii) to specify the circumstances in which an FFI may, on a withholding statement provided to a payor, allocate an interest payment to a U.S. non-exempt recipient within a pool (referred to as a ''U.S. payee pool''), in lieu of providing payee-specific information with respect to each U.S. non-exempt recipient, for purposes of applying the exceptions described in paragraphs § 1.6049–4(c)(4)(i) and (c)(4)(ii). These temporary regulations provide that a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI

(including a reporting Model 1 FFI) may allocate a payment to a chapter 4 withholding rate pool of U.S. payees on an applicable withholding statement to the extent the FFI is excepted from reporting the payment under § 1.6049–4(c)(4)(i) or both the FFI is excepted from reporting under § 1.6049–4(c)(4)(ii) and the payment is not subject to withholding under chapter 4.

The coordination rules in § 1.6049–4(c)(4) that provide an exception from the requirement to report information with respect to certain account holders of an FFI also apply for purposes of information reporting under sections 6041, 6042, and 6045.

2. Additions and Revisions to Definitions in § 1.6049–4(f) Related to Interest Reporting Under §§ 1.6049–4 and 1.6049–5

Section 1.6049–4(f) of the final regulations provides definitions that apply for purposes of section 6049 and that are also relevant for other sections of chapter 61. These temporary regulations amend certain of the definitions and add additional definitions to coordinate with terms used under chapter 4. First, these temporary regulations add to § 1.6049–4(f) the terms *chapter 4 withholding rate pool, participating FFI, registered deemed-compliant FFI, reporting Model 1 FFI, reporting Model 2 FFI, recalcitrant account holder, non-consenting U.S. account,* and *intergovernmental agreement (IGA)* to coordinate and provide helpful cross-references to navigate these rules.

Second, these temporary regulations add the term *offshore obligation,* which includes accounts of banks and other financial institutions and obligations (other than such accounts) maintained outside the United States, in § 1.6049–5(c)(1) (as discussed in section III.D of this preamble).

Finally, these temporary regulations add to § 1.6049–4(f)(16) the term *paid and received outside the United States*. The definition of paid and received outside the United States is relevant for purposes of determining the circumstances under which (i) a payment of interest from non-U.S. sources is reportable by a non-U.S. payor, (ii) the exception to backup withholding under § 31.3406(g)–1(e) applies with respect to a payment of interest, and (iii) an agent of a payee (other than a U.S. middleman) is excluded from reporting a payment of interest on an obligation described in § 1.6049–5(b)(10). This new term is largely based on the description of amounts paid outside the United States in § 1.6049–5(e) of the final regulations. Section 1.6049–5(e) (as modified by these temporary regulations) describes when a payment is made outside the United States, which is relevant for determining cases in which a payor may rely upon documentary evidence in lieu of an applicable withholding certificate to establish a payee's foreign status for a payment made with respect to an offshore obligation.

The new definition of an amount paid and received outside the United States under § 1.6049–4(f)(16) also applies for purposes of information reporting rules under sections 6041 and 6042 and for determining whether the exception to backup withholding under section 3406 applies to payments reportable under sections 6041 and 6042 and to gross proceeds reportable under section 6045.

B. Further Coordination of Interest Reporting Under § 1.6049–5(b) With Chapter 4

Section 1.6049–5(b) of the final regulations describes payments that are not treated as interest or OID for purposes of section 6049. Accordingly, payments described in § 1.6049–5(b) of the final regulations are not subject to reporting under section 6049. These temporary regulations modify the rule for payments with respect to foreign intermediaries (which has been renumbered as new § 1.6049–5(b)(15)) and add a new exception in § 1.6049–5(b)(14) for certain payments that a payor or middleman can reliably associate with documentation or certain other information provided by a foreign intermediary or flow-through entity.

1. Exception to Reporting Interest Payments Made to Foreign Intermediary or Flow-Through Entity Under New § 1.6049–5(b)(14)

These temporary regulations add a new exception from reporting in § 1.6049–5(b)(14). The exception applies to payments made by a payor or middleman that can be reliably associated with documentation to treat the payments as made to a foreign intermediary or flow-through entity, provided that the payor or middleman has obtained a withholding statement from the foreign intermediary or flow-through entity allocating the payment (or portion thereof) to a chapter 4 withholding rate pool or to specific payees to which withholding under chapter 4 applies. This exception for payments made to a chapter 4 withholding rate pool coordinates with the requirements under the chapter 4 regulations describing the circumstances under which a withholding agent may, with respect to a chapter 4 withholdable payment, rely on an FFI withholding statement (described in § 1.1471–3(c)(3)(iii)(B)(*2*)) that allocates the payment to a chapter 4 withholding rate pool of nonparticipating FFIs and recalcitrant account holders or a chapter 4 withholding statement that allocates the payment to a chapter 4 withholding rate pool of nonparticipating FFIs, instead of requiring payee-specific information with respect to such payees and account holders. For purposes of applying this exception, these temporary regulations also provide that a payor or middleman may reliably associate a payment with a chapter 4 withholding rate pool of U.S. payees on a withholding statement provided by an FFI if the payor or middleman identifies the intermediary or flow-through entity receiving the payment as either a participating FFI (including a reporting Model 2 FFI) or a registered deemed-compliant FFI (including a reporting Model 1 FFI) (by applying the due diligence requirements described in § 1.1471–3(d)(4)).

The exception to reporting added by these temporary regulations in § 1.6049–5(b)(14) shall also apply for purposes of information reporting under sections 6041 and 6042.

2. Exception to Reporting Interest Payments Made by a Foreign Intermediary Under Renumbered § 1.6049–5(b)(15)

These temporary regulations renumber the exception from reporting that was included in § 1.6049–5(b)(14) of the final regulations as new § 1.6049–5(b)(15) for a foreign intermediary (or a U.S. branch not treated as a U.S. person under § 1.1441–1(b)(2)(iv)) receiving a payment from a payor, if the intermediary furnishes to the payor or middleman the information required for the payor or middleman to report the payment under section 6049. This exception does not apply to a foreign intermediary that knows that the payments are required to be reported by the payor or middleman under § 1.6049–4 and were not so reported. These temporary regulations also clarify that a territory financial institution that is not treated as a U.S. person under § 1.1441–1(b)(2)(iv) is excepted from reporting under this paragraph if it provides the information required for the payor or middleman from which it is receiving a payment to report. These temporary regulations incorporate by cross-reference the exception from reporting provided in § 1.6049–4(c)(4) (referring to rules that exempt certain FFIs that are non-U.S. payors from reporting under chapter 61 if the payments are made to account holders that will be reported by the FFI and, in

narrower circumstances, rules that exempt certain FFIs that are U.S. or non-U.S. payors from reporting under chapter 61 on certain presumed U.S. non-exempt recipients), such that an intermediary need not report under this paragraph if the payment is not required to be reported under § 1.6049–4(c)(4).

The exception to reporting in § 1.6049–5(b)(15) also applies for purposes of information reporting under sections 6041, 6042, and 6045. (For a discussion of the applicable exemptions from reporting under sections 6041, 6042, and 6045 for certain FFIs that report information about their account holders under chapter 4 or an applicable IGA, see the discussion of the coordination rules under § 1.6049–4(c)(4) in section III.A.1 of this preamble.)

C. Exceptions to Reporting for Certain Payments Made on Behalf of a PFIC

These temporary regulations add two new exceptions to reporting that apply to paying agents and stock transfer agents making certain payments on behalf of a corporation described in section 1297(a) (a passive foreign investment company or PFIC). The first exception relates to dividend payments made by a paying agent on behalf of a PFIC as described in § 1.6042–2(a)(1)(i)(B). The second exception relates to certain payments made by a stock transfer agent with respect to a redemption of PFIC stock as described in § 1.6045–1(c)(3)(xiv). Both exceptions apply if the agent (that is, the paying agent or stock transfer agent, as applicable) satisfies four requirements. First, the agent must obtain, for each year that the agent relies on this exception, a written statement from the PFIC that states that the corporation is described in section 1297(a). This written certification from the PFIC must be signed by an officer of the corporation, and the agent must have no reason to know that the written certification is unreliable or incorrect. Second, the agent must identify, prior to payment, the PFIC as a participating FFI (including a reporting Model 2 FFI) or a reporting Model 1 FFI in accordance with the requirements of § 1.1471–3(d)(4) (as if, for purposes of that section, the paying agent or stock transfer agent were a withholding agent and as if the PFIC were a payee). Third, the agent must obtain, before the year the payment would otherwise be reported, a written certification representing that the PFIC will report information with respect to the payment (or the account to which the payment is made) as required by its reporting obligations under chapter 4 or an applicable IGA. If the agent, however, knows that the PFIC is not reporting the information as represented in the written certification, the agent must report all payments reportable under sections 6041 or 6045 that are made during the year for which the agent knows the PFIC is not reporting such information. Finally, the agent must not also be acting in its capacity as a custodian, nominee, or other agent of the payee (that is, the PFIC shareholder).

D. Reliance on Documentary Evidence Under § 1.6049–5(c)

Section 1.6049–5(c) of the final regulations provides rules for determining whether a payor may rely upon documentary evidence instead of a withholding certificate for purposes of determining a payee's status under section 6049, prescribes the types of documentation that constitutes documentary evidence for this purpose, and describes the requirements for maintaining the documentary evidence. To provide consistency between the documentation standards applicable to withholding agents in determining whether withholding applies under chapters 3 and 4, or an applicable IGA, these temporary regulations revise the final regulations in several respects.

1. Modification to § 1.6049–5(c)(1) and Coordinating Change to § 1.6045–1(g)

Section 1.6049–5(c)(1) of the final regulations provides that a payor may rely on documentary evidence described in § 1.6049–5(c)(1) (which may include, but is not limited to, a certificate of residence issued by an appropriate tax official of the foreign government or other official documents issued by an authorized governmental body) for payments made outside the United States to an offshore account. These temporary regulations modify this rule in several respects.

First, these temporary regulations in § 1.6049–5(c)(1) replace the term *offshore account* with the term *offshore obligation* for purposes of determining whether a payor may rely upon documentary evidence with respect to a payment made outside the United States. These temporary regulations define an offshore obligation that is not an account of a bank or other financial institution as, among other things, an obligation with respect to which the payor is either engaged in business as a broker or dealer in securities or a financial institution defined in § 1.1471–5(e). Thus, these temporary regulations expand the circumstances in which documentary evidence may be relied upon by, among other things, allowing for the use of documentary evidence beyond payments made to accounts of banks and other financial institutions and allowing for the use of documentary evidence by a withholding agent consistent with chapter 4.

Second, the use of documentary evidence is further expanded as a result of changes made by these temporary regulations to the description of payment outside the United States under § 1.6049–5(e), which eliminates the requirement for payors to monitor whether certain U.S. connections are present as a condition for using documentary evidence (see section III.F of this preamble for a description of changes to § 1.6049–5(e)).

Third, these temporary regulations modify the types of documentation that qualify as documentary evidence under § 1.6049–5(c)(1) by prescribing rules regarding the types of documentary evidence that may be relied upon that are the same as those in the chapter 4 regulations.

Fourth, the requirements for payors to maintain documentary evidence under § 1.6049–5(c)(1) of the final regulations are also modified by these temporary regulations to be consistent with the requirements for maintaining documentary evidence applicable to withholding agents in the chapter 4 regulations.

In addition, § 1.6049–5(c)(1) of the final regulations includes a rule providing that a payor of broker proceeds described in § 1.6045–1(c)(2) may rely on documentary evidence described in § 1.6049–5(c)(1) of the final regulations if the broker completes the acts necessary to effect the sale outside the United States. Because reporting of gross proceeds is governed by section 6045 and not section 6049, these temporary regulations remove this rule from § 1.6049–5(c)(1) and add a cross-reference to a revised rule that is provided in § 1.6045–1(g)(1)(i) addressing the circumstances under which a broker paying gross proceeds may determine a payee's status using documentary evidence. The revised rule under § 1.6045–5(c)(1) defines a sale effected outside the United States as a sale with respect to which a broker completes the acts necessary to effect the sale outside of the United States provided that no office of the same broker within the United States negotiated the sale with the customer or received instructions with respect to the sale from the customer. The revised rule also removes the limitations on the use of documentary evidence described in § 1.6045–1(g)(3)(iii)(B) of the final regulations, except in circumstances in which the broker completes the acts

necessary to effect to sale at an office of the same broker in the United States.

Finally, consistent with § 1.1441–1(e)(3)(iii), these temporary regulations clarify that documentary evidence is permitted to be used with respect to payments made to a foreign intermediary (in addition to a foreign partnership or foreign trust), regardless of whether the obligation with respect to which the payment is made is maintained outside the United States.

The new definition of the term *offshore obligation* in § 1.6049–5(c)(1) also applies for purposes of information reporting under sections 6041 and 6042.

2. Modifications to Documentation Standards Under § 1.6049–5(c)(4)

Section 1.6049–5(c)(4) of the final regulations provides special documentation rules for certain offshore accounts maintained at a bank or other financial institution, which modify the documentation standards of § 1.6049–5(c)(1) of the final regulations for payments that are not subject to withholding under chapter 3 and are not payments of certain U.S. source short-term OID or bank deposit interest paid to foreign intermediaries and flow-through entities. These temporary regulations in § 1.6049–5(c)(4) retain the modified documentation standards in paragraph § 1.6049–5(c)(1) for such payments and provide additional allowances for payors to determine the status of payees receiving such payments to be consistent with the documentation rules prescribed under the chapter 4 regulations for participating FFIs (including reporting Model 2 FFIs) to identify their account holders. In particular, these temporary regulations allow a payor that is a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI to establish a payee's status based on identification by a third-party credit agency to the extent permitted in § 1.1471–4(c)(4)(ii). A payor that is a reporting Model 1 FFI or reporting Model 2 FFI may rely upon documentation or a certification establishing a payee's status under an applicable IGA. A payor that is an FFI may also rely on a written statement (as defined in § 1.1471–1(b)(150)) to establish a payee's foreign status in circumstances in which the statement is allowed to be used by the FFI to establish the chapter 4 status of the payee without documentary evidence under the chapter 4 regulations. Consistent with the provision in the chapter 4 regulations that permits reliance on documentary evidence without a definitive renewal period for payments made with respect to offshore obligations, these temporary regulations provide the same treatment for documentation permitted to be relied upon by a payor under § 1.6049–5(c)(4). Thus, a payor may rely upon documentation under § 1.6049–5(c)(4) if the payor does not have for the payee any of the indicia of U.S. status described in § 1.1471–3(c)(6)(ii)(C)(*1*) until the payor knows or has reason to know of a change in circumstances. Finally, these temporary regulations allow a payor to maintain a record of documentary evidence instead of retaining the actual documentation reviewed, which is consistent with the rules for a participating FFI under chapter 4.

E. Coordination of Chapter 4 With Presumption Rules Under § 1.6049–5(d)

Section 1.6049–5(d) of the final regulations provides general requirements for identifying payees (referencing the relevant requirements of § 1.1441–1) and presumptions that apply in the absence of valid documentation for determining the status of a payee as a U.S. or foreign person for purposes of reporting under section 6049.

1. Payee Identification

In general, § 1.6049–5(d)(1) of the final regulations provides that a payee of a payment that is otherwise reportable under section 6049 is identified pursuant to certain provisions that apply to identify the payee for purposes of chapter 3, with two exceptions that apply to payments that are not subject to withholding under chapter 3. The first exception modifies the treatment of a payment made to a U.S. agent by treating any such payment as a payment made to a U.S. payee (even if the U.S. agent is an agent of a foreign payee). The second exception modifies the treatment of a payment to a U.S. branch of a foreign bank or of a foreign insurance company by treating the payment as made to a foreign payee, regardless of the fact that the U.S. branch is treated as a U.S. person for payments of amounts subject to withholding and is a U.S. payor.

The temporary regulations modify these two exceptions to be consistent with the rules under chapter 4 by clarifying that these exceptions also do not apply with respect to amounts that are withholdable payments. The chapter 4 regulations provide that withholdable payments made to U.S. agents and intermediaries and certain U.S. branches are treated as made to U.S. persons. In addition, these temporary regulations, consistent with the chapter 4 regulations, add that the first exception applies to a U.S. intermediary in addition to a U.S. agent, and they clarify that the second exception applies to payments made to a territory financial institution that is treated as a U.S. person under § 1.1441–1(b)(2)(iv) (as well as to a U.S. branch of a foreign bank or of a foreign insurance company treated as a U.S. person under that section).

2. Presumptions in the Absence of Documentation Under § 1.6049–5(d)(2)

a. General Rule Under § 1.6049–5(d)(2)(i)

In general, § 1.6049–5(d)(2)(i) of the final regulations incorporates the presumption rules of §§ 1.1441–1(b)(3) and 1.1441–5(d) and (e)(6) (general presumption rules) to determine the classification and other relevant characteristics of the payee if a payment cannot be reliably associated with valid documentation. The chapter 61 regulations incorporate these rules regardless of whether a payment is subject to withholding under chapter 3. The presumption rule for payments with respect to offshore obligations provided under the general presumption rules does not apply to a payment that is not subject to withholding under chapter 3.

These temporary regulations modify this exception (which would not apply the general presumption rules to a payment that is not subject to withholding under chapter 3) in the case of a withholdable payment made to a payee that is an entity by applying the presumption rule for payments with respect to offshore obligations under § 1.1441–1(b)(3)(iii)(D) and (b)(3)(vii)(B) regardless of whether the payment is an amount subject to withholding under chapter 3. This avoids conflicting presumptions under chapters 4 and 61 given that § 1.1471–3(f) treats such payments as made to a nonparticipating FFI (and therefore as made to a foreign entity).

These temporary regulations also add a new presumption rule that applies to a payment that is not subject to withholding under chapter 3 made to a payee that is an individual with respect to an offshore obligation. This new presumption rule will limit the cases in which individuals are presumed U.S. non-exempt recipients to cases where a payor has U.S. indicia associated with the individual.

b. Grace Period Under § 1.6049–5(d)(2)(ii)

For purposes of applying the presumption rules, § 1.6049–5(d)(2)(ii) of the final regulations provides a 90-

day grace period during which a payor may treat an account as held by a foreign person if certain indications of foreign status are present to avoid reporting under chapter 61 and backup withholding under section 3406. The chapter 61 regulations also provide rules for determining when the grace period begins, depending on whether an account is a new or preexisting account of the payor. These temporary regulations retain the 90-day grace period in § 1.6049–5(d)(2)(ii) without modification but expand the types of accounts that will be treated as existing accounts to include accounts treated as consolidated obligations for purposes of chapter 4 (defined in § 1.1471–1(b)(23)) as long as all payments made to the account are not subject to withholding under chapter 3.

c. Joint Owners Under § 1.6049–5(d)(2)(iii)

These temporary regulations modify the presumption rule with respect to withholdable payments made to joint owners of a joint account consistent with the presumption rule described in § 1.1471–3(f)(7). Thus, in the case of an amount that is a withholdable payment made to a joint account, the payment is presumed made to a foreign payee that is a nonparticipating FFI if any joint payee does not appear to be an individual. This modification creates consistency between the presumption rules applicable under chapters 4 and 61 with respect to withholdable payments made to joint accounts.

The joint account holder presumption rule described in § 1.1471–3(f)(7) also applies for purposes of reporting under sections 6041 and 6042 and backup withholding under section 3406.

3. Foreign Intermediaries or Flow-Through Entities Under § 1.6049–5(d)(3)

Section 1.6049–5(d)(3)(i) of the final regulations provides a presumption rule for determining whether a payment of an amount subject to withholding under chapter 3 may be treated as made to a foreign intermediary or flow-through entity by cross-references to the applicable presumption rules under §§ 1.1441–1(b)(3) and 1.1441–5(d) and (e)(6). These temporary regulations add a cross-reference to the chapter 4 regulations for an amount that is a withholdable payment under chapter 4 for purposes of both identifying the payee and providing the presumption rule that applies to the payment. In addition, these temporary regulations clarify that the presumption rule under § 1.6049–5(d)(3)(ii), applicable to payments not subject to withholding under chapter 3, does not apply to amounts that are withholdable payments under chapter 4, consistent with the presumption rule under chapter 4.

The chapter 61 regulations also provide a presumption rule for payments of certain U.S. source short-term interest or OID and bank deposit interest paid to a foreign intermediary or flow-through entity that treats the payment as made to a U.S. non-exempt recipient. These temporary regulations under § 1.6049–5(d)(3)(iii) remove bank deposit interest from the existing rule to make it consistent with the chapter 4 presumption rule applicable to withholdable payments (which includes such interest) made to a foreign intermediary or flow-through entity. See § 1.1471–3(f)(5) (treating the payment as made to a nonparticipating FFI). These temporary regulations also provide that this presumption rule is not required to be applied with respect to a payment of U.S. source short-term OID allocated on a withholding statement to a chapter 4 withholding rate pool of U.S. payees by an intermediary or flow-through entity receiving the payment that the payor documents to be a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) under the identification requirements of chapter 4.

F. Paid Outside the United States Under § 1.6049–5(e)

Section 1.6049–5(e) of the final regulations describes the circumstances in which an amount is considered paid outside the United States for purposes of, among other things, determining whether a payor may rely upon documentary evidence under § 1.6049–5(c)(1) of the final regulations to document a payee. It requires that the payor or middleman (i) complete the acts necessary to effect payment outside the United States and (ii) verify that the obligation or payee does not have certain specified connections with the United States (U.S. connections), such as a U.S. mailing address for the payee. See § 1.6049–5(e)(1)(i) through (e)(1)(ii) and (e)(2) through (e)(4) of the final regulations. These temporary regulations retain the requirement that a payor or middleman complete the acts necessary to effect payment outside the United States, but remove the other U.S. connections described in § 1.6049–5(e) of the final regulations for the purpose of being allowed to use documentary evidence under § 1.6049–5(c). This modification reduces burdens by eliminating the need for a payor or middleman to monitor whether these U.S. connections are present for purposes of determining if the payor or middleman may rely upon documentary evidence under § 1.6049–5(c)(1). (For a discussion of the documentary evidence rule in § 1.6049–5(c), see section III.D of this preamble.) The U.S. connections, however, are still retained for other purposes under chapter 61 and section 3406, and have been included in the definition of the term *paid and received outside the United States* under § 1.6049–4(f)(16) (as discussed in section III.A of this preamble).

*IV. Other Changes With Respect to Backup Withholding Under Section 3406, Claims for Refund or Credit Under Section 6402, and Repeal of Portfolio Interest Treatment for Certain Obligations Under Section 871*

A. Coordination of Withholding Under § 31.3406(g)–1(e) With Chapter 4

Section 31.3406(g)–1 of the final regulations requires backup withholding with respect to certain reportable payments and provides an exception to backup withholding for such payments if they are made outside the United States to payees other than known U.S. persons or are payments to which withholding under chapter 3 has been applied. The final regulations also provide the same exception for payments to which the documentary evidence rule under § 1.6049–5(c) applies. These temporary regulations modify this exception (consistent with the changes made by these temporary regulations in §§ 1.6049–4 and 1.6049–5) so that it applies to a reportable payment that is paid and received outside the United States (as defined in § 1.6049–4(f)(16)) with respect to an offshore obligation (or a sale effected outside the United States).

In addition, these temporary regulations do not require backup withholding under section 3406 for certain payments with respect to which withholding under chapter 4 has been applied, regardless of whether the payee is a known U.S. person to prevent duplicative withholding with respect to the same payment.

B. Claims for Credit or Refund of Chapter 4 Withholding Under § 301.6402–3(e)

Section 6402 provides authority for the Secretary to make a credit or refund of an overpayment, and § 301.6402–3(e) of the final regulations provides the general requirements applicable to a claim for credit or refund of income tax made by a nonresident alien individual or foreign corporation, including a claim for amounts withheld under chapter 3. These temporary regulations modify

these rules to also apply to claims for refund or credit of amounts withheld under chapter 4. Similar to the request for a claim for refund or credit of an amount withheld under chapter 3, these temporary regulations provide that, for an overpayment of tax that resulted from withholding under chapter 4, a taxpayer must attach a copy of the Form 1042–S to the income tax return on which the claim for refund or credit is made. These temporary regulations eliminate, however, the requirement that the Form 1042–S include the TIN of the recipient in order for the claim to be valid. In addition, these temporary regulations clarify that the ''other statement'' that a taxpayer may attach in lieu of the Form 1042–S or Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' is a statement described in § 1.1446–3(d)(2). Finally, to coordinate claims under chapter 3 with those under chapter 4, which permits a participating FFI (including a reporting Model 2 FFI) to file a collective claim for refund for amounts withheld under chapter 4 with respect to its account holders, these temporary regulations provide that no claim for refund or credit may be made by a taxpayer for an amount repaid to the taxpayer pursuant to a collective refund claim filed by a participating FFI (including a reporting Model 2 FFI).

C. Repeal of Portfolio Interest Treatment for Foreign-Targeted Obligations Under § 1.871–14

Section 1.871–14 of the final regulations provides procedures for interest to qualify as portfolio interest under section 871(h)(2) or section 881(c). Section 502 of the HIRE Act, among other things, repealed section 163(f)(2)(B) with respect to obligations that are not issued in registered form. In response to the elimination of the foreign targeting rules by the HIRE Act, the IRS and Treasury Department issued Notice 2012–20, 2012–13 IRB 574 (March 26, 2012), which clarified the circumstances in which an obligation held in a book entry system by a clearing organization qualifies as an obligation in registered form and postponed until January 1, 2014, the elimination of the treatment of interest paid with respect to foreign-targeted registered obligations under § 1.871–14(e) as portfolio interest. Notice 2012–20 was amplified by Notice 2013–43, 2013–31 IRB 113 (July 29, 2013), which further postpones the elimination of the allowance for foreign-targeted registered obligations to apply to obligations issued before July 1, 2014. In response to comments, these temporary regulations provide an additional transitional extension until January 1, 2016, for the portfolio interest treatment of foreign-targeted registered obligations issued before that date in order to afford the time for foreign institutions to become qualified intermediaries in accordance with the forthcoming amendment of the qualified intermediary agreement and governing revenue procedure. Because of the continuing applicability of Notice 2012–20 (as amplified), these temporary regulations do not revise the requirements for determining whether an obligation is in registered form under § 5f.103–1(c). Instead, these temporary regulations include updated citations to sections 871(h)(2)(A) and (B) and 881(c)(2)(A) and (B) for the applicable sunset dates of obligations issued in non-registered form and of foreign-targeted registered obligations and include provisions to coordinate the exception from withholding for portfolio interest with the withholding requirements of chapter 4. In addition, § 1.871–14(c)(2) of the final regulations describes cases in which a U.S. person will be considered to have received a statement that meets the requirements of section 871(h)(5), which permits receipt of the statement by an authorized foreign agent (as described in § 1.1441–7(c)(2)) of a U.S. person. To further coordinate with revisions made by these temporary regulations to § 1.1441–7(c)(2), including the removal of the allowance for the use of an authorized foreign agent, these temporary regulations update references in § 1.871–14(c)(2) to remove the term *authorized foreign agent* and replace it with the term *authorized agent.*

The IRS and the Treasury Department intend to issue additional amendments to this and other regulatory provisions affected by section 502 of the HIRE Act (for example, the definition of an obligation in registered form) in separate published guidance and seek comments on the requirements that should apply under such amendments. Until such guidance is issued, taxpayers may continue to rely on Notice 2012–20 to treat an obligation as an obligation in registered form.

D. Removal of Example in § 1.6045–1(g)(4)

In general, § 1.6045–1(c)(2) of the final regulations requires a broker to make a return of information for each sale by a customer of the broker if the broker effects the sale in the ordinary course of a trade or business in which the broker stands ready to effect sales to be made by others. Exceptions to the reporting requirement of § 1.6045–1(c)(2) of the final regulations include sales effected for exempt recipients within the meaning of § 1.6045–1(c)(3) and sales made by a broker with respect to a customer who is considered to be an exempt foreign person under § 1.6045–1(g). *Example 8* in § 1.6045–1(g)(4) of the final regulations deals with the sale of an obligation payable 183 days or less from the date of original issue. These temporary regulations remove *Example 8* from the final regulations because the sale of a short-term obligation is generally no longer subject to reporting under section 6045, and former *Example 9* is renumbered to be *Example 8.*

**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 13653. 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.

The collection of information in these temporary regulations is contained in a number of provisions including §§ 1.1441–1, 1.1441–3, 1.1441–4, and 1.1441–5. The IRS intends that the information collection requirements of these temporary regulations will be implemented through use of the W–8 series of forms, Form W–9, Form 1042, Form 1042–S, the 1099 series of forms, and Form 8966, as well as certain income tax returns (for example, Forms 1040, 1040–NR, and 1120F) and Form 843 relating to refunds. As a result, for purposes of the Paperwork Reduction Act (44 U.S.C. 3507), the reporting burden associated with the collection of information in these temporary regulations will be reflected in the information collection burden and OMB control number of the appropriate IRS form.

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 OMB control number.

Books and 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.

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, requires that an agency prepare a costs and benefits analysis and a budgetary impact statement before

promulgating a rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Reform Act requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The Treasury Department and the IRS have determined that there is no federal mandate imposed by this rulemaking that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Drafting Information**

The principal authors of these regulations are John Sweeney, Joshua Rabon, Subin Seth, and Nancy Lee of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 31*

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

*26 CFR Part 301*

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

**Amendments to the Regulations**

Accordingly, 26 CFR parts 1, 31, and 301 are 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 1.871–14 is amended by:

■ 1. Revising paragraph (b).

■ 2. In the last sentence of paragraph (c)(1)(i)(B), removing the first instance of the word ''in''.

■ 3. Revising paragraphs (c)(2), (c)(3)(i), (c)(4), and (e)(1).

■ 4. Adding paragraph (i)(3).

The additions and revisions read as follows:

**§ 1.871–14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.**

* * * * *

(b) [Reserved]. For further guidance, see § 1.871–14T(b).

(c) * * *

(2) through (3)(i) [Reserved]. For further guidance, see § 1.871–14T(c)(2) through (c)(3)(i).

* * * * *

(4) [Reserved]. For further guidance, see § 1.871–14T(c)(4).

* * * * *

(e)(1) [Reserved]. For further guidance, see § 1.871–14T(e)(1).

* * * * *

(i) * * *

(3) [Reserved]. For further guidance, see § 1.871–14T(i)(3).

■ **Par. 3.** Section 1.871–14T is added to read as follows:

**§ 1.871–14T Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments (temporary).**

(a) [Reserved]. For further guidance, see § 1.871–14(a).

(b) *Rules concerning obligations in bearer form before March 19, 2012*—(1) *In general.* Interest (including original issue discount) with respect to an obligation in bearer form is portfolio interest within the meaning of section 871(h)(2)(A) or 881(c)(2)(A) only if it is paid with respect to an obligation issued after July 18, 1984, and issued before March 19, 2012, that is described in section 163(f)(2)(B), as in effect prior to the amendment by section 502 of the Hiring Incentives to Restore Employment Act of 2010 (HIRE Act), Public Law 111–147, and the regulations under that section and an exception under section 871(h) or 881(c) does not apply. Any obligation that is not in registered form as defined in paragraph (c)(1)(i) of this section is an obligation in bearer form.

(2) *Coordination with withholding and reporting rules.* For an exemption from withholding under section 1441 with respect to obligations described in this paragraph (b), see § 1.1441–1(b)(4)(i). See § 1.1471–2 for rules relating to withholding under chapter 4 of the Code that may apply to withholdable payments (as defined in § 1.1471–4(b)(145)) made on or after July 1, 2014, with respect to an agreement or instrument that is not treated as an obligation outstanding before March 19, 2012. For purposes of the preceding sentence, the terms *obligation* and *outstanding* are described in § 1.1471–2(b)). See also § 1.1471–4(d)(6) for the reporting requirements of participating foreign financial institutions (as defined in § 1.1471–1(b)(91)) with respect to accounts held by recalcitrant account holders (as defined in § 1.1471–5(g)). For rules relating to an exemption from Form 1099 reporting and backup withholding under section 3406, see section 6049 and § 1.6049–5(b)(8) for the payment of interest and § 1.6045–1(g)(1)(ii) for the redemption, retirement, or sale of an obligation in bearer form.

(c)(1) through (c)(1)(ii)(D) [Reserved]. For further guidance, see § 1.1871–14(c)(1) introductory text through (c)(1)(ii)(D).

(2) *Required statement.* For purposes of paragraph (c)(1)(ii)(C) of this section, a U.S. person will be considered to have received a statement that meets the requirements of section 871(h)(5) if either it complies with one of the procedures described in this paragraph (c)(2) and does not have actual knowledge or reason to know that the beneficial owner is a U.S. person or it complies with the procedures described in paragraph (d) or (e) of this section (to the extent applicable).

(i) The U.S. person (or its authorized agent described in § 1.1441–7(c)(2)) can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii). See § 1.1441–1(b)(2)(vii) for rules regarding reliable association with documentation.

(ii) The U.S. person (or its authorized agent described in § 1.1441–7(c)(2)) can reliably associate the payment with a withholding certificate described in § 1.1441–5(c)(2)(iv) from a person claiming to be a withholding foreign partnership or § 1.1441–5(e)(v) for a person claiming to be a withholding foreign trust.

(iii) The U.S. person (or its authorized agent described in § 1.1441–7(c)(2)) can reliably associate the payment with a withholding certificate described in § 1.1441–1(e)(3)(ii) from a person representing to be a qualified intermediary that has assumed primary

withholding responsibility for the payment in accordance with § 1.1441–1(e)(5)(iv) or a qualified intermediary that has provided a withholding statement that meets the requirements of § 1.1441–1(e)(5)(v)(C) or that includes the payment in a withholding rate pool for payments excepted from withholding.

(iv) The U.S. person (or its authorized agent described in § 1.1441–7(c)(2)) can reliably associate the payment with a withholding certificate described in § 1.1441–1(e)(3)(v) from a person claiming to be a U.S. branch of a foreign bank or of a foreign insurance company that is described in § 1.1441–1(b)(2)(iv)(A) or a U.S. branch designated in accordance with § 1.1441–1(b)(2)(iv)(E).

(3) *Time for providing certificate or documentary evidence*—(i) *General rule.* Interest on a registered obligation shall qualify as portfolio interest if the withholding certificate or documentary evidence that must be provided is furnished before expiration of the beneficial owner's period of limitation for claiming a refund of tax with respect to such interest. See, however, § 1.1441–1(b)(7) for consequences to a withholding agent that makes a payment without withholding even though it cannot reliably associate the payment with the documentation prior to the payment. If a withholding agent withholds an amount under chapter 3 of the Code because it cannot reliably associate the payment with the documentation for the beneficial owner on the date of payment, the beneficial owner may nevertheless claim the benefit of an exemption from tax under this section by claiming a refund or credit for the amount withheld based upon the procedures described in §§ 1.1464–1 and 301.6402–3(e) of this chapter. See § 1.1474–5 and § 301.6402–3(e) for the allowance and requirements for a refund with respect to an amount (including a payment of interest) that was withheld upon under chapter 4 of the Code. In the alternative, adjustments to any amount of overwithheld tax may be made under the procedures described in § 1.1461–2(a) for a payment withheld upon under chapter 3 of the Code or in § 1.1474–2 for a payment withheld upon under chapter 4 of the Code.

(ii) [Reserved]. For further guidance, see § 1.871–14(c)(3)(ii).

(4) *Coordination with withholding and reporting rules.* For an exemption from withholding under section 1441 with respect to obligations described in this paragraph (c)(4), see § 1.1441–1(b)(4)(i). For rules applicable to withholding certificates, see § 1.1441–1(e)(4). For rules regarding documentary evidence, see § 1.6049–5(c)(1). For application of presumptions when the U.S. person cannot reliably associate the payment with documentation, see § 1.1441–1(b)(3). For standards of knowledge applicable to withholding agents, see § 1.1441–7(b). For rules relating to reporting on Forms 1042 and 1042–S, see § 1.1461–1(b) and (c). For rules relating to an exemption from Form 1099 reporting and backup withholding under section 3406, see section 6049 and § 1.6049–5(b)(8) for the payment of interest and § 1.6045–1(g)(1)(i) for the redemption, retirement, or sale of an obligation in registered form. For rules relating to withholding under sections 1471 and 1472 that may apply notwithstanding the exemption for payments of portfolio interest under section 1441, see §§ 1.1471–2(a), 1.1471–4(b), and 1.1472–1(b).

(d) [Reserved]. For further guidance, see § 1.871–14(d) introductory text through (d)(3)(iv).

(e) *Foreign-targeted registered obligations*—(1) *General rule.* The statement described in paragraph (c)(1)(ii) of this section is not required with respect to interest paid on an obligation issued before January 1, 2016, that is a registered obligation targeting foreign markets in accordance with the provisions of paragraph (e)(2) of this section if the interest is paid by a U.S. person, a withholding foreign partnership, or a U.S. branch described in § 1.1441–1(b)(2)(iv)(A) or (E) to a registered owner at an address outside the United States, provided that the registered owner is a financial institution described in section 871(h)(5)(B). In that case, the U.S. person otherwise required to deduct and withhold tax may treat the interest as portfolio interest if it does not have actual knowledge that the beneficial owner is a United States person and if it receives the certificate described in paragraph (e)(3)(i) of this section from a financial institution or member of a clearing organization, which member is the beneficial owner of the obligation, or the documentary evidence or statement described in paragraph (e)(3)(ii) of this section from the beneficial owner, in accordance with the procedures described in paragraph (e)(4) of this section.

(2) through (i)(2) [Reserved]. For further guidance, see § 1.871–14(e)(2) through (i)(2).

(3) *Effective/applicability date.* The rules of paragraphs (b)(2), (c)(3)(i), and (c)(4) of this section apply to payments of interest made after June 30, 2014. (For payments of interest made before July 1, 2014, see paragraphs (b)(2), (c)(3)(i), and (c)(4) of this section as in effect prior to February 28, 2017.)

(j) *Expiration date.* The applicability of this section expires on or before February 28, 2017.

■ **Par. 4.** Section 1.1441–1 is amended by:

■ 1. Revising paragraph (a).

■ 2. Revising paragraphs (b)(1), (b)(2)(i), (b)(2)(iii)(A), (b)(2)(iv)(A), (b)(2)(iv)(B)(*2*) and (b)(2)(iv)(B)(*3*).

■ 3. Adding paragraph (b)(2)(iv)(B)(*4*).

■ 4. Revising paragraphs (b)(2)(iv)(C), (b)(2)(iv)(E), (b)(2)(vi), (b)(2)(vii), (b)(3)(i), (b)(3)(ii), (b)(3)(iii) introductory text, and (b)(3)(iii)(A).

■ 5. Revising paragraphs (b)(3)(iii)(D), (b)(3)(iv) introductory text, (B)(3)(iv)(A), (b)(3)(v)(B), (b)(3)(vi), (b)(3)(vii), (b)(3)(ix)(A), (b)(3)(x), (b)(4) introductory text, (b)(4)(i).

■ 6. Adding paragraph (b)(5)(ix).

■ 7. Revising paragraphs (b)(6), (b)(7)(i) introductory text, (b)(7)(i)(A), (b)(7)(i)(B), (b)(7)(i)(C), (b)(7)(ii), and (b)(7)(iv).

■ 8. Adding paragraph (b)(7)(v).

■ 9. Revising paragraphs (c) introductory text, (c)(2), (c)(5), (c)(10), (c)(12), (c)(16), (c)(17), (c)(25), (c)(28), (c)(29), and (c)(30).

■ 10. Adding paragraphs (c)(31) through (56).

■ 11. Revising paragraph (d)(4).

■ 12. Revising paragraphs (e)(1)(ii)(A)(*2*), (e)(1)(ii)(A)(*3*), (e)(2)(ii), (e)(3)(ii) introductory text, (e)(3)(ii)(A), (e)(3)(ii)(C), and (e)(3)(ii)(D).

■ 13. Adding paragraph (e)(3)(ii)(E).

■ 14. Revising paragraphs (e)(3)(iii) introductory text, (e)(3)(iii)(A), (e)(3)(iii)(C), and (e)(3)(iii)(D).

■ 15. Adding paragraph (e)(3)(iii)(E).

■ 16. Revising paragraphs (e)(3)(iv)(A), (e)(3)(iv)(B), and (e)(3)(iv)(C).

■ 17. Revising paragraphs (e)(3)(iv)(D)(*1*) through (*6*), (e)(3)(iv)(E), and (e)(3)(v).

■ 18. Revising paragraphs (e)(4) introductory text, (e)(4)(i), (e)(4)(ii)(A), (e)(4)(ii)(B)(*1*) through (*6*), and (e)(4)(ii)(B)(*8*), and adding paragraphs (e)(4)(ii)(B)(*9*) through (*12*).

■ 19. Revising paragraphs (e)(4)(ii)(C) and (D).

■ 20. Revising paragraphs (e)(4)(iii), (e)(4)(iv)(A), (e)(4)(iv)(C), (e)(4)(v), (e)(4)(vi), (e)(4)(vii) introductory text, (e)(4)(vii)(A), (e)(4)(vii)(F), and (e)(4)(vii)(H).

■ 21. Adding paragraph (e)(4)(vii)(I).

■ 22. Revising paragraph (e)(4)(viii)(B) and adding paragraph (e)(4)(viii)(C).

■ 23. Revising paragraphs (e)(4)(ix) and (e)(5).

■ 24. Adding paragraph (f)(3).

The revisions and additions read as follows:

**§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.**

(a) [Reserved]. For further guidance, see § 1.1441–1T(a).

(b) * * *

(1) [Reserved]. For further guidance, see § 1.1441–1T(b)(1).

(2) * * *

(i) [Reserved]. For further guidance, see § 1.1441–1T(b)(2)(i).

* * * * *

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1441–1T(b)(2)(iii)(A).

* * * * *

(iv) * * *

(A) [Reserved]. For further guidance, see § 1.1441–1T(b)(2)(iv)(A).

(B) * * *

(*2*) through (*4*) [Reserved]. For further guidance, see § 1.1441–1T(b)(2)(iv)(B)(*2*) through (b)(2)(iv)(B)(*4*).

(C) [Reserved]. For further guidance, see § 1.1441–1T(b)(2)(iv)(C).

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(E) [Reserved]. For further guidance, see § 1.1441–1T(b)(2)(iv)(E).

* * * * *

(vi) [Reserved]. For further guidance, see § 1.1441–1T(b)(2)(vi).

(vii) * * *

(B) * * *

(b)(2)(vii)(B)(*1*) through (b)(2)(vii)(E)(*2*) [Reserved]. For further guidance, see § 1.1441–1T(b)(2)(vii)(B)(*1*) through (b)(2)(vii)(E)(*2*).

(F) [Reserved]. For further guidance, see § 1.1441–1T(b)(2)(vii(F).

(3) * * *

(i) [Reserved]. For further guidance, see § 1.1441–1T(b)(3)(i).

(ii) * * *

(A) through (C) [Reserved]. For further guidance, see § 1.1441–1T(b)(3)(ii)(A) trough (b)(3)(ii)(C).

(iii) [Reserved]. For further guidance, see § 1.1441–1T(b)(3)(iii).

(A) [Reserved]. For further guidance, see § 1.1441–1T(b)(3)(iii)(A).

(*1*) [Reserved]. For further guidance, see § 1.1441–1T(b)(3)(iii)(A)(*1*).

* * * * *

(*iii*) [Reserved]. For further guidance, see § 1.1441–1T(b)(3)(iii)(A)(*1*)(*iii*).

(*iv*) [Reserved]. For further guidance, see § 1.1441–1T(b)(3)(iii)(A)(*1*)(*iv*).

(*v*) [Reserved]. For further guidance, see § 1.1441–1T(b)(3)(iii)(A)(*1*)(*v*).

(*2*) [Reserved]. For further guidance, see § 1.1441–1T(b)(3)(iii)(A)(*2*).

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(D) [Reserved]. For further guidance, see § 1.1441–1T(b)(3)(iii)(D).

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(iv) [Reserved]. For further guidance, see § 1.1441–1T(b)(3)(iv).

(A) [Reserved]. For further guidance, see § 1.1441–1T(b)(3)(iv)(A).

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(v) * * *

(B) [Reserved]. For further guidance, see § 1.1441–1T(b)(3)(v)(B).

(vi) [Reserved]. For further guidance, see § 1.1441–1T(b)(3)(vi).

(vii) [Reserved]. For further guidance, see § 1.1441–1T(b)(3)(vii).

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(ix) * * *

(A) [Reserved]. For further guidance, see § 1.1441–1T(b)(3)(ix)(A).

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(x) [Reserved]. For further guidance, see § 1.1441–1T(b)(3)(x).

(4) [Reserved]. For further guidance, see § 1.1441–1T(b)(4).

(i) [Reserved]. For further guidance, see § 1.1441–1T(b)(4)(i).

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(5) * * *

(ix) [Reserved]. For further guidance, see § 1.1441–1T(b)(5)(ix).

(6) [Reserved]. For further guidance, see § 1.1441–1T(b)(6).

(7) * * *

(i) [Reserved]. For further guidance, see § 1.1441–1T(b)(7)(i).

(A) through (C) [Reserved]. For further guidance, see § 1.1441–1T(b)(7)(i)(A) through (b)(7)(i)(C).

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(ii) [Reserved]. For further guidance, see § 1.1441–1T(b)(7)(ii).

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(iv) [Reserved]. For further guidance, see § 1.1441–1T(b)(7)(iv).

(v) [Reserved]. For further guidance, see § 1.1441–1T(b)(7)(v).

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(c) [Reserved]. For further guidance, see § 1.1441–1T(c).

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(2) [Reserved]. For further guidance, see § 1.1441–1T(c)(2).

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(5) [Reserved]. For further guidance, see § 1.1441–1T(c)(5).

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(10) [Reserved]. For further guidance, see § 1.1441–1T(c)(10).

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(12) [Reserved]. For further guidance, see § 1.1441–1T(c)(12).

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(c)(16) through (c)(17) [Reserved]. For further guidance, see § 1.1441–1T(c)(16) through (c)(17).

* * * * *

(25) [Reserved]. For further guidance, see § 1.1441–1T(c)(25).

* * * * *

(c)(28) through (c)(56) [Reserved]. For further guidance, see § 1.1441–1T(c)(28) through (c)(56).

(d) * * *

(4) [Reserved]. For further guidance, see § 1.1441–1T(d)(4).

(e) * * *

(1) * * *

(ii) * * *

(A) * * *

(*2*) through (e)(1)(ii)(A)(*3*) [Reserved]. For further guidance, see § 1.1441–1T(e)(1)(ii)(A)(*2*) through (e)(1)(ii)(A)(*3*).

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(2) * * *

(ii) [Reserved]. For further guidance, see § 1.1441–1T(e)(2)(ii).

(3) * * *

(ii) [Reserved]. For further guidance, see § 1.1441–1T(e)(3)(ii).

(A) [Reserved]. For further guidance, see § 1.1441–1T(e)(3)(ii)(A).

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(C) through (E) [Reserved]. For further guidance, see § 1.1441–1T(e)(3)(ii)(C) through (e)(3)(ii)(E).

(iii) [Reserved]. For further guidance, see § 1.1441–1T(e)(3)(iii).

(A) [Reserved]. For further guidance, see § 1.1441–1T(e)(3)(iii)(A).

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(C) through (E) [Reserved]. For further guidance, see § 1.1441–1T(e)(3)(iii)(C) through (e)(3)(iii)(E).

(iv) * * *

(A) [Reserved]. For further guidance, see § 1.1441–1T(e)(3)(iv)(A) through (C).

(D) * * *

(*1*) [Reserved]. For further guidance, see § 1.1441–1T(e)(3)(iv)(D)(*1*).

(*2*) [Reserved]. For further guidance, see § 1.1441–1T(e)(3)(iv)(D)(*2*).

(*3*) [Reserved]. For further guidance, see § 1.1441–1T(e)(3)(iv)(D)(*3*).

(*4*) [Reserved]. For further guidance, see § 1.1441–1T(e)(3)(iv)(D)(*4*).

(*5*) [Reserved]. For further guidance, see § 1.1441–1T(e)(3)(iv)(D)(*5*).

(*6*) [Reserved]. For further guidance, see § 1.1441–1T(e)(3)(iv)(D)(*6*).

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(E) [Reserved]. For further guidance, see § 1.1441–1T(e)(3)(iv)(E).

(v) [Reserved]. For further guidance, see § 1.1441–1T(e)(3)(v).

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(4) [Reserved]. For further guidance, see § 1.1441–1T(e)(4).

(i) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(i).

(ii) * * *

(A) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(ii)(A).

(B) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(ii)(B).

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(*8*) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(ii)(B)(*8*).

(*9*) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(ii)(B)(*9*).

(*10*) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(ii)(B)(*10*).

(*11*) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(ii)(B)(*11*).

(*12*) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(ii)(B)(*12*).

(C) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(ii)(C).

(D) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(ii)(D).

(iii) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(iii).

(iv) * * *

(A) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(iv)(A).

* * * * *

(C) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(iv)(C).

(v) through (vii) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(v) through (e)(4)(vii).

(A) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(vii)(A).

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(F) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(vii)(F).

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(H) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(vii)(H).

(I) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(vii)(I).

(viii) * * *

(B) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(viii)(B).

(C) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(viii)(C).

(ix) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(ix).

(5) [Reserved]. For further guidance, see § 1.1441–1T(e)(5).

(f) * * *

(3) [Reserved]. For further guidance, see § 1.1441–1T(f)(3).

■ **Par. 5.** Section 1.1441–1T is added to read as follows:

**§ 1.1441–1T Requirement for the deduction and withholding of tax on payments to foreign persons (temporary).**

(a) *Purpose and scope.* This section, §§ 1.1441–2 through 1.1441–9, and 1.1443–1 provide rules for withholding under sections 1441, 1442, and 1443 when a payment is made to a foreign person. This section provides definitions of terms used in chapter 3 of the Internal Revenue Code (Code) and regulations thereunder. It prescribes procedures to determine whether an amount must be withheld under chapter 3 of the Code and documentation that a withholding agent may rely upon to determine the status of a payee or a beneficial owner as a U.S. person or as a foreign person and other relevant characteristics of the payee that may affect a withholding agent's obligation to withhold under chapter 3 of the Code and the regulations thereunder. Special procedures regarding payments to foreign persons that act as intermediaries are also provided. Section 1.1441–2 defines the income subject to withholding under section 1441, 1442, and 1443 and the regulations under these sections. Section 1.1441–3 provides rules regarding the amount subject to withholding and rules for coordinating withholding under this section with withholding under section 1445 and under chapter 4 of the Code. Section 1.1441–4 provides exemptions from withholding for, among other things, certain income effectively connected with the conduct of a trade or business in the United States, including certain compensation for the personal services of an individual. Section 1.1441–5 provides rules for withholding on payments made to flow-through entities and other similar arrangements. Section 1.1441–6 provides rules for claiming a reduced rate of withholding under an income tax treaty. Section 1.1441–7 defines the term withholding agent and provides due diligence rules governing a withholding agent's obligation to withhold. Section 1.1441–8 provides rules for relying on claims of exemption from withholding for payments to a foreign government, an international organization, a foreign central bank of issue, or the Bank for International Settlements. Sections 1.1441–9 and 1.1443–1 provide rules for relying on claims of exemption from withholding for payments to foreign tax exempt organizations and foreign private foundations.

(b) *General rules of withholding*—(1) *Requirement to withhold on payments to foreign persons.* A withholding agent must withhold 30-percent of any payment of an amount subject to withholding made to a payee that is a foreign person unless it can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a payee that is a U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding. However, a withholding agent making a payment to a foreign person need not withhold where the foreign person assumes responsibility for withholding on the payment under chapter 3 of the Code and the regulations thereunder as a qualified intermediary (see paragraph (e)(5) of this section), as a U.S. branch of a foreign person (see paragraph (b)(2)(iv) of this section), as a withholding foreign partnership (see § 1.1441–5(c)(2)(i)), or as a withholding foreign trust (see § 1.1441–5(e)(5)(v)). Withholding is also not required under this section when withholding under chapter 4 was applied to the payment. See § 1.1441–3(a)(2). This section (dealing with general rules of withholding and claims of foreign or U.S. status by a payee or a beneficial owner), and §§ 1.1441–4, 1.1441–5, 1.1441–6, 1.1441–8, 1.1441–9, and 1.1443–1 provide rules for determining whether documentation is required as a condition for reducing the rate of withholding on a payment to a foreign beneficial owner or to a U.S. payee and if so, the nature of the documentation upon which a withholding agent may rely in order to reduce such rate. Paragraph (b)(2) of this section prescribes the rules for determining who the payee is, the extent to which a payment is treated as made to a foreign payee, and reliable association of a payment with documentation. Paragraph (b)(3) of this section describes the applicable presumptions for determining the payee's status as U.S. or foreign and the payee's other characteristics (*i.e.,* as an owner or intermediary, as an individual, partnership, corporation, etc.). Paragraph (b)(4) of this section lists the types of payments for which the 30-percent withholding rate may be reduced. Because the treatment of a payee as a U.S. or a foreign person also has consequences for purposes of making an information return under the provisions of chapter 61 of the Code and for withholding under other provisions of the Code, such as sections 3402, 3405 or 3406, paragraph (b)(5) of this section lists applicable provisions outside chapter 3 of the Code that require certain payees to establish their foreign status (for example, in order to be exempt from information reporting). Paragraph (b)(6) of this section describes the withholding obligations of a foreign person making a payment that it has received in its capacity as an intermediary. Paragraph (b)(7) of this section describes the liability of a withholding agent that fails to withhold at the required 30-percent rate in the absence of documentation. Paragraph (b)(8) of this section deals with adjustments and refunds in the case of overwithholding. Paragraph (b)(9) of this section deals with determining the status of the payee when the payment is jointly owned. See paragraph (c)(6) of this section for a definition of beneficial owner. See § 1.1441–7(a) for a definition of withholding agent. See § 1.1441–2(a) for the determination of an amount subject to withholding. See § 1.1441–2(e) for the definition of a payment and when it is considered made. Except as

otherwise provided, the provisions of this section apply only for purposes of determining a withholding agent's obligation to withhold under chapter 3 of the Code and the regulations thereunder.

(2) *Determination of payee and payee's status*—(i) *In general.* Except as otherwise provided in this paragraph (b)(2) and § 1.1441–5(c)(1) and (e)(3), a payee is the person to whom a payment is made, regardless of whether such person is the beneficial owner of the amount (as defined in paragraph (c)(6) of this section). A foreign payee is a payee who is a foreign person. A U.S. payee is a payee who is a U.S. person. Generally, the determination by a withholding agent of the U.S. or foreign status of a payee and of its other relevant characteristics (*e.g.,* as a beneficial owner or intermediary, or as an individual, corporation, or flow-through entity) is made on the basis of a withholding certificate that is a Form W–8 or a Form 8233 (indicating foreign status of the payee or beneficial owner) or a Form W–9 (indicating U.S. status of the payee). The provisions of this paragraph (b)(2), paragraph (b)(3) of this section, and § 1.1441–5 (c), (d), and (e) dealing with determinations of payee and applicable presumptions in the absence of documentation, apply only to payments of amounts subject to withholding under chapter 3 of the Code (within the meaning of § 1.1441–2(a)). However, for a payment that is both an amount subject to withholding under chapter 3 and a withholdable payment under chapter 4, first apply the rules of § 1.1471–3 for determining the payee of a withholdable payment under chapter 4 and applicable presumptions in the absence of documentation applicable to such payments. See also § 1.6049–5(d) for payments of amounts that are not subject to withholding under chapter 3 of the Code (or the regulations thereunder) but that may be reportable under provisions of chapter 61 of the Code (and the regulations thereunder). See paragraph (d) of this section for documentation upon which the withholding agent may rely in order to treat the payee or beneficial owner as a U.S. person. See paragraph (e) of this section for documentation upon which the withholding agent may rely in order to treat the payee or beneficial owner as a foreign person. For applicable presumptions of status in the absence of documentation, see paragraph (b)(3) of this section and § 1.1441–5(d). For definitions of a foreign person and U.S. person, see paragraph (c)(2) of this section.

(ii) [Reserved]. For further guidance, see § 1.1441–1(b)(2)(ii).

(iii) *Payments to wholly-owned entities*—(A) *Foreign-owned domestic entity.* A payment to a wholly-owned domestic entity that is disregarded for federal tax purposes under § 301.7701–2(c)(2) of this chapter as an entity separate from its owner and whose single owner is a foreign person shall be treated as a payment to the owner of the entity, subject to the provisions of paragraph (b)(2)(iv) of this section. For purposes of this paragraph (b)(2)(iii)(A), a domestic entity means a person that would be treated as a U.S. person if it had an election in effect under § 301.7701–3(c)(1)(i) of this chapter to be treated as a corporation. For example, a limited liability company, A, organized under the laws of the State of Delaware, opens an account at a U.S. bank. Upon opening of the account, the bank requests A to furnish a Form W–9 as required under section 6049(a) and the regulations under that section. A does not have an election in effect under § 301.7701–3(c)(1)(i) of this chapter and, therefore, is not treated as an organization taxable as a corporation, including for purposes of the exempt recipient provisions in § 1.6049–4(c)(1). If A has a single owner and the owner is a foreign person (as defined in paragraph (c)(2) of this section), then A may not furnish a Form W–9 because it may not represent that it is a U.S. person for purposes of the provisions of chapters 3, 4, and 61 of the Code, and section 3406. Therefore, A must furnish a Form W–8 with the name, address, and taxpayer identifying number (TIN) (if required) of the foreign person who is the single owner in the same manner as if the account were opened directly by the foreign single owner. See §§ 1.894–1T(d) and 1.1441–6(b)(2) for special rules where the entity's owner is claiming a reduced rate of withholding under an income tax treaty.

(B) [Reserved]. For further guidance, see § 1.1441–1(b)(2)(iii)(B).

(iv) *Payments to a U.S. branch of certain foreign banks or foreign insurance companies*—(A) *U.S. branch treated as a U.S. person in certain cases.* A payment to a U.S. branch of a foreign person is a payment to a foreign person. However, a U.S. branch of a participating FFI, registered deemed compliant FFI or NFFE that is described in this paragraph (b)(2)(iv)(A) may agree to be treated as a U.S. person for purposes of withholding on specified payments to the U.S. branch. See § 1.1471–3(d) for rules regarding how a withholding agent may determine the chapter 4 status of an entity. If a U.S. branch agrees to be treated as a U.S. person with a withholding agent, it is required to act as a U.S. person with respect to all other withholding agents, including when acting as an intermediary with respect to withholdable payments for purposes of chapter 4. See § 1.1471–3(a)(3)(iv). In such cases, the U.S. branch is treated as a payee that is a U.S. person. Notwithstanding the preceding sentence, a withholding agent making a payment to a U.S. branch treated as a U.S. person under this paragraph (b)(2)(iv)(A) shall not treat the branch as a U.S. person for purposes of reporting the payment made to the branch. Therefore, a payment to such U.S. branch shall be reported on Form 1042–S under § 1.1461–1(c) and § 1.1474–1(d)(1)(i) for a payment of U.S. source FDAP income that is a chapter 4 reportable amount as defined in § 1.1471–1(b)(16). Further, a U.S. branch that is treated as a U.S. person under this paragraph (b)(2)(iv)(A) shall not be treated as a U.S. person for purposes of the withholding certificate it provides to a withholding agent. Therefore, the U.S. branch must furnish a U.S. branch withholding certificate on a Form W–8IMY as provided in paragraph (e)(3)(v) of this section and not a Form W–9. An agreement to treat a U.S. branch as a U.S. person must be evidenced by a U.S. branch withholding certificate described in paragraph (e)(3)(v) of this section furnished by the U.S. branch to the withholding agent. A U.S. branch described in this paragraph (b)(2)(iv)(A) is any U.S. branch of a foreign bank subject to regulatory supervision by the Federal Reserve Board or a U.S. branch of a foreign insurance company required to file an annual statement on a form approved by the National Association of Insurance Commissioners with the Insurance Department of a State, a Territory, or the District of Columbia. In addition, a territory financial institution (including a territory financial institution that is a flow-through entity) will be treated as a U.S. branch for purposes of this paragraph (b)(2)(iv)(A). The Internal Revenue Service (IRS) may approve a list of U.S. branches that may qualify for treatment as a U.S. person under this paragraph (b)(2)(iv)(A) (see § 601.601(d)(2) of this chapter). See § 1.6049–5(c)(5)(vi) for the treatment of U.S. branches as U.S. payors if they make a payment that is subject to reporting under chapter 61 of the Internal Revenue Code. Also see § 1.6049–5(d)(1)(ii) for the treatment of U.S. branches as foreign payees under chapter 61 of the Internal Revenue Code.

(B) [Reserved]. For further guidance, see § 1.1441–1(b)(2)(iv)(B).

(*1*) [Reserved]. For further guidance, see § 1.1441–1(b)(2)(iv)(B)(*1*).

(*2*) As a payment directly to the persons whose names are on withholding certificates or other appropriate documentation forwarded by the U.S. branch to the withholding agent when no agreement is in effect to treat the U.S. branch as a U.S. person for such payment, to the extent the withholding agent can reliably associate the payment with such certificates or documentation;

(*3*) As a payment to a foreign person of income that is effectively connected with the conduct of a trade or business in the United States if the withholding agent has obtained an EIN for the branch and cannot reliably associate the payment with a withholding certificate from a U.S. branch (or any other certificate or other appropriate documentation from another person). See § 1.1441–4(a)(2)(ii); or

(*4*) As a payment to a foreign person of income that is not effectively connected with the conduct of a trade or business in the United States if the withholding agent has not obtained an EIN for the branch and cannot reliably associate the payment with a withholding certificate from the U.S. branch.

(C) *Consequences to the U.S. branch.* A U.S. branch that is treated as a U.S. person under paragraph (b)(2)(iv)(A) of this section shall be treated as a separate person for purposes of section 1441(a) and all other provisions of chapters 3 and 4 of the Internal Revenue Code and the regulations thereunder (other than for purposes of reporting the payment to the U.S. branch under § 1.1461–1(c) and § 1.1474–1(d)(1)(i) for a chapter 4 reportable amount) or for purposes of the documentation such a branch must furnish under paragraph (e)(3)(v) of this section) for any payment that it receives as such. Thus, the U.S. branch shall be responsible for withholding on the payment in accordance with the provisions under chapters 3 and 4 of the Internal Revenue Code and the regulations thereunder and other applicable withholding provisions of the Internal Revenue Code. For this purpose, it shall obtain and retain documentation from payees or beneficial owners of the payments that it receives as a U.S. person in the same manner as if it were a separate entity. For example, if a U.S. branch receives a payment on behalf of its home office and the home office is a qualified intermediary, the U.S. branch must obtain a qualified intermediary withholding certificate described in paragraph (e)(3)(ii) of this section from its home office. In addition, a U.S. branch that has not provided documentation to the withholding agent for a payment that is, in fact, not effectively connected income is a withholding agent with respect to that payment. See paragraph (b)(6) of this section and § 1.1441–4(a)(2)(ii).

(D) [Reserved]. For further guidance, see § 1.1441–1(b)(2)(iv)(D).

(E) *Payments to other U.S. branches.* Similar withholding procedures may apply to payments to U.S. branches that are not described in paragraph (b)(2)(iv)(A) of this section to the extent permitted by the IRS. Any such branch must establish that its situation is analogous to that of a U.S. branch described in paragraph (b)(2)(iv)(A) of this section. In the alternative, the branch must establish that the withholding and reporting requirements under chapter 3 of the Code and the regulations thereunder impose an undue administrative burden and that the collection of the tax imposed by section 871(a) or 881(a) on the foreign person (or its members in the case of a foreign partnership) will not be jeopardized by the exemption from withholding. Generally, an undue administrative burden will be found to exist in a case where the person entitled to the income, such as a foreign insurance company, receives from the withholding agent income on securities issued by a single corporation, some of which is, and some of which is not, effectively connected with conduct of a trade or business within the United States and the criteria for determining the effective connection are unduly difficult to apply because of the circumstances under which such securities are held. No exemption from withholding shall be granted under this paragraph (b)(2)(iv)(E) unless the person entitled to the income complies with such other requirements as may be imposed by the IRS and unless the IRS is satisfied that the collection of the tax on the income involved will not be jeopardized by the exemption from withholding. The IRS may prescribe such procedures as are necessary to make these determinations (see § 601.601(d)(2) of this chapter).

(v) [Reserved]. For further guidance, see § 1.1441–1(b)(2)(v).

(vi) *Other payees.* A payment to a person described in § 1.6049–4(c)(1)(ii) that the withholding agent would treat as a payment to a foreign person without obtaining documentation for purposes of information reporting under section 6049 (if the payment were interest) is treated as a payment to a foreign payee for purposes of chapter 3 of the Code and the regulations thereunder (or to a foreign beneficial owner to the extent provided in paragraph (e)(1)(ii)(A) (*6*) or (*7*) of this section). Further, a payment that the withholding agent can reliably associate with documentary evidence described in § 1.6049–5(c)(1) relating to the payee is treated as a payment to a foreign payee. See § 1.1441–5(b)(1) and (c)(1) for payee determinations for payments to partnerships. See § 1.1441–5(e) for payee determinations for payments to foreign trusts or foreign estates.

(vii) [Reserved]. For further guidance, see § 1.1441–1(b)(2)(vii) introductory text and (b)(2)(vii)(A).

(B) *Special rules applicable to a withholding certificate from a nonqualified intermediary or flow-through entity*—(*1*) In the case of a payment made to a nonqualified intermediary, a flow-through entity (as defined in paragraph (c)(23) of this section), or a U.S. branch described in paragraph (b)(2)(iv) of this section (other than a U.S. branch that is treated as a U.S. person), a withholding agent can reliably associate the payment with valid documentation only to the extent that, prior to the payment, the withholding agent can allocate the payment to a valid nonqualified intermediary, flow-through, or U.S. branch withholding certificate (and a withholding certificate provided by a nonparticipating FFI with respect to a portion of a payment that is a withholdable payment allocated to an exempt beneficial owner as described in § 1.1471–3(c)(3)(iii)(B)(*4*)); the withholding agent can reliably determine how much of the payment relates to valid documentation provided by a payee as determined under paragraph (c)(12) of this section (*i.e.,* a person that is not itself an intermediary, flow-through entity, or U.S. branch); and the withholding agent has sufficient information to report the payment on Form 1042–S or Form 1099, if reporting is required. See, however, paragraph (e)(3)(iv) of this section for when a nonqualified intermediary may report payees to the withholding agent in a chapter 4 withholding rate pool, in which case a withholding agent need not associate the portion of the payment attributable to such payees with documentation from each such payee. See also paragraph (e)(3)(iii) of this section for the requirements of a nonqualified intermediary withholding certificate, paragraph (e)(3)(v) of this section for the requirements of a U.S. branch certificate, and §§ 1.1441–5(c)(3)(iii) and (e)(5)(iii) for the requirements of a flow-through withholding certificate (including the requirements for a withholding certificate associated with a withholdable payment). Thus, a payment cannot be reliably associated with valid documentation provided by a

payee to the extent such documentation is lacking or unreliable, or to the extent that information required to allocate and report all or a portion of the payment to each payee is lacking or unreliable. If a withholding certificate attached to an intermediary, U.S. branch, or flow-through withholding certificate is another intermediary, U.S. branch, or flow-through withholding certificate, the rules of this paragraph (b)(2)(vii)(B) apply by treating the share of the payment allocable to the other intermediary, U.S. branch, or flow-through entity as if the payment were made directly to such other entity. See paragraph (e)(3)(iv)(D) of this section for rules permitting information allocating a payment to documentation to be received after the payment is made.

(*2*) The rules of paragraph (b)(2)(vii)(B)(*1*) of this section are illustrated by the following examples. Each example illustrates a payment that is not a withholdable payment and, therefore, neither the chapter 4 status of the NQI nor payee specific documentation is required to be provided to the withholding agent (and no withholding applies under chapter 4 on each payment). See paragraph (e)(3)(iv)(C) of this section for the requirements of a withholding statement provided by a nonqualified intermediary that receives a withholdable payment and for an example illustrating the requirements of an NQI providing a withholding statement to a withholding agent for a withholdable payment.

*Example 1.* WA, a withholding agent, makes a payment of U.S. source interest with respect to a grandfathered obligation as described in § 1.1471–2(b) (and thus the payment is not a withholdable payment) to NQI, an intermediary that is a nonqualified intermediary. NQI provides a valid intermediary withholding certificate under paragraph (e)(3)(iii) of this section. NQI does not, however, provide valid documentation from the persons on whose behalf it receives the interest payment, and, therefore, the interest payment cannot be reliably associated with valid documentation provided by a payee. WA must apply the presumption rules of paragraph (b)(3)(v) of this section to the payment.

*Example 2.* The facts are the same as in *Example 1,* except that NQI does attach valid beneficial owner withholding certificates (as defined in paragraph (e)(2)(i) of this section) from A, B, C, and D establishing their status as foreign persons. NQI does not, however, provide WA with any information allocating the payment among A, B, C, and D and, therefore, WA cannot determine the portion of the payment that relates to each beneficial owner withholding certificate. The interest payment cannot be reliably associated with valid documentation from a payee and WA must apply the presumption rules of paragraph (b)(3)(v) of this section to the payment. See, however, paragraph (e)(3)(iv)(D) of this section providing for alternative procedures that allow a nonqualified intermediary to provide allocation information after a payment is made.

*Example 3.* The facts are the same as in *Example 2,* except that NQI provides allocation information associated with its intermediary withholding certificate indicating that 25% of the interest payment is allocable to A and 25% to B. NQI does not provide any allocation information regarding the remaining 50% of the payment. WA may treat 25% of the payment as made to A and 25% as made to B. The remaining 50% of the payment cannot be reliably associated with valid documentation from a payee, however, since NQI did not provide information allocating the payment. Thus, the remaining 50% of the payment is subject to the presumption rules of paragraph (b)(3)(v) of this section.

*Example 4.* WA makes a payment of U.S. source interest to NQI1, an intermediary that is not a qualified intermediary. NQI1 provides WA with a valid nonqualified intermediary withholding certificate as well valid beneficial owner withholding certificates from A and B and a valid nonqualified intermediary withholding certificate from NQI2. NQI2 has provided valid beneficial owner documentation from C sufficient to establish C's status as a foreign person. Based on information provided by NQI1, WA can allocate 20% of the interest payment to A, and 20% to B. Based on information that NQI2 provided NQI1 and that NQI1 provides to WA, WA can allocate 60% of the payment to NQI2, but can only allocate one half of that payment (30%) to C. Therefore, WA cannot reliably associate the remainder of the payment made to NQI2 (30% of the total payment) with valid documentation and must apply the presumption rules of paragraph (b)(3)(v) of this section to that portion of the payment.

(C) *Special rules applicable to a withholding certificate provided by a qualified intermediary that does not assume primary withholding responsibility*—(*1*) If a payment is made to a qualified intermediary that does not assume primary withholding responsibility under chapter 3 of the Internal Revenue Code or primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406 of the Internal Revenue Code for the payment, a withholding agent can reliably associate the payment with valid documentation only to the extent that, prior to the payment, the withholding agent has received a valid qualified intermediary withholding certificate described in paragraph (e)(3)(ii) of this section and the withholding agent can reliably determine the portion of the payment that relates to a chapter 3 withholding rate pool, as defined in paragraph (c)(44) of this section, a chapter 4 withholding rate pool (including for a withholdable payment as described in paragraph (e)(5)(v)(C)(*2*) of this section) as defined in paragraph (c)(48) of this section, or a pool attributable to U.S. exempt recipients. In the case of a withholding rate pool attributable to a U.S. non-exempt recipient, a payment cannot be reliably associated with valid documentation unless, prior to the payment, the qualified intermediary has provided the U.S. person's Form W–9 (or, in the absence of the form, the name, address, and TIN, if available, of the U.S. person) and sufficient information for the withholding agent to report the payment on Form 1099. See, however, paragraph (e)(5)(v)(C)(*3*) of this section for alternative procedures for allocating payments among U.S. non-exempt recipients and paragraphs (e)(5)(iv)(C)(*1*) and (*2*) of this section for when a chapter 4 withholding rate pool of U.S. payees may be provided by a qualified intermediary instead of documentation with respect to each U.S. non-exempt recipient.

(*2*) The rules of this paragraph (b)(2)(vii)(C) are illustrated by the following examples:

*Example 1.* WA, a withholding agent, makes a payment of U.S. source dividends that is a withholdable payment to QI. QI provides WA with a valid qualified intermediary withholding certificate on which it indicates that it does not assume primary withholding responsibility under chapters 3 and 4 or primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406. QI does not provide any information allocating the dividend to withholding rate pools. WA cannot reliably associate the payment with valid payee documentation and therefore must apply the presumption rules applicable to a withholdable payment under § 1.1471–3(f)(5) to determine the status of the payee for purposes of chapter 4. See *Example 2* for an application of the presumption rules under § 1.1471–3(f).

*Example 2.* WA makes a payment of U.S. source dividends that is a withholdable payment to QI, which is an NFFE. QI has 5 customers: A, B, C, D, and E, all of whom are individuals except for C. QI has obtained valid documentation from A and B establishing their entitlement to a 15% rate of tax on U.S. source dividends under an income tax treaty. C is a U.S. person that is an exempt recipient as defined in paragraph (c)(20) of this section. D and E are U.S. non-exempt recipients who have provided Forms W–9 to QI. A, B, C, D, and E are each entitled to 20% of the dividend payment. QI provides WA with a valid qualified intermediary withholding certificate as described in paragraph (e)(3)(ii) of this section with which it associates the Forms W–9 from D and E. QI associates the following allocation information with its qualified intermediary withholding certificate: 40% of the payment is allocable to the 15% chapter 3 withholding

rate pool, and 20% is allocable to each of D and E. QI does not provide any allocation information regarding the remaining 20% of the payment. WA cannot reliably associate 20% of the payment with valid documentation and, therefore, must apply the presumption rules applicable to a withholdable payment. Because QI is receiving a withholdable payment as an intermediary, under paragraph (b)(3)(iii) of this section WA must apply the presumption rule of § 1.1471–3(f)(5) to treat the portion of the payment that cannot reliably be associated with valid documentation as made to a nonparticipating FFI account holder of QI. As a result, WA is required to withhold at a 30% rate of tax under chapter 4. See § 1.1441–3(a)(2) permitting WA to credit the amount withheld under chapter 4 against the liability for tax due on the payment under section 1441. The 40% of the payment allocable to the 15% withholding rate pool, and the portion of the payments allocable to D and E are payments that can be reliably associated with documentation.

(D) Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary withholding responsibility under chapter 3 of the Internal Revenue Code—(*1*) In the case of a payment made to a qualified intermediary that assumes primary withholding responsibility under chapter 3 of the Internal Revenue Code with respect to that payment (but does not assume primary Form 1099 reporting and backup withholding responsibility under chapter 61 of the Internal Code and section 3406), a withholding agent can reliably associate the payment with valid documentation only to the extent that, prior to the payment, the withholding agent has received a valid qualified intermediary withholding certificate and the withholding agent can reliably determine the portion of the payment that relates to the withholding rate pool for which the qualified intermediary assumes primary withholding responsibility and the portion of the payment attributable to withholding rate pools for each U.S. non-exempt recipient for whom the qualified intermediary has provided a Form W–9 (or, in absence of the form, the name, address, and TIN, if available, of the U.S. non-exempt recipient). See paragraph (e)(5)(iv) of this section (requiring a qualified intermediary assuming primary withholding responsibility under chapter 3 to assume primary withholding responsibility under chapter 4). See also paragraph (e)(5)(v)(C)(*3*) of this section for alternative allocation procedures for payments made to U.S. persons that are not exempt recipients and paragraphs (e)(5)(v)(C)(*1*) and (*2*) of this section for when a qualified intermediary may provide a chapter 4 withholding rate pool of U.S. payees to a withholding agent instead of documentation with respect to each U.S. non-exempt recipient.

(*2*) *Examples.* The following examples illustrate the rules of paragraph (b)(2)(vii)(D)(*1*) of this section. However, see the example in paragraph (e)(5)(v)(D) for rules for reporting of U.S. non-exempt recipients when a qualified intermediary that is an FFI reports a U.S. account under chapter 4.

*Example 1.* WA makes a payment of U.S. source interest that is a withholdable payment to QI, a qualified intermediary that is an NFFE. QI provides WA with a withholding certificate that indicates that QI will assume primary withholding responsibility under chapters 3 and 4 of the Internal Revenue Code with respect to the payment. In addition, QI attaches a Form W–9 from A, a U.S. non-exempt recipient, as defined in paragraph (c)(21) of this section, and provides the name, address, and TIN of B, a U.S. person that is also a non-exempt recipient but who has not provided a Form W–9. QI associates a withholding statement with its qualified intermediary withholding certificate indicating that 10% of the payment is attributable to A, and 10% to B, and that QI will assume primary withholding responsibility for chapters 3 and 4 with respect to the remaining 80% of the payment. WA can reliably associate the entire payment with valid documentation. Although under the presumption rule of paragraph (b)(3)(v) of this section, an undocumented person receiving U.S. source interest is generally presumed to be a foreign person, WA has actual knowledge that B is a U.S. non-exempt recipient and therefore must report the payment on Form 1099 and backup withhold on the interest payment under section 3406.

*Example 2.* The facts are the same as in *Example 1,* except that no information has been provided for the 20% of the payment that is allocable to A and B. Thus, QI has accepted withholding responsibility for 80% of the payment, but has provided no information for the remaining 20%. In this case, 20% of the payment cannot be reliably associated with valid documentation, and, under paragraph (b)(3)(iii) of this section, WA must apply the presumption rule of § 1.1471–3(f)(5) (because the payment is a withholdable payment). See the *Example 2* in paragraph (b)(2)(vii)(C)(*2*).

(E) *Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary Form 1099 reporting and backup withholding responsibility but not primary withholding under chapter 3*—(*1*) If a payment is made to a qualified intermediary that assumes primary Form 1099 reporting and backup withholding responsibility for the payment (but does not assume primary withholding responsibility under chapters 3 and 4 of the Internal Revenue Code), a withholding agent can reliably associate the payment with valid documentation only to the extent that, prior to the payment, the withholding agent has received a valid qualified intermediary withholding certificate and the withholding agent can reliably determine the portion of the payment that relates to a withholding rate pool or pools provided as part of the qualified intermediary's withholding statement and the portion of the payment for which the qualified intermediary assumes primary Form 1099 reporting and backup withholding responsibility. See paragraph (e)(5)(v)(C)(*2*) of this section for when a qualified intermediary may include a chapter 4 withholding rate pool on a withholding statement provided to a withholding agent with respect to a withholdable payment.

(*2*) The following example illustrates the rules of paragraph (b)(2)(vii)(D)(*1*) of this section:

*Example.* WA, a withholding agent, makes a payment of U.S. source dividends that is a withholdable payment to QI, a qualified intermediary and participating FFI. QI has provided WA with a valid qualified intermediary withholding certificate. QI states on its withholding statement accompanying the certificate that it assumes primary Form 1099 reporting and backup withholding responsibility but does not assume primary withholding responsibility under chapters 3 and 4 of the Internal Revenue Code. QI represents that 15% of the dividend is subject to a 30% rate of withholding, 75% of the dividend is subject to a 15% rate of withholding. QI represents that it assumes primary Form 1099 reporting and backup withholding for the remaining 10% of the payment, and therefore need not provide a chapter 4 withholding rate pool with respect to this portion of the payment or documentation with respect to U.S. non-exempt recipients. The entire payment can be reliably associated with valid documentation.

(F) *Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary withholding responsibility under chapter 3 and primary Form 1099 reporting and backup withholding responsibility and a withholding certificate provided by a withholding foreign partnership or a withholding foreign trust.* If a payment is made to a qualified intermediary that assumes both primary withholding responsibility under chapters 3 and 4 of the Internal Revenue Code and primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406 of the Internal Revenue Code for the payment, a withholding agent can reliably associate a payment with valid documentation provided that it receives a valid qualified intermediary withholding certificate as described in paragraph (e)(3)(ii) of this section. In the

case of a payment made to a withholding foreign partnership or a withholding foreign trust, the withholding agent can reliably associate the payment with valid documentation to the extent it can associate the payment with a valid withholding certificate described in § 1.1441–5(c)(2)(iv) or in § 1.1441–5(e)(5)(v) (respectively). See paragraph (e)(5)(iv) of this section, providing that a qualified intermediary assuming primary withholding responsibility under chapter 3 must also assume primary withholding responsibility under chapter 4 with respect to a withholdable payment.

(3) *Presumptions regarding payee's status in the absence of documentation*—(i) *General rules.* A withholding agent that cannot, prior to the payment, reliably associate (within the meaning of paragraph (b)(2)(vii) of this section) a payment of an amount subject to withholding (as described in § 1.1441–2(a)) with valid documentation may rely on the presumptions of this paragraph (b)(3) to determine the status of the person receiving the payment as a U.S. or a foreign person and the person's other relevant characteristics (for example, as an owner or intermediary, as an individual, trust, partnership, or corporation). The determination of withholding and reporting requirements applicable to payments to a person presumed to be a foreign person is governed only by the provisions of chapters 3 and 4 of the Code and the regulations thereunder. For the determination of withholding and reporting requirements applicable to payments to a person presumed to be a U.S. person, see chapter 61 of the Code, section 3402, 3405, or 3406, and, with respect to the reporting requirements of a participating FFI or registered deemed-compliant FFI, see chapter 4 of the Code and the related regulations. A presumption that a payee is a foreign payee is not a presumption that the payee is a foreign beneficial owner. Therefore, the provisions of this paragraph (b)(3) have no effect for purposes of reducing the withholding rate if associating the payment with documentation of foreign beneficial ownership is required as a condition for such rate reduction. See paragraph (b)(3)(ix) of this section for consequences to a withholding agent that fails to withhold in accordance with the presumptions set forth in this paragraph (b)(3) or if the withholding agent has actual knowledge or reason to know of facts that are contrary to the presumptions set forth in this paragraph (b)(3). See paragraph (b)(2)(vii) of this section for rules regarding the extent to which a withholding agent can reliably associate a payment with documentation.

(ii) *Presumptions of classification as individual, corporation, partnership, etc.*—(A) *In general.* A withholding agent that cannot reliably associate a payment with a valid withholding certificate or that has received valid documentary evidence under §§ 1.1441–1(e)(1)(ii)(A)(*2*) and 1.6049–5(c)(1) or (4) but cannot determine a payee's classification from the documentary evidence must apply the rules of this paragraph (b)(3)(ii) to determine the payee's classification as an individual, trust, estate, corporation, or partnership. The fact that a payee is presumed to have a certain status under the provisions of this paragraph (b)(3)(ii) does not mean that it is excused from furnishing documentation if documentation is otherwise required to obtain a reduced rate of withholding under this section. For example, if, for purposes of this paragraph (b)(3)(ii), a payee is presumed to be a tax-exempt organization based on § 1.6049–4(c)(1)(ii)(B), the withholding agent cannot rely on this presumption to reduce the rate of withholding on payments to such person (if such person is also presumed to be a foreign person under paragraph (b)(3)(iii)(A) of this section) because a reduction in the rate of withholding for payments to a foreign tax-exempt organization generally requires that a valid Form W–8 described in § 1.1441–9(b)(2) be furnished to the withholding agent.

(B) *No documentation provided.* If the withholding agent cannot reliably associate a payment with a valid withholding certificate or valid documentary evidence, it must presume that the payee is an individual, a trust, or an estate, if the payee appears to be such person (for example, based on the payee's name or information in the customer file). In the absence of reliable indications that the payee is an individual, trust, or an estate, the withholding agent must presume that the payee is a corporation or one of the persons enumerated under § 1.6049–4(c)(1)(ii)(B) through (Q) if it can be so treated under § 1.6049–4(c)(1)(ii)(A)(*1*) or any one of the paragraphs under § 1.6049–4(c)(1)(ii)(B) through (Q) without the need to furnish documentation. If the withholding agent cannot treat a payee as a person described in § 1.6049–4(c)(1)(ii)(A)(*1*) through (Q), then the payee shall be presumed to be a partnership. If such a partnership is presumed to be foreign, it is not the beneficial owner of the income paid to it. See paragraph (c)(6) of this section. If such a partnership is presumed to be domestic, it is a U.S. non-exempt recipient for purposes of chapter 61 of the Internal Revenue Code.

(C) *Documentary evidence furnished for offshore obligation.* If the withholding agent receives valid documentary evidence, as described in § 1.6049–5(c)(1) or (c)(4), with respect to an offshore obligation from an entity but the documentary evidence does not establish the entity's classification as a corporation, trust, estate, or partnership, the withholding agent may presume (in the absence of actual knowledge otherwise) that the entity is the type of person enumerated under § 1.6049–4 (c)(1)(ii)(B) through (Q) if it can be so treated under any one of those paragraphs without the need to furnish documentation. If the withholding agent cannot treat a payee as a person described in § 1.6049–4(c)(1)(ii)(B) through (Q), then the payee shall be presumed to be a corporation unless the withholding agent knows, or has reason to know, that the entity is not classified as a corporation for U.S. tax purposes. If a payee is, or is presumed to be, a corporation under this paragraph (b)(3)(ii)(C) and a foreign person under paragraph (b)(3)(iii) of this section, a withholding agent shall not treat the payee as the beneficial owner of income if the withholding agent knows, or has reason to know, that the payee is not the beneficial owner of the income. For this purpose, a withholding agent will have reason to know that the payee is not a beneficial owner if the documentary evidence indicates that the payee is a bank, broker, intermediary, custodian, or other agent, or is treated under § 1.6049–4(c)(1)(ii)(B) through (Q) as such a person. A withholding agent may, however, treat such a person as a beneficial owner if the foreign person provides a statement, in writing and signed by a person with authority to sign the statement, that is attached to the documentary evidence stating it is the beneficial owner of the income.

(iii) *Presumption of U.S. or foreign status.* A payment that the withholding agent cannot reliably associate with documentation is presumed to be made to a U.S. person, except as otherwise provided in this paragraph (b)(3)(iii), in paragraphs (b)(3) (iv) and (v) of this section, or in § 1.1441–5 (d) or (e). A withholding agent must treat a payee that is presumed or known to be a trust but for which the withholding agent cannot determine the type of trust in accordance with the presumptions specified in § 1.1441–5(e)(6)(ii). In the case of a payment that is a withholdable payment, a withholding agent must

apply the presumption rule under § 1.1471–3(f) for purposes of chapter 4.

(A) *Payments to exempt recipients*—(*1*) *In general.* If a withholding agent cannot reliably associate a payment with documentation from the payee and the payee is an exempt recipient (as determined under the provisions of § 1.6049–4(c)(1)(ii) in the case of interest, or under similar provisions under chapter 61 of the Code applicable to the type of payment involved, but not including a payee that the withholding agent may treat as a foreign intermediary in accordance with paragraph (b)(3)(v) of this section), the payee is presumed to be a foreign person and not a U.S. person—

(*i*) If the withholding agent has actual knowledge of the payee's employer identification number and that number begins with the two digits ''98'';

(*ii*) If the withholding agent's communications with the payee are mailed to an address in a foreign country;

(*iii*) If the name of the payee indicates that the entity is the type of entity that is on the per se list of foreign corporations contained in § 301.7701–2(b)(8)(i) of this chapter (other than a name which contains the designation ''corporation'' or ''company'');

(*iv*) If the payment is made with respect to an offshore obligation (as defined in paragraph (c)(37) of this section); or

(*v*) Only with respect to an account opened after July 1, 2014, if the withholding agent has a telephone number for the person outside of the United States.

(*2*) *Special rule for withholdable payments made to exempt recipients.* Notwithstanding the provisions of paragraph (b)(3)(iii)(A)(*1*) of this section, a payment that is also a withholdable payment made to an entity determined to be an exempt recipient under § 1.6049–4(c)(1)(ii)(A)(*1*), (F), (G), (H), (M), (O), (P), or (Q) in the case of interest (or under similar provisions in chapter 61 applicable to the type of income) shall be presumed made to a foreign payee in the absence of documentation (including documentary evidence) establishing the entity as a U.S. person. Additionally, a withholding agent may apply the rule provided in this paragraph (b)(3)(iii)(A)(*2*) instead of the rule in provided in paragraph (b)(3)(iii)(A)(*1*) of this section for all payments with respect to an obligation. The provisions of this paragraph (b)(3)(iii)(A)(*2*) will not apply, however, to a withholdable payment made with respect to a preexisting obligation to a payee that the withholding agent determined prior to July 1, 2014 to be a U.S. exempt recipient.

(B) and (C) [Reserved]. For further guidance, see § 1.1441–1(b)(3)(iii)(B) and (C).

(D) *Payments with respect to offshore obligations.* A payment is presumed made to a foreign payee if the payment is made outside the United States (as defined in § 1.6049–5(e)) with respect to an offshore obligation (as defined in paragraph (c)(37) of this section) and the withholding agent does not have actual knowledge that the payee is a U.S. person. See § 1.6049–5(d)(2) and (3) for exceptions to this rule.

(E) [Reserved]. For further guidance, see § 1.1441–1(b)(3)(iii)(E).

(iv) *Grace period.* A withholding agent may choose to apply the provisions of § 1.6049–5(d)(2)(ii) regarding a 90-day grace period for purposes of this paragraph (b)(3) (by applying the term withholding agent instead of the term payor) to amounts described in § 1.1441–6(c)(2) and to amounts covered by a Form 8233 described in § 1.1441–4(b)(2)(ii). Thus, for these amounts, a withholding agent may choose to treat the payee as a foreign person and withhold under chapter 3 of the Internal Revenue Code (and the regulations thereunder) while awaiting documentation. For purposes of determining the rate of withholding under this section, the withholding agent must withhold at the unreduced 30-percent rate at the time that the amounts are credited to an account. For reporting of amounts credited both before and after the grace period, see § 1.1461–1(c)(4)(i)(A). The following adjustments shall be made at the expiration of the grace period:

(A) If, at the end of the grace period, the documentation is not furnished in the manner required under this section and the account holder is presumed to be a U.S. non-exempt recipient, then backup withholding only applies to amounts credited to the account after the expiration of the grace period. Amounts credited to the account during the grace period shall be treated as owned by a foreign payee and adjustments must be made to correct any underwithholding on such amounts in the manner described in § 1.1461–2.

(B) [Reserved]. For further guidance, see § 1.1441–1(b)(3)(iv)(B).

(v) [Reserved]. For further guidance, see § 1.1441–1(b)(3)(v) introductory text and (b)(3)(v)(A).

(B) *Beneficial owner documentation or allocation information is lacking or unreliable.* Except as otherwise provided in this paragraph (b)(3)(v)(B), any portion of a payment that the withholding agent may treat as made to a foreign intermediary (whether a nonqualified or a qualified intermediary) but that the withholding agent cannot treat as reliably associated with valid documentation under the rules of paragraph (b)(2)(vii) of this section is presumed made to an unknown, undocumented foreign payee. As a result, a withholding agent must deduct and withhold 30 percent from any payment of an amount subject to withholding. If a withholding certificate attached to an intermediary certificate is another intermediary withholding certificate or a flow-through withholding certificate, the rules of this paragraph (b)(3)(v)(B) (or § 1.1441–5(d)(3) or (e)(6)(iii)) apply by treating the portion of the payment allocable to the other intermediary or flow-through entity as if it were made directly to the other intermediary or flow-through entity. Any payment of an amount subject to withholding that is presumed made to an undocumented foreign person must be reported on Form 1042–S. See § 1.1461–1(c). See § 1.6049–5(d) for payments that are not subject to withholding under chapter 3. However, in the case of a payment that is a withholdable payment made to a foreign intermediary, the presumption rules under § 1.1471–3(f)(5) shall apply.

(vi) *U.S. branches and territory financial institutions not treated as a U.S. person.* The rules of paragraph (b)(3)(v)(B) of this section shall apply to payments to a U.S. branch or a territory financial institution described in paragraph (b)(2)(iv)(A) of this section that has provided a withholding certificate as described in paragraph (e)(3)(v) of this section on which it has not agreed to be treated as a U.S. person.

(vii) *Joint payees*—(A) *In general.* Except as provided in paragraph (b)(3)(vii)(B) of this section and this paragraph (b)(3)(vii)(A), if a withholding agent makes a payment to joint payees and cannot reliably associate a payment with valid documentation from all payees, the payment is presumed made to an unidentified U.S. person. If, however, a withholding agent makes a payment that is a withholdable payment and any joint payee does not appear, by its name and other information contained in the account file, to be an individual, then the entire amount of the payment will be treated as made to an undocumented foreign person. See paragraph (b)(3)(iii) of this section for presumption rules that apply in the case of a payment that is a withholdable payment. However, if one of the joint payees provides a Form W–9 furnished in accordance with the procedures described in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, the

payment shall be treated as made to that payee. See § 31.3406(h)–2 of this chapter for rules to determine the relevant payee if more than one Form W–9 is provided. For purposes of applying this paragraph (b)(3), the grace period rules in paragraph (b)(3)(iv) of this section shall apply only if each payee meets the conditions described in paragraph (b)(3)(iv) of this section.

(B) *Special rule for offshore obligations.* If a withholding agent makes a payment to joint payees and cannot reliably associate a payment with valid documentation from all payees, the payment is presumed made to an unknown foreign payee if the payment is made outside the United States (as defined in § 1.6049–5(e)) with respect to an offshore obligation (as defined in § 1.6049–5(c)(1)).

(viii) [Reserved]. For further guidance, see § 1.1441–1(b)(3)(viii).

(ix) *Effect of reliance on presumptions and of actual knowledge or reason to know otherwise*—(A) *General rule.* Except as otherwise provided in paragraph (b)(3)(ix)(B) of this section, a withholding agent that withholds on a payment under section 3402, 3405 or 3406 in accordance with the presumptions set forth in this paragraph (b)(3) shall not be liable for withholding under this section even if it is later established that the beneficial owner of the payment is, in fact, a foreign person. Similarly, a withholding agent that withholds on a payment under this section in accordance with the presumptions set forth in this paragraph (b)(3) shall not be liable for withholding under section 3402 or 3405 or for backup withholding under section 3406 even if it is later established that the payee or beneficial owner is, in fact, a U.S. person. A withholding agent that, instead of relying on the presumptions described in this paragraph (b)(3), relies on its own actual knowledge to withhold a lesser amount, not withhold, or not report a payment, even though reporting of the payment or withholding a greater amount would be required if the withholding agent relied on the presumptions described in this paragraph (b)(3), shall be liable for tax, interest, and penalties to the extent provided under section 1461 and the regulations under that section. See paragraph (b)(7) of this section for provisions regarding such liability if the withholding agent fails to withhold in accordance with the presumptions described in this paragraph (b)(3).

(B) [Reserved]. For further guidance, see § 1.1441–1(b)(3)(ix)(B).

(x) *Examples.* The provisions of this paragraph (b)(3) are illustrated by the following examples:

*Example 1.* A withholding agent, W, makes a payment of U.S. source interest with respect to a grandfathered obligation as described in § 1.1471–2(b) (and thus the payment is not a withholdable payment) to person X, Inc. with respect to an account W maintains for X, Inc. outside the United States. W cannot reliably associate the payment to X, Inc. with documentation. Under § 1.6049–4(c)(1)(ii)(A)(*1*), W may treat X, Inc. as a corporation that is an exempt recipient under chapter 61. Thus, under the presumptions described in paragraph (b)(3)(iii) of this section as applicable to a payment to an exempt recipient that is not a withholdable payment, W must presume that X, Inc. is a foreign person (because the payment is made with respect to an offshore obligation). However, W knows that X, Inc. is a U.S. person who is an exempt recipient. W may not rely on its actual knowledge to not withhold under this section. If W's knowledge is, in fact, incorrect, W would be liable for tax, interest, and, if applicable, penalties, under section 1461. W would be permitted to reduce or eliminate its liability for the tax by establishing, in accordance with paragraph (b)(7) of this section, that the tax is not due or has been satisfied. If W's actual knowledge is, in fact, correct, W may nevertheless be liable for tax, interest, or penalties under section 1461 for the amount that W should have withheld based upon the presumptions. W would be permitted to reduce or eliminate its liability for the tax by establishing, in accordance with paragraph (b)(7) of this section, that its actual knowledge was, in fact, correct and that no tax or a lesser amount of tax was due.

*Example 2.* A withholding agent, W, makes a payment of U.S. source interest with respect to a grandfathered obligation as described in § 1.1471–2(b) (and thus the payment is not a withholdable payment) to Y who does not qualify as an exempt recipient under § 1.6049–4(c)(1)(ii). W cannot reliably associate the payment to Y with documentation. Under the presumptions described in paragraph (b)(3)(iii) of this section, W must presume that Y is a U.S. person who is not an exempt recipient for purposes of section 6049. However, W knows that Y is a foreign person. W may not rely on its actual knowledge to withhold under this section rather than backup withhold under section 3406. If W's knowledge is, in fact, incorrect, W would be liable for tax, interest, and, if applicable, penalties, under section 3403. If W's actual knowledge is, in fact, correct, W may nevertheless be liable for tax, interest, or penalties under section 3403 for the amount that W should have withheld based upon the presumptions. Paragraph (b)(7) of this section does not apply to provide relief from liability under section 3403.

*Example 3.* A withholding agent, W, makes a payment of U.S. source dividends to X, Inc. with respect to an account that X, Inc. opened with W after June 30, 2014. W cannot reliably associate the payment to X, Inc. with documentation but may treat X, Inc. as an exempt recipient for purposes of this section applying the rules of § 1.6042–3(b)(1)(vii). However, because the dividend payment is a withholdable payment and W did not determine the chapter 3 status of X, Inc. before July 1, 2014, W may treat X, Inc. as a U.S. person that is an exempt recipient only if W obtains documentary evidence supporting X, Inc.'s status as a U.S. person. See paragraph (b)(3)(iii)(A)(*2*) of this section.

*Example 4.* A withholding agent, W, is a plan administrator who makes pension payments to person X with a mailing address in a foreign country with which the United States has an income tax treaty in effect. Under that treaty, the type of pension income paid to X is taxable solely in the country of residence. The plan administrator has a record of X's U.S. social security number. W has no actual knowledge or reason to know that X is a foreign person. W may rely on the presumption of paragraph (b)(3)(iii)(C) of this section in order to treat X as a U.S. person. Therefore, any withholding and reporting requirements for the payment are governed by the provisions of section 3405 and the regulations under that section.

(4) *List of exemptions from, or reduced rates of, withholding under chapter 3 of the Code.* A withholding agent that has determined that the payee is a foreign person for purposes of paragraph (b)(1) of this section must determine whether the payee is entitled to a reduced rate of withholding under section 1441, 1442, or 1443. This paragraph (b)(4) identifies items for which a reduction in the rate of withholding may apply and whether the rate reduction is conditioned upon documentation being furnished to the withholding agent. Documentation required under this paragraph (b)(4) is documentation that a withholding agent must be able to associate with a payment upon which it can rely to treat the payment as made to a foreign person that is the beneficial owner of the payment in accordance with paragraph (e)(1)(ii) of this section. This paragraph (b)(4) also cross-references other sections of the Code and applicable regulations in which some of these exceptions, exemptions, or reductions are further explained. See, for example, paragraph (b)(4)(viii) of this section, dealing with effectively connected income, that cross-references § 1.1441–4(a); see paragraph (b)(4)(xv) of this section, dealing with exemptions from, or reductions of, withholding under an income tax treaty, that cross-references § 1.1441–6. This paragraph (b)(4) is not an exclusive list of items to which a reduction of the rate of withholding may apply and, thus, does not preclude an exemption from, or reduction in, the rate of withholding that may otherwise be allowed under the regulations under the provisions of chapter 3 of the Code for a particular item of income identified in this paragraph (b)(4). The exclusions and limitations specified in this paragraph (b)(4) apply for purposes of chapter 3. Additional withholding

and documentation requirements may apply to withholding agents under chapter 4 with respect to payments that are withholdable payments. See, for example, § 1.1471–2(a) requiring withholding on withholdable payments made to certain FFIs and § 1.1471–2(a)(4) for payments exempted from withholding under section 1471(a).

(i) Portfolio interest described in section 871(h) or 881(c) and substitute interest payments described in § 1.871–7(b)(2) or 1.881–2(b)(2) are exempt from withholding under section 1441(a). See § 1.871–14 for regulations regarding portfolio interest and section 1441(c)(9) for the exemption from withholding for portfolio interest. Documentation establishing foreign status is required for interest on an obligation in registered form to qualify as portfolio interest. See section 871(h)(2)(B)(ii) and § 1.871–14(c)(1)(ii)(C). For special documentation rules regarding foreign-targeted registered obligations described in § 1.871–14(e)(2) (and issued before January 1, 2016), see § 1.871–14(e) (3) and (4) and, in particular, § 1.871–14(e)(4)(i)(A) and (ii)(A) regarding when the withholding agent must receive the documentation. The documentation furnished for purposes of qualifying interest as portfolio interest serves as the basis for the withholding exemption for purposes of this section and establishing foreign status for purposes of section 6049. See § 1.6049–5(b)(8). Documentation establishing foreign status is not required for qualifying interest on an obligation in bearer form described in § 1.871–14(b)(1) (and issued before March 19, 2012) as portfolio interest. However, in certain cases, documentation for portfolio interest on a bearer obligation may have to be furnished in order to establish foreign status for purposes of the information reporting provisions of section 6049 and backup withholding under section 3406. See § 1.6049–5(b)(7).

(ii) through (xxi) [Reserved]. For further guidance, see § 1.1441–1(b)(4)(ii) through (xxi).

(5)(i) through (viii) [Reserved]. For further guidance, see § 1.1441–1(b)(5)(i) through (viii).

(ix) Payments to a foreign person that are governed by section 6050W (dealing with payment card and third party network transactions) are exempt from information reporting under § 1.6050W–1(a)(5)(ii).

(6) *Rules of withholding for payments by a foreign intermediary or certain U.S. branches*—(i) *In general.* A foreign intermediary described in paragraph (e)(3)(i) of this section or a U.S. branch or territory financial institution described in paragraph (b)(2)(iv) of this section that receives an amount subject to withholding (as defined in § 1.1441–2(a)) shall be required to withhold (if another withholding agent has not withheld the full amount required) and report such payment under chapter 3 of the Internal Revenue Code and the regulations thereunder except as otherwise provided in this paragraph (b)(6). A nonqualified intermediary, U.S. branch, or territory financial institution described in paragraph (b)(2)(iv) of this section (other than a U.S. branch or territory financial institution that is treated as a U.S. person) shall not be required to withhold or report if it has provided a valid nonqualified intermediary withholding certificate or a U.S. branch withholding certificate, it has provided all of the information required by paragraph (e)(3)(iv) of this section (withholding statement), and it does not know, and has no reason to know, that another withholding agent failed to withhold the correct amount or failed to report the payment correctly under § 1.1461–1(c). The withholding requirement of a nonqualified intermediary under the previous sentence also excludes a case in which withholding under chapter 4 was applied by a withholding agent on the payment. See § 1.1441–3(a)(2) (coordinating withholding under chapter 3 with withholding applied under chapter 4 of the Code). A qualified intermediary's obligations to withhold and report shall be determined in accordance with its qualified intermediary withholding agreement.

(ii) *Examples.* The following examples illustrate the rules of paragraph (b)(6)(i) of this section and coordinate rules for withholding that apply under chapter 4 with those that apply under chapter 3. See also paragraph (e)(3)(iv)(C) of this section for the requirements of withholding statements provided by nonqualified intermediaries.

*Example 1.* FB, a foreign bank, acts as intermediary for five different individuals, A, B, C, D, and E, each of whom owns U.S. securities that generate U.S. source dividends (that are withholdable payments). The dividends are paid by USWA, a U.S. withholding agent. FB furnished USWA with a nonqualified intermediary withholding certificate, described in paragraph (e)(3)(iii) of this section, on which FB certifies its status as a participating FFI (such that withholding under chapter 4 does not apply), to which it attached valid withholding certificates for A, B, C, D, and E. The withholding certificates from A and B claim a 15% reduced rate of withholding under an income tax treaty. C, D, and E claim no reduced rate of withholding. FB provides a withholding statement that meets all of the requirements of paragraph (e)(3)(iv) of this section, including information allocating 20% of each dividend payment to each of A, B, C, D, and E. FB does not have actual knowledge or reason to know that USWA did not withhold the correct amounts or report the dividends on Forms 1042–S to each of A, B, C, D, and E. FB is not required to withhold or to report the dividends to A, B, C, D, and E.

*Example 2.* The facts are the same as in *Example 1,* except that FB did not provide any information for USWA to determine how much of the dividend payments were made to A, B, C, D, and E. Because USWA could not reliably associate the dividend payments with documentation under paragraph (b)(2)(vii) of this section with respect to a payment that is a withholdable payment, USWA applied the presumption rule of § 1.1471–3(f)(5) and withheld 30% from all dividend payments under chapter 4 and filed a Form 1042–S reporting the payment to an account holder of FB that is a non-participating FFI. FB is deemed to know that USWA did not report the payment to A, B, C, D, and E because it did not provide all of the information required on a withholding statement under paragraph (e)(3)(iv) of this section (that is, allocation information). Although FB is not required to withhold on the payment under this section because the full 30% withholding was imposed by USWA, it is required to report the payments on Forms 1042–S to A, B, C, D, and E. FB's intentional failure to do so will subject it to intentional disregard penalties under sections 6721 and 6722.

(7) *Liability for failure to obtain documentation timely or to act in accordance with applicable presumptions*—(i) *General rule.* A withholding agent that cannot reliably associate a payment with valid documentation on the date of payment and that does not withhold under this section, or withholds at less than the 30-percent rate prescribed under section 1441(a) and paragraph (b)(1) of this section, is liable under section 1461 for the tax required to be withheld under chapter 3 of the Code and the regulations thereunder, without the benefit of a reduced rate unless—

(A) The withholding agent has appropriately relied on the presumptions described in paragraph (b)(3) of this section (including the grace period described in paragraph (b)(3)(iv) of this section) in order to treat the payee as a U.S. person or, if applicable, on the presumptions described in § 1.1441–4(a) (2)(ii) or (3)(i) to treat the payment as effectively connected income;

(B) The withholding agent can demonstrate to the satisfaction of the district director or the Assistant Commissioner (International) that the proper amount of tax, if any, was in fact paid to the IRS;

(C) No documentation is required under section 1441 or this section in order for a reduced rate of withholding to apply; or

(D) [Reserved]. For further guidance, see § 1.1441–1(b)(7)(i)(D).

(ii) *Proof that tax liability has been satisfied.* Proof of payment of tax may be established for purposes of paragraph (b)(7)(i)(B) of this section on the basis of a Form 4669 (or such other form as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter)), establishing the amount of tax, if any, actually paid by or for the beneficial owner on the income. Proof that a reduced rate of withholding was, in fact, appropriate under the provisions of chapter 3 of the Code and the regulations thereunder may also be established after the date of payment by the withholding agent on the basis of a valid withholding certificate or other appropriate documentation furnished after that date that was effective as of the date of payment. A withholding certificate furnished after the date of payment will be considered effective as of the date of the payment if the certificate contains a signed affidavit (either at the bottom of the form or on an attached page) that states that the information and representations contained on the certificate were accurate as of the time of the payment. A certificate obtained within 30 days after the date of the payment will not be considered to be unreliable solely because it does not contain an affidavit. However, in the case of a withholding certificate of an individual received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence, as described in § 1.1471–3(c)(5)(i), that supports the individual's claim of foreign status or documentary evidence described in § 1.1441–6(c)(4)(i) to support any treaty claim made on the certificate. In the case of a withholding certificate of an entity received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence described in § 1.1471–3(c)(5)(i) that supports the entity's claim of foreign status or documentary evidence described in § 1.1441–6(c)(4)(ii) to support any treaty claim made on the certificate. If documentation other than a withholding certificate is submitted from a payee more than a year after the date of payment, the withholding agent will be required to obtain from the payee a withholding certificate and affidavit supporting the claim of chapter 3 status as of the time of the payment. See § 1.1471–3(c)(7)(ii) for additional requirements that may apply under chapter 4 for documentation obtained after the date of payment of a withholdable payment.

(iii) [Reserved]. For further guidance, see § 1.1441–1(b)(7)(iii).

(iv) *Special rule for determining validity of withholding certificate containing inconsequential errors.* A withholding agent may treat a withholding certificate as valid when the certificate includes an error described as an inconsequential error in § 1.1471–3(c)(7)(i) for which the withholding agent obtains documentation sufficient for supporting a payee's claim of status as a foreign person or, for a payee that is an entity, its classification to the extent permitted under § 1.1471–3(c)(7)(i). For example, if the country of residence is abbreviated in an ambiguous way on a beneficial owner withholding certificate provided to establish the beneficial owner's foreign status, a withholding agent may treat the withholding certificate as valid if it has obtained documentary evidence supporting that the beneficial owner's residence is in a country other than the United States.

(v) *Special effective date.* See paragraph (f)(2)(ii) of this section for the special effective date applicable to this paragraph (b)(7).

(8) and (9) [Reserved]. For further guidance, see § 1.1441–1(b)(8) and (9).

(c) *Definitions.* The following definitions apply for purposes of sections 1441 through 1443, 1461, and regulations under those sections. For definitions of terms used in these regulations that are defined under sections 1471 through 1474, see subparagraphs (43) through (56) of this paragraph.

(1) [Reserved]. For further guidance, see § 1.1441–1(c)(1).

(2) *Foreign and U.S. person.* The term foreign person means any person that is not a U.S. person, including a QI branch of a U.S. financial institution (as defined in § 1.1471–1(b)(109). Such a branch continues to be a U.S. payor for purposes of chapter 61 of the Internal Revenue Code. See § 1.6049–5(c)(4). A U.S. person is a person described in section 7701(a)(30), the U.S. government (including an agency or instrumentality thereof), a State (including an agency or instrumentality thereof), or the District of Columbia (including an agency or instrumentality thereof).

(3) and (4) [Reserved]. For further guidance, see § 1.1441–1(c)(3) and (4).

(5) *Financial institution and foreign financial institution (FFI).* The term financial institution means a person described in § 1.1471–5(e). The term foreign financial institution or FFI has the meaning set forth in § 1.1471–5(d).

(6) through (9) [Reserved]. For further guidance, see § 1.1441–1(c)(6) through (9).

(10) *Chapter 3 of the Code (or chapter 3).* For purposes of the regulations under sections 1441, 1442, and 1443, any reference to chapter 3 of the Code (or chapter 3) shall not include references to sections 1445 and 1446, unless the context indicates otherwise.

(11) [Reserved]. For further guidance, see § 1.1441–1(c)(11).

(12) *Payee.* For purposes of chapter 3 of the Internal Revenue Code, the term *payee* of a payment is determined under paragraph (b)(2) of this section, § 1.1441–5(c)(1) (relating to partnerships), and § 1.1441–5(e)(2) and (3) (relating to trusts and estates) and includes foreign persons, U.S. exempt recipients, and U.S. non-exempt recipients. A nonqualified intermediary and a qualified intermediary (to the extent it does not assume primary withholding responsibility) are not payees if they are acting as intermediaries and not the beneficial owner of income. In addition, a flow-through entity (other than a withholding foreign partnership, withholding foreign trust, or qualified intermediary that assumes primary withholding responsibility) is not a payee unless the income is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States. See § 1.6049–5(d)(1) for rules to determine the payee for purposes of chapter 61 of the Internal Revenue Code. See §§ 1.1441–1(b)(3), 1.1441–5(d), and (e)(6) and § 1.6049–5(d)(3) for presumption rules that apply if a payee's identity cannot be determined on the basis of valid documentation. For purposes of chapter 4, the term payee has the meaning set forth in § 1.1471–3(a) with respect to a withholdable payment.

(13) through (15) [Reserved]. For further guidance, see § 1.1441–1(c)(13) through (15).

(16) *Withholding certificate.* The term withholding certificate means a Form W–8 described in paragraph (e)(2)(i) of this section (relating to foreign beneficial owners), paragraphs (e)(3)(i) or (e)(5)(i) of this section (relating to foreign intermediaries), § 1.1441–5(c)(2)(iv), (c)(3)(iii), and (e)(5)(iii) (relating to flow-through entities), a Form 8233 described in § 1.1441–4(b)(2), a Form W–9 as described in paragraph (d) of this section, a statement described in § 1.871–14(c)(2)(v) (relating to portfolio interest), or any other certificates that under the Internal

Revenue Code or regulations certifies or establishes the status of a payee or beneficial owner as a U.S. or a foreign person.

(17) *Documentary evidence; other appropriate documentation.* The terms documentary evidence or other appropriate documentation refer to documentary evidence that may be provided for payments made outside the United States with respect to offshore obligations in accordance with § 1.6049–5(c)(1) or any other evidence that under the Internal Revenue Code or regulations certifies or establishes the status of a payee or beneficial owner as a U.S. or foreign person. See §§ 1.1441–6(b)(2), (c)(3) and (4) (relating to treaty benefits), and 1.6049–5(c)(1) and (4) (relating to chapter 61 reporting). Also see § 1.1441–4(a)(3)(ii) regarding documentary evidence for notional principal contracts.

(18) through (24) [Reserved]. For further guidance, see § 1.1441–1(c)(18) through (c)(24).

(25) *Foreign complex trust.* A foreign complex trust is a foreign trust other than a foreign simple trust or foreign grantor trust.

(26) through (27) [Reserved]. For further guidance, see § 1.1441–1(c)(26) through (c)(27).

(28) *Nonwithholding foreign partnership (or NWP).* A nonwithholding foreign partnership is a foreign partnership that is not a withholding foreign partnership, as defined in § 1.1441–5(c)(2)(i).

(29) *Withholding foreign partnership (or WP).* A withholding foreign partnership is defined in § 1.1441–5(c)(2)(i).

(30) *Possessions of the United States or U.S. territory.* For purposes of the regulations under chapters 3 and 61 of the Internal Revenue Code, the term possessions of the United States or U.S. territory means Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands.

(31) *Amount subject to chapter 3 withholding.* An amount subject to withholding under chapter 3 is an amount described in § 1.1441–2(a).

(32) *EIN.* The term EIN means an employer identification number (also known as a federal tax identification number) described in § 301.6109–1(a)(1)(i).

(33) *Flow-through withholding certificate.* The term flow-through withholding certificate means a Form W–8IMY submitted by a foreign partnership, foreign simple trust, or foreign grantor trust.

(34) *Foreign payee.* The term foreign payee means any payee other than a U.S. payee.

(35) *Intermediary withholding certificate.* The term intermediary withholding certificate means a Form W–8IMY submitted by an intermediary.

(36) *Nonwithholding foreign trust (or NWT).* The term nonwithholding foreign trust or NWT means a foreign trust as defined in section 7701(a)(31)(B) that is a simple trust or grantor trust and is not a withholding foreign trust.

(37) *Payment with respect to an offshore obligation.* The term payment with respect to an offshore obligation means a payment made outside of the United States, within the meaning of § 1.6049–5(e), with respect to an offshore obligation (as defined in §§ 1.6049–5(c)(1)), 1.6041–1(d), or 1.6042–3(b) (depending on the type of payment).

(38) *Permanent residence address.* The term permanent residence address is the address in the country of which the person claims to be a resident for purposes of that country's income tax. In the case of a withholding certificate furnished in order to claim a reduced rate of withholding under an income tax treaty, the residence must be determined in the manner prescribed under the applicable treaty. See § 1.1441–6(b). The address of a financial institution with which the person maintains an account, a post office box, or an address used solely for mailing purposes is not a permanent residence address unless such address is the only permanent address used by the person and appears as the person's registered address in the person's organizational documents. Further, an address that is provided subject to instructions to hold all mail to that address is not a permanent residence address. If the person is an individual who does not have a tax residence in any country, the permanent address is the place at which the person normally resides. If the person is an entity and does not have a tax residence in any country, then the permanent residence address of the entity is the place at which the person maintains its principal office.

(39) *Standing instructions to pay amounts.* The term *standing instructions to pay amounts* has the meaning set forth in § 1.1471–1(b)(126).

(40) *Territory financial institution.* The term territory financial institution has the meaning set forth in § 1.1471–1(b)(130).

(41) *TIN.* The term TIN means the tax identifying number assigned to a person under section 6109.

(42) *Withholding foreign trust (or WT).* The term withholding foreign trust (or WT) means a foreign grantor trust or foreign simple trust that has executed the agreement described in § 1.1441–5(e)(5)(v).

(43) *Certified deemed-compliant FFI.* The term certified deemed-compliant FFI means an FFI described in § 1.1471–5(f)(2).

(44) *Chapter 3 withholding rate pool.* The term chapter 3 withholding rate pool has the meaning described in paragraph (e)(5)(v)(C)(*1*) of this section.

(45) *Chapter 3 status.* The term chapter 3 status refers to the attributes of a payee relevant for determining the rate of withholding with respect to a payment made to the payee for purposes of chapter 3.

(46) *Chapter 4 of the Code (or chapter 4).* The term chapter 4 of the Code (or chapter 4) means sections 1471 through 1474 and the regulations thereunder.

(47) *Chapter 4 status.* The term chapter 4 status means a person's status as a U.S. person, a specified U.S. person, an individual that is a foreign person, a participating FFI, a deemed-compliant FFI, a restricted distributor, an exempt beneficial owner, a nonparticipating FFI, a territory financial institution, an excepted NFFE, or a passive NFFE.

(48) *Chapter 4 withholding rate pool.* The term chapter 4 withholding rate pool has the meaning set forth § 1.1471–1(b)(20). For when a withholding statement may include a chapter 4 withholding rate pool of U.S. payees for purposes of this section and § 1.1441–5, however, see paragraph (e)(3)(iv)(A) of this section (for a withholding statement provided by a nonqualified intermediary) or paragraph (e)(5)(v)(C)(2) of this section (for a withholding statement provided by a qualified intermediary).

(49) *Deemed-compliant FFI.* The term deemed-compliant FFI means an FFI that is treated, pursuant to section 1471(b)(2) and § 1.1471–5(f), as meeting the requirements of section 1471(b). The term deemed-compliant FFI also includes a QI branch of a U.S. financial institution that is a reporting Model 1 FFI.

(50) *GIIN (or Global Intermediary Identification Number).* The term GIIN or Global Intermediary Identification Number means the identification number that is assigned to a participating FFI or registered deemed-compliant FFI. The term GIIN or Global Intermediary Identification Number also includes the identification number assigned to a reporting Model 1 FFI (as defined in § 1.1471–1(b)(114)) for purposes of identifying such entity to withholding agents. All GIINs will appear on the IRS FFI list.

(51) *NFFE.* The term NFFE or nonfinancial foreign entity has the meaning set forth in § 1.1471–1(b)(80).

(52) *Nonparticipating FFI.* The term nonparticipating FFI means an FFI other than a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner.

(53) *Participating FFI.* The term participating FFI has the meaning set forth in § 1.1471–1(b)(91).

(54) *Preexisting obligation.* The term preexisting obligation has the meaning set forth in § 1.1471–1(b)(104).

(55) *Registered deemed-compliant FFI.* The term registered deemed-compliant FFI has the meaning set forth in § 1.1471–5(f)(1).

(56) *Withholdable payment.* The term withholdable payment has the meaning set forth in § 1.1473–1(a).

(d) [Reserved]. For further guidance, see § 1.1441–1(d) introductory text through (d)(3).

(4) *When a payment to an intermediary or flow-through entity may be treated as made to a U.S. payee.* A withholding agent that makes a payment to an intermediary (whether a qualified intermediary or nonqualified intermediary), a flow-through entity, or a U.S. branch or territory financial institution described in paragraph (b)(2)(iv) of this section may treat the payment as made to a U.S. payee to the extent that, prior to the payment, the withholding agent can reliably associate the payment with a Form W–9 described in paragraph (d)(2) or (3) of this section attached to a valid intermediary, flow-through, or U.S. branch withholding certificate described in paragraph (e)(3)(i) of this section or to the extent the withholding agent can reliably associate the payment with a Form W–8 described in paragraph (e)(3)(v) of this section that evidences an agreement to treat a U.S. branch or territory financial institution described in paragraph (b)(2)(iv) of this section as a U.S. person. In addition, a withholding agent may treat the payment as made to a U.S. payee only if it complies with the electronic confirmation procedures described in paragraph (e)(4)(v) of this section, if required, and it has not been notified by the IRS that any of the information on the withholding certificate or other documentation is incorrect or unreliable. In the case of a Form W–9 that is required to be furnished for a reportable payment that may be subject to backup withholding, the withholding agent may be notified in accordance with section 3406(a)(1)(B) and the regulations under that section. See applicable procedures under section 3406(a)(1)(B) and the regulations under that section for payors who have been notified with regard to such a Form W–9. Withholding agents who have been notified in relation to other Forms W–9, including under section 6724(b) pursuant to section 6721, may rely on the withholding certificate or other documentation only to the extent provided under procedures as prescribed by the IRS (see § 601.601(d)(2) of this chapter).

(e) through (e)(1)(ii)(A)(*1*) [Reserved]. For further guidance, see § 1.1441–1(e) introductory text through (e)(1)(ii)(A)(*1*).

(*2*) That the payment is made outside the United States (within the meaning of § 1.6049–5(e)) with respect to an offshore obligation (within the meaning of paragraph (c)(37) of this section) and the withholding agent can reliably associate the payment with documentary evidence described in §§ 1.1441–6(c)(3) or (4), or 1.6049–5(c)(1) relating to the beneficial owner;

(*3*) That the withholding agent can reliably associate the payment with a valid qualified intermediary withholding certificate, as described in paragraph (e)(3)(ii) of this section, and the qualified intermediary has provided sufficient information for the withholding agent to allocate the payment to a chapter 3 withholding rate pool;

(*4*) through (*7*) [Reserved]. For further guidance, see § 1.1441–1(e)(1)(ii)(A)(*4*) through (*7*).

(B) [Reserved]. For further guidance, see § 1.1441–1(e)(1)(ii)(B).

(2) [Reserved]. For further guidance, see § 1.1441–1(e)(2) introductory text through (e)(2)(i).

(ii) *Requirements for validity of certificate.* A beneficial owner withholding certificate is valid for purposes of a payment of an amount subject to chapter 3 withholding only if it is provided on a Form W–8, or a Form 8233 in the case of personal services income described in § 1.1441–4(b) or certain scholarship or grant amounts described in § 1.1441–4(c) (or a substitute form described in paragraph (e)(4)(vi) of this section or such other form as the IRS may prescribe). A Form W–8 is valid only if its validity period has not expired, it is signed under penalties of perjury by the beneficial owner, and it contains all of the information required on the form. The required information is the beneficial owner's name, permanent residence address (as defined in § 1.1441–1(c)(55)), TIN (if required), a certification that the person is not a U.S. citizen (if the person is an individual) or a certification of the country under the laws of which the beneficial owner is created, incorporated, or governed (if a person other than an individual), the classification of the entity, and such other information as may be required by the regulations under section 1441 or by the form or accompanying instructions in addition to, or in lieu of, the information described in this paragraph (e)(2)(ii) (including when a foreign TIN and an individual's date of birth are required). A beneficial owner withholding certificate must also include the chapter 4 status of a beneficial owner that is an entity receiving a withholdable payment in order to be valid. See paragraph (e)(4)(vii) of this section for circumstances in which a TIN is required on a beneficial owner withholding certificate.

(3) [Reserved]. For further guidance, see § 1.1441–1(e)(3) introductory text and (e)(3)(i).

(ii) *Intermediary withholding certificate from a qualified intermediary.* A qualified intermediary shall provide a qualified intermediary withholding certificate for withholdable payments or reportable amounts received by the qualified intermediary. See paragraph (e)(3)(vi) of this section for the definition of reportable amount. A qualified intermediary withholding certificate is valid only if it is furnished on a Form W–8, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person with authority to sign for the qualified intermediary, its validity has not expired, and it contains the following information, statement, and certifications—

(A) The name, permanent residence address, qualified intermediary employer identification number (QI–EIN), and the country under the laws of which the intermediary is created, incorporated, or governed. For a withholding certificate provided with respect to a withholdable payment or associated with a withholding statement allocating the payment to a chapter 4 withholding rate pool of U.S. payees, the withholding certificate must also include the chapter 4 status of the qualified intermediary (which, if the qualified intermediary is an FFI, it must be a participating FFI, a registered deemed-compliant FFI, or an FFI treated as a deemed-compliant FFI under an applicable IGA that is subject to due diligence and reporting requirements with respect to its U.S. accounts similar to those applicable to a registered deemed-compliant FFI under § 1.1471–5(f)(1), and its GIIN (if applicable). However, a qualified intermediary withholding certificate may include a chapter 4 status of limited FFI as defined in § 1.1471–1(b)(77) through

December 31, 2015. See paragraph (e)(5)(ii) for the chapter 4 status required of a qualified intermediary. A qualified intermediary that does not act in its capacity as a qualified intermediary must not use its QI–EIN. Rather, the intermediary should provide a nonqualified intermediary withholding certificate, if it is acting as an intermediary, and should use the taxpayer identification number (if any) and GIIN (if applicable) that it uses for all other purposes;

(B) [Reserved]. For further guidance, see § 1.1441–1(e)(3)(ii)(B).

(C) A certification that the qualified intermediary has provided, or will provide, a withholding statement as required by paragraph (e)(5)(v) of this section;

(D) A certification that the qualified intermediary is fulfilling its reporting obligations under chapter 4 with respect to any payees included in the U.S. payee pool when the qualified intermediary provides a withholding statement that allocates a payment to payees in such a pool; and

(E) Any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certifications described in this paragraph (e)(3)(ii) or paragraph (e)(3)(v) of this section. See paragraph (e)(5)(v) of this section for the requirements of a withholding statement associated with the qualified intermediary withholding certificate.

(iii) *Intermediary withholding certificate from a nonqualified intermediary.* A nonqualified intermediary shall provide a nonqualified intermediary withholding certificate for reportable amounts received by the nonqualified intermediary. See paragraph (e)(3)(vi) of this section for the definition of reportable amount. A nonqualified intermediary withholding certificate is valid only to the extent it is furnished on a Form W–8, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person authorized to sign for the nonqualified intermediary, it contains the information, statements, and certifications described in this paragraph (e)(3)(iii) and paragraph (e)(3)(iv) of this section, its validity has not expired, and it contains the withholding certificates and other appropriate documentation for all persons to whom the certificate relates are associated with the certificate. Withholding certificates and other appropriate documentation consist of beneficial owner withholding certificates described in paragraph (e)(2)(i) of this section, intermediary and flow-through withholding certificates described in paragraph (e)(3)(i) of this section, withholding foreign partnership and withholding foreign trust certificates described in § 1.1441–5(c)(2)(iv) and (e)(5)(iii), documentary evidence described in §§ 1.1441–6(c)(3) or (4) and 1.6049–5(c)(1), and any other documentation or certificates applicable under other provisions of the Internal Revenue Code or regulations that certify or establish the status of the payee or beneficial owner as a U.S. or a foreign person. If a nonqualified intermediary is acting on behalf of another nonqualified intermediary or a flow-through entity, then the nonqualified intermediary must associate with its own withholding certificate the other nonqualified intermediary withholding certificate or the flow-through withholding certificate and separately identify all of the withholding certificates and other appropriate documentation that are associated with the withholding certificate of the other nonqualified intermediary or flow-through entity. Nothing in this paragraph (e)(3)(iii) shall require an intermediary to furnish original documentation. Copies of certificates or documentary evidence may be transmitted to the U.S. withholding agent, in which case the nonqualified intermediary must retain the original documentation for the same time period that the copy is required to be retained by the withholding agent under paragraph (e)(4)(iii) of this section and must provide it to the withholding agent upon request. For purposes of this paragraph (e)(3)(iii), a valid intermediary withholding certificate also includes a statement described in § 1.871–14(c)(2)(v) furnished for interest to qualify as portfolio interest for purposes of sections 871(h) and 881(c). The information and certifications required on a Form W–8 described in this paragraph (e)(3)(iii) are as follows—

(A) The name and permanent resident address of the nonqualified intermediary, chapter 4 status (for a nonqualified intermediary receiving a withholdable payment or providing a withholding statement associated with the Form W–8 allocating a payment to a chapter 4 withholding rate pool of U.S. payees), GIIN (if applicable), and the country under the laws of which the nonqualified intermediary is created, incorporated, or governed;

(B) [Reserved]. For further guidance, see § 1.1441–1(e)(3)(iii)(B).

(C) If the nonqualified intermediary withholding certificate is used to transmit withholding certificates or other appropriate documentation for more than one person on whose behalf the nonqualified intermediary is acting, a withholding statement associated with the Form W–8 that provides all the information required by paragraph (e)(3)(iv) of this section;

(D) A certification that the nonqualified intermediary is fulfilling its reporting obligations under chapter 4 with respect to any payees included in the U.S. payee pool when the nonqualified intermediary provides an FFI withholding statement described in § 1.1471–3(c)(3)(iii)(B)(*2*) that allocates a payment to payees in such a pool; and

(E) Any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in lieu of, the information, certifications, and statements described in this paragraph (e)(3)(iii) or paragraph (e)(5)(iv) of this section.

(iv) *Withholding statement provided by nonqualified intermediary*—(A) *In general.* A nonqualified intermediary shall provide a withholding statement required by this paragraph (e)(3)(iv) to the extent the nonqualified intermediary is required to furnish, or does furnish, documentation for payees on whose behalf it receives reportable amounts (as defined in paragraph (e)(3)(vi) of this section) or to the extent it otherwise provides the documentation of such payees to a withholding agent. A nonqualified intermediary, however, that is subject to withholding under chapter 4 due to its chapter 4 status as a nonparticipating FFI need not provide a withholding statement unless it is providing documentation with respect to an exempt beneficial owner as described in § 1.1471–3(c)(3)(iii)(B)(*4*). A nonqualified intermediary is not required to disclose to the withholding agent information regarding persons for whom it collects reportable amounts unless it has actual knowledge that any such person is a U.S. non-exempt recipient as defined in paragraph (c)(21) of this section. Information regarding U.S. non-exempt recipients required under this paragraph (e)(3)(iv) must be provided irrespective of any requirement under foreign law that prohibits the disclosure of the identity of an account holder of a nonqualified intermediary or financial information relating to such account holder. A nonqualified intermediary is not required to provide information on a withholding statement regarding U.S. non-exempt recipients, provided that the nonqualified intermediary is a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) that identifies on the

withholding statement the portion of a payment allocable to a chapter 4 withholding rate pool of U.S. payees to the extent that the nonqualified intermediary is permitted to include such U.S. payees in a pool under § 1.6049–4(c)(4)(iii). See § 1.1471–3(d)(4) for the requirements of an entity to identify itself as a participating FFI or registered deemed-compliant FFI to a withholding agent for purposes of chapter 4. Although a nonqualified intermediary is not required to provide documentation and other information required by this paragraph (e)(3)(iv) for persons other than U.S. non-exempt recipients not included in a chapter 4 withholding rate pool of U.S. payees, a withholding agent that does not receive documentation and such information must apply the presumption rules of paragraph (b) of this section, §§ 1.1441–5(d) and (e)(6), 1.6049–5(d), and 1.1471–3(f)(5) (for a withholdable payment) or the withholding agent shall be liable for tax, interest, and penalties. A withholding agent must apply the presumption rules even if it is not required under chapter 61 of the Internal Revenue Code to obtain documentation to treat a payee as an exempt recipient and even though it has actual knowledge that the payee is a U.S. person. For example, if a nonqualified intermediary receives a payment that is not a withholdable payment and fails to provide a withholding agent with a Form W–9 for an account holder that is a U.S. exempt recipient that is not included in a chapter 4 withholding rate pool of U.S. payees to the extent permitted in this paragraph (e)(3)(iv)(A), the withholding agent must presume (even if it has actual knowledge that the account holder is a U.S. exempt recipient) that the account holder is an undocumented foreign person with respect to amounts subject to chapter 3 withholding. See paragraph (b)(3)(v) of this section for applicable presumptions. Therefore, the withholding agent must withhold 30 percent from the payment even though if a Form W–9 had been provided, no withholding or reporting on the payment attributable to a U.S. exempt recipient would apply. Further, a nonqualified intermediary that fails to provide the documentation and the information under this paragraph (e)(3)(iv) for another withholding agent to report the payments on Forms 1042–S (including under the requirements of § 1.1474–1(d)(2) for a payment of a chapter 4 reportable amount) and Forms 1099 is not relieved of its responsibility to file information returns. See paragraph (b)(6) of this section. Therefore, unless the nonqualified intermediary itself files such returns and provides copies to the payees, it shall be liable for penalties under sections 6721 (failure to file information returns), and 6722 (failure to furnish payee statements), including the penalties under those sections for intentional failure to file information returns. In addition, failure to provide either the documentation or the information required by this paragraph (e)(3)(iv) results in a payment not being reliably associated with valid documentation. Therefore, the beneficial owners of the payment are not entitled to reduced rates of withholding and if the full amount required to be held under the presumption rules is not withheld by the withholding agent, the nonqualified intermediary must withhold the difference between the amount withheld by the withholding agent and the amount required to be withheld. Failure to withhold shall result in the nonqualified intermediary being liable for tax under section 1461, interest, and penalties, including penalties under section 6656 (failure to deposit) and section 6672 (failure to collect and pay over tax).

(B) *General requirements.* A withholding statement must be provided prior to the payment of a reportable amount and must contain the information specified in paragraph (e)(3)(iv)(C) of this section. The statement must be updated as often as required to keep the information in the withholding statement correct prior to each subsequent payment. The withholding statement forms an integral part of the withholding certificate provided under paragraph (e)(3)(iii) of this section, and the penalties of perjury statement provided on the withholding certificate shall apply to the withholding statement. The withholding statement may be provided in any manner the nonqualified intermediary and the withholding agent mutually agree, including electronically. If the withholding statement is provided electronically as part of a system established by the withholding agent or nonqualified intermediary to provide the statement, however, there must be sufficient safeguards to ensure that the information received by the withholding agent is the information sent by the nonqualified intermediary and all occasions of user access that result in the submission or modification of the withholding statement information must be recorded. In addition, the electronic system must be capable of providing a hard copy of all withholding statements provided by the nonqualified intermediary. A withholding statement may otherwise be transmitted by a nonqualified intermediary via email or facsimile to a withholding agent under the requirements specified in paragraph (e)(4)(iv)(C) of this section (substituting the term withholding statement for the term Form W–8 or the term document, as applicable). A withholding agent will be liable for tax, interest, and penalties in accordance with paragraph (b)(7) of this section to the extent it does not follow the presumption rules of paragraph (b)(3) of this section or §§ 1.1441–5(d) and (e)(6), and 1.6049–5(d) for any payment of a reportable amount, or portion thereof, for which it does not have a valid withholding statement prior to making a payment. A withholding agent may not treat as valid an allocation of a payment to a chapter 4 withholding rate pool of U.S. payees described in paragraph (e)(3)(iv)(A) of this section or an allocation of a payment to a chapter 4 withholding rate pool of recalcitrant account holders described in paragraph (e)(3)(iv)(C)(*2*) of this section unless the withholding agent identifies the nonqualified intermediary maintaining the account (as described in § 1.1471–5(b)(5)) as a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) by applying the rules of § 1.1471–3(d)(4).

(C) *Content of withholding statement.* The withholding statement provided by a nonqualified intermediary must contain the information required by this paragraph (e)(3)(iv)(C).

(*1*) *In general.* The withholding statement provided by a nonqualified intermediary must contain the information required by this paragraph (e)(3)(iv)(C).

(*i*) Except as otherwise provided in (e)(3)(iv)(A) of this section (which excludes reporting of information with respect to certain U.S. persons on the withholding statement), the withholding statement must contain the name, address, TIN (if any) and the type of documentation (documentary evidence, Form W–9, or type of Form W–8) for every person from whom documentation has been received by the nonqualified intermediary and provided to the withholding agent and whether that person is a U.S. exempt recipient, a U.S. non-exempt recipient, or a foreign person. See paragraphs (c)(2), (20), and (21) of this section for the definitions of foreign person, U.S. exempt recipient, and U.S. non-exempt recipient. In the case of a foreign person, the statement must indicate whether the foreign person is a beneficial owner or an

intermediary, flow-through entity, U.S. branch, or territory financial institution described in paragraph (b)(2)(iv) of this section and include the type of recipient, based on recipient codes applicable for chapter 3 purposes used for filing Forms 1042–S, if the foreign person is a recipient as defined in § 1.1461–1(c)(1)(ii).

(*ii*) The withholding statement must allocate each payment, by income type, to every payee required to be reported on the withholding statement for whom documentation has been provided (including U.S. exempt recipients except as provided in paragraph (e)(3)(iv)(A) of this section). Any payment that cannot be reliably associated with valid documentation from a payee shall be treated as made to an unknown payee in accordance with the presumption rules of paragraph (b) of this section and §§ 1.1441–5(d) and (e)(6) and 1.6049–5(d). For this purpose, a type of income is determined by the types of income required to be reported on Forms 1042–S or 1099, as appropriate. Notwithstanding the preceding sentence, deposit interest (including original issue discount) described in section 871(i)(2)(A) or 881(d) and interest or original issue discount on short-term obligations as described in section 871(g)(1)(B) or 881(e) is only required to be allocated to the extent it is required to be reported on Form 1099 or Form 1042–S. See § 1.6049–8 (regarding reporting of bank deposit interest to certain foreign persons). If a payee receives income through another nonqualified intermediary, flow-through entity, or U.S. branch or territory financial institution described in paragraph (e)(2)(iv) of this section (other than a U.S. branch or territory financial institution treated as a U.S. person), the withholding statement must also state, with respect to the payee, the name, address, and TIN, if known, of the other nonqualified intermediary or U.S. branch from which the payee directly receives the payment or the flow-through entity in which the payee has a direct ownership interest. If another nonqualified intermediary, flow-through entity, or U.S. branch fails to allocate a payment, the name of the nonqualified intermediary, flow-through entity, or U.S. branch that failed to allocate the payment shall be provided with respect to such payment.

(*iii*) If a payee is identified as a foreign person, the nonqualified intermediary must specify the rate of withholding to which the payee is subject, the payee's country of residence and, if a reduced rate of withholding is claimed, the basis for that reduced rate (*e.g.,* treaty benefit, portfolio interest, exempt under section 501(c)(3), 892, or 895). The allocation statement must also include the taxpayer identification numbers of those foreign persons for whom such a number is required under paragraph (e)(4)(vii) of this section or § 1.1441–6(b)(1) (regarding claims for treaty benefits for which a TIN is provided unless a foreign tax identifying number described in § 1.1441–6(b)(1) is provided). In the case of a claim of treaty benefits, the nonqualified intermediary's withholding statement must also state whether the limitation on benefits and section 894 statements required by § 1.1441–6(c)(5) have been provided, if required, in the beneficial owner's Form W–8 or associated with such owner's documentary evidence.

(*iv*) The withholding statement must also contain any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 3, chapter 61 of the Internal Revenue Code, and section 3406.

(*2*) *Nonqualified intermediary withholding statement for withholdable payments.* This paragraph (e)(3)(iv)(C)(*2*) modifies the requirements of a withholding statement described in paragraph (e)(3)(iv)(C)(1) of this section that is provided by a nonqualified intermediary with respect to a reportable amount that is a withholdable payment. For such a payment, the requirements applicable to a withholding statement described in paragraph (e)(3)(iv)(A) through (e)(3)(iv)(C)(*1*) of this section shall apply, except that—

(*i*) The withholding statement must include the chapter 4 status and GIIN (when required for chapter 4 purposes under § 1.1471–3(d)) of each other intermediary or flow-through entity that is a foreign person and that receives the payment excluding an intermediary or flow-through entity that is an account holder of or interest holder in a withholding foreign partnership, withholding foreign trust, or qualified intermediary;

(*ii*) If the nonqualified intermediary that is a participating FFI or registered deemed-compliant FFI provides a withholding statement described in § 1.1471–3(c)(3)(iii)(B)(*2*) (describing an FFI withholding statement), the withholding statement may include chapter 4 withholding rate pools with respect to the portions of the payment allocated to nonparticipating FFIs and recalcitrant account holders (to the extent permitted on an FFI withholding statement described in that paragraph) in lieu of providing specific payee information with respect to such persons reported on the statement (including persons subject to chapter 4 withholding) as described in paragraph (e)(3)(iv)(C)(*1*) of this section;

(*iii*) If the nonqualified intermediary provides a withholding statement described in § 1.1471–3(c)(3)(iii)(B)(*3*) (describing a chapter 4 withholding statement), the withholding statement may include chapter 4 withholding rate pools with respect to the portions of the payment allocated to nonparticipating FFIs; and

(*iv*) For a payment allocated to a payee that is a foreign person (other than a person included in a chapter 4 withholding rate pool described in paragraphs (e)(3)(iv)(C)(2)(ii) and (iii) of this section) that is reported on a withholding statement described in § 1.1471–3(c)(3)(iii)(B)(*2*) or (*3*), the withholding statement must include the chapter 4 status of the payee and, for a payee other than an individual, the recipient code for chapter 4 purposes used for filing Form 1042–S.

*(3) Example.* This example illustrates the principles of paragraph (e)(3)(iv)(C) of this section. WA makes a withholdable payment of U.S. source dividends to NQI, a nonqualified intermediary. NQI provides WA with a valid intermediary withholding certificate under paragraph (e)(3)(iii) of this section that includes NQI's certification of its status for chapter 4 purposes as a participating FFI. NQI provides a withholding statement on which NQI allocates 20% of the payment to a chapter 4 withholding rate pool of recalcitrant account holders of NQI for purposes of chapter 4 and allocates 80% of the payment equally to A and B, individuals that are account holders of NQI. NQI also provides WA with valid beneficial owner withholding certificates from A and B establishing their status as foreign persons entitled to a 15% rate of withholding under an applicable income tax treaty. Because NQI has certified its status as a participating FFI, withholding under chapter 4 is not required with respect to NQI. See § 1.1471–2(a)(4). Based on the documentation NQI provided to WA with respect to A and B, WA can reliably associate the payment with valid documentation on the portion of the payment allocated to them and, because the payment is a withholdable payment, may rely on the allocation of the payment for NQI's recalcitrant account holders in a chapter 4 withholding rate pool in lieu of payee information with respect to such account holders. See paragraph (e)(3)(iv)(C)(*2*) of this section for the special rules for a withholding statement provided by a nonqualified intermediary for a withholdable payment. Also see § 1.1471–2(a) for WA's withholding requirements under chapter 4 with respect to the portion of the payment allocated to NQI's recalcitrant account holders and § 1.1441–3(a)(2) for coordinating withholding under chapter 3 for payments to which withholding is applied under chapter 4.

(D) *Alternative procedures*—(*1*) *In general.* Under the alternative

procedures of this paragraph (e)(3)(iv)(D), a nonqualified intermediary may provide information allocating a payment of a reportable amount to each payee (including U.S. exempt recipients) otherwise required under paragraph (e)(3)(iv)(B)(2) of this section after a payment is made. To use the alternative procedure of this paragraph (e)(3)(iv)(D), the nonqualified intermediary must inform the withholding agent on a statement associated with its nonqualified intermediary withholding certificate that it is using the procedure under this paragraph (e)(3)(iv)(D) and the withholding agent must agree to the procedure. If the requirements of the alternative procedure are met, a withholding agent, including the nonqualified intermediary using the procedures, can treat the payment as reliably associated with documentation and, therefore, the presumption rules of paragraph (b)(3) of this section and §§ 1.1441–5(d) and (e)(6) and 1.6049–5(d) do not apply even though information allocating the payment to each payee has not been received prior to the payment. See paragraph (e)(3)(iv)(D)(*7*) of this section, however, for a nonqualified intermediary's liability for tax and penalties if the requirements of this paragraph (e)(3)(iv)(D) are not met. These alternative procedures shall not be used for payments that are allocable to U.S. non-exempt recipients except as provided in paragraph (e)(3)(iv)(D)(2)(*ii*) of this section. Therefore, a nonqualified intermediary is required to provide a withholding agent with information allocating payments of reportable amounts to U.S. non-exempt recipients prior to the payment being made by the withholding agent.

(*2*) *Withholding rate pools*—(*i*) *In general.* In place of the information required in paragraph (e)(3)(iv)(C)(*2*) of this section allocating payments to each payee, the nonqualified intermediary must provide a withholding agent with withholding rate pool information prior to the payment of a reportable amount. The withholding statement must contain all other information required by paragraph (e)(3)(iv)(C) of this section. Further, each payee listed in the withholding statement must be assigned to an identified withholding rate pool. To the extent a nonqualified intermediary is required to, or does provide, documentation, the alternative procedures do not relieve the nonqualified intermediary from the requirement to provide documentation prior to the payment being made. Therefore, withholding certificates or other appropriate documentation and all information required by paragraph (e)(3)(iv)(C) of this section (other than allocation information) must be provided to a withholding agent before any new payee receives a reportable amount. In addition, the withholding statement must be updated by assigning a new payee to a withholding rate pool prior to the payment of a reportable amount. A withholding rate pool is a payment of a single type of income, determined in accordance with the categories of income used to file Form 1042–S, that is subject to a single rate of withholding. A withholding rate pool may be established by any reasonable method to which the nonqualified intermediary and a withholding agent agree (*e.g.,* by establishing a separate account for a single withholding rate pool, or by dividing a payment made to a single account into portions allocable to each withholding rate pool). The nonqualified intermediary shall determine withholding rate pools based on valid documentation or, to the extent a payment cannot be reliably associated with valid documentation, the presumption rules of paragraph (b)(3) of this section and §§ 1.1441–5(d) and (e)(6) and 1.6049–5(d).

(*ii*) *Withholding rate pools for withholdable payments.* This paragraph (e)(3)(iv)(D)(*2*)(*ii*) modifies the provisions of paragraph (e)(3)(iv)(D)(*2*)(*i*) of this section with respect to the withholding rate pools permitted for the alternative procedures described in paragraph (e)(3)(iv)(D)(*1*) of this section in the case of a reportable amount that is a withholdable payment or for a payment for which an FFI withholding statement is provided by the nonqualified intermediary. In the case of a withholdable payment, a nonqualified intermediary may include amounts allocable to a chapter 4 reporting pool (other than a U.S. payee pool) in a 30-percent rate pool together with a withholding rate pool for amounts subject to chapter 3 withholding at the 30-percent rate. For the amount of the payment allocable to a U.S. payee pool on an FFI withholding statement, a nonqualified intermediary may include such an amount in a withholding rate pool with the amount of the payment that is exempt from withholding under chapter 3 instead of providing documentation regarding U.S. non-exempt recipients included in the pool. To the extent that a nonqualified intermediary allocates an amount to any chapter 4 withholding rate pool, the nonqualified intermediary is required to notify the withholding agent of the allocation before receiving the payment and is not required to provide documentation with respect to the payees included in such pool. The nonqualified intermediary shall determine the chapter 4 withholding rate pools permitted to be used under this paragraph (e)(3)(iv)(D)(*2*)(*ii*) in accordance with the nonqualified intermediary's applicable chapter 4 status and under § 1.1471–3(c)(3)(iii)(B)(*2*) (for an FFI withholding statement) or (*3*) (for a chapter 4 withholding statement). Additionally, the nonqualified intermediary shall identify those payees to which withholding under chapter 4 applies that are not included in a chapter 4 reporting pool (including payees that could be included in a chapter 4 withholding rate pool for whom the nonqualified intermediary chooses to provide payee specific information).

(*3*) *Allocation information.* The nonqualified intermediary must provide the withholding agent with sufficient information to allocate the income in each withholding rate pool to each payee (including U.S. exempt recipients or any chapter 4 withholding rate pool identified by the withholding agent under paragraph (c)(3)(iv)(D)(*2*)(*ii*) of this section) within the pool no later than January 31 of the year following the year of payment. Any payments that are not allocated to payees for whom documentation has been provided or a chapter 4 withholding rate pool referred to in the previous sentence shall be allocated to an undocumented payee in accordance with the presumption rules of paragraph (b)(3) of this section and §§ 1.1441–5(d) and (e)(6), 1.6049–5(d), and 1.1471–3(f)(5) (for a withholdable payment for chapter 4 purposes). Notwithstanding the preceding sentence, deposit interest (including original issue discount) described in section 871(i)(2)(A) or 881(d) and interest or original issue discount on short-term obligations as described in section 871(g)(1)(B) or 881(e) is not required to be allocated to a U.S. exempt recipient or a foreign payee, except as required under § 1.6049–8 (regarding reporting of deposit interest paid to certain foreign persons).

(*4*) *Failure to provide allocation information.* Except as provided in paragraph (e)(3)(iv)(D)(*5*) of this section, if a nonqualified intermediary fails to provide allocation information, if required, by January 31 for any withholding rate pool to the extent required in paragraph (e)(3)(iv)(D)(3) of this section, a withholding agent shall not apply the alternative procedures of this paragraph (e)(3)(iv)(D) to any payments of reportable amounts paid after January 31 in the taxable year

following the calendar year for which allocation information was not given and any subsequent taxable year. Further, the alternative procedures shall be unavailable for any other withholding rate pool (other than a chapter 4 withholding rate pool as otherwise permitted) even though allocation information was given for that other pool. Therefore, the withholding agent must withhold on a payment of a reportable amount in accordance with the presumption rules of paragraph (b)(3) of this section, and §§ 1.1441–5(d) and (e)(6), 1.6049–5(d), and 1.1471–3(f)(5) (for a withholdable payment for chapter 4 purposes), unless the nonqualified intermediary provides all of the information, including information sufficient to allocate the payment to each specific payee or chapter 4 withholding rate pool (as permitted), required by paragraph (e)(3)(iv)(A) through (C) of this section prior to the payment. A nonqualified intermediary must allocate at least 90 percent of the income required to be allocated for each withholding rate pool as required under this paragraph (e)(3)(iv)(D)(*4*) or the nonqualified intermediary will be treated as having failed to provide allocation information for purposes of this paragraph (e)(3)(iv)(D). For purposes of the allocation, a nonqualified intermediary is required to identify by January 31 the portion of the payment that is allocated to each chapter 4 withholding rate pool (rather than the payees included in each such pool). See paragraph (e)(3)(iv)(D)(*7*) of this section for liability for tax and penalties if a nonqualified intermediary fails to provide allocation information in whole or in part.

(*5*) *Cure provision.* A nonqualified intermediary may cure any failure to provide allocation information by providing the required allocation information to the withholding agent no later than February 14 following the calendar year of payment. If the withholding agent receives the allocation information by that date, it may apply the adjustment procedures of § 1.1461–2 (or of § 1.1474–2 for an amount withheld under chapter 4) to any excess withholding for payments made on or after February 1 and on or before February 14. Any nonqualified intermediary that fails to cure by February 14, may request the ability to use the alternative procedures of this paragraph (e)(3)(iv)(D) by submitting a request, in writing, to the. The request must state the reason that the nonqualified intermediary did not comply with the alternative procedures of this paragraph (e)(3)(iv)(D) and steps that the nonqualified intermediary has taken, or will take, to ensure that no failures occur in the future. If the IRS determines that the alternative procedures of this paragraph (e)(3)(iv)(D) may apply, a determination to that effect will be issued by the IRS to the nonqualified intermediary.

(*6*) *Form 1042–S reporting in case of allocation failure.* If a nonqualified intermediary fails to provide allocation information by February 14 following the year of payment for a withholding rate pool, the withholding agent must file Forms 1042–S for payments made to each payee in that pool (other than U.S. exempt recipients) in the prior calendar year by pro rating the payment to each payee (including U.S. exempt recipients) listed in the withholding statement for that withholding rate pool, treating as a payee for this purpose each chapter 4 withholding rate pool identified by the nonqualified intermediary under paragraph (e)(3)(iv)(D)(*2*)(*ii*) of this section. If the nonqualified intermediary fails to allocate 10 percent or less of an amount required to be allocated for a withholding rate pool, a withholding agent shall report the unallocated amount as paid to a single unknown payee in accordance with the presumption rules of paragraph (b) of this section and §§ 1.1441–5(d) and (e)(6), 1.6049–5(d), and § 1.1471–3(f)(5) (for a withholdable payment for chapter 4 purposes). The portion of the payment that can be allocated to specific recipients, as defined in § 1.1461–1(c)(1)(ii), shall be reported to each recipient in accordance with the rules of § 1.1461–1(c) and § 1.1471–1(d)(2) (for a withholdable payment).

(*7*) and (*8*) [Reserved]. For further guidance, see § 1.1441–1(e)(iv)(D)(*7*) and (*8*).

(E) *Notice procedures.* The IRS may notify a withholding agent that the alternative procedures of paragraph (e)(3)(iv)(D) of this section are not applicable to a specified nonqualified intermediary, a U.S. branch described in paragraph (b)(2)(iv) of this section, or a flow-through entity. If a withholding agent receives such a notice, it must commence withholding under this section or chapter 4 (if applicable) in accordance with the presumption rules of paragraph (b)(3) of this section and §§ 1.1441–5(d) and (e)(6), 1.6049–5(d), and1.1471–3(f)(5) (for a withholdable payment for chapter 4 purposes) unless the nonqualified intermediary, U.S. branch, or flow-through entity complies with the procedures in paragraphs (e)(3)(iv)(A) through (C) of this section. In addition, the IRS may notify a withholding agent, in appropriate circumstances, that it must apply the presumption rules of paragraph (b)(3) of this section and §§ 1.1441–5(d) and (e)(6), 1.6049–5(d), and § 1.1471–3(f)(5) (for a withholdable payment for chapter 4 purposes) to payments made to a nonqualified intermediary, a U.S. branch, or a flow-through entity even if the nonqualified intermediary, U.S. branch or flow-through entity provides allocation information prior to the payment. A withholding agent that receives a notice under this paragraph (e)(3)(iv)(E) must commence withholding in accordance with the presumption rules within 30 days of the date of the notice. The IRS may withdraw its prohibition against using the alternative procedures of paragraph (e)(3)(iv)(D) of this section, or its requirement to follow the presumption rules, if the nonqualified intermediary, U.S. branch, or flow-through entity can demonstrate to the satisfaction of the IRS that it is capable of complying with the rules under chapter 3 of the Internal Revenue Code and any other conditions required by the IRS.

(v) *Withholding certificate from certain U.S. branches (including territory financial institutions).* A U.S. branch certificate is a withholding certificate provided by a U.S. branch (including a territory financial institution) described in paragraph (b)(2)(iv) of this section that is not the beneficial owner of the income. The withholding certificate is provided with respect to reportable amounts and must state that such amounts are not effectively connected with the conduct of a trade or business in the United States. The withholding certificate must either transmit the appropriate documentation for the persons for whom the branch receives the payment (*i.e.,* as an intermediary) or be provided as evidence of its agreement with the withholding agent to be treated as a U.S. person with respect to any payment associated with the certificate. A U.S. branch withholding certificate is valid only if it is furnished on a Form W–8, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person authorized to sign for the branch, its validity has not expired, and it contains the information, statements, and certifications described in this paragraph (e)(3)(v). If the certificate is furnished to transmit withholding certificates and other documentation, it must contain the information, certifications, and statements described in paragraphs (e)(3)(v)(A) through (C) of this section and in paragraphs (e)(3)(iii)

and (iv) (alternative procedures) of this section, applying the term U.S. branch instead of the term nonqualified intermediary. If the certificate is furnished pursuant to an agreement to treat the U.S. branch or territory financial institution as a U.S. person (which agreement must be for purposes of chapter 4 in addition to this section in the case of a payment that is a withholdable payment), the information and certifications required on the withholding certificate are limited to the following—

(A) The name of the territory financial institution or person of which the U.S. branch is a part, the address of the territory financial institution or U.S. branch, and, for a withholding certificate provided by a U.S. branch, a certification that the person of which the branch is a part is a participating FFI or registered deemed-compliant FFI;

(B) A certification that the payments associated with the certificate are not effectively connected with the conduct of its trade or business in the United States;

(C) The EIN of the territory financial institution or branch;

(D) The GIIN of the FFI of which the U.S. branch is a part, if applicable; and

(E) Any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certification described in this paragraph (e)(3)(v).

(vi) [Reserved]. For further guidance, see § 1.1441–1(e)(3)(vi).

(4) *Applicable rules.* The provisions in this paragraph (e)(4) describe procedures applicable to withholding certificates on Form W–8 or Form 8233 (or a substitute form) or documentary evidence furnished to establish foreign status. These provisions do not apply to Forms W–9 (or their substitutes). For corresponding provisions regarding Form W–9 (or a substitute form), see section 3406 and the regulations under that section.

(i) *Who may sign the certificate.* A withholding certificate (including an acceptable substitute) may be signed by any person authorized to sign a declaration under penalties of perjury on behalf of the person whose name is on the certificate as provided in section 6061 and the regulations under that section (relating to who may sign generally for an individual, estate, or trust, which includes certain agents who may sign returns and other documents), section 6062 and the regulations under that section (relating to who may sign corporate returns), and section 6063 and the regulations under that section (relating to who may sign partnership returns). A person authorized to sign a withholding certificate includes an officer or director of a corporation, a partner of a partnership, a trustee of a trust, an executor of an estate, any foreign equivalent of the former titles, and any other person that has been provided written authorization by the individual or entity named on the certificate to sign documentation on such person's behalf.

(ii) Period of validity—(A) *General rule.* Except as provided otherwise in paragraphs (e)(4)(ii)(B) and (C) of this section and this paragraph (e)(4)(ii)(A), a withholding certificate described in paragraph (e)(2)(i) of this section, or a certificate described in § 1.871–14(c)(2)(v) (furnished to qualify interest as portfolio interest for purposes of sections 871(h) and 881(c)), will remain valid until the [earlier of the] last day of the third calendar year following the year in which the withholding certificate is signed [or the day that a change in circumstances occurs that makes any information on the certificate incorrect]. For example, a withholding certificate signed on September 30, 2015, remains valid through December 31, 2018, unless circumstances change that make the information on the form no longer correct. Documentary evidence described in § 1.1441–6(c)(3) or (4) or § 1.6049–5(c)(1) shall remain valid until the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent except as provided in paragraph (e)(4)(ii)(B) of this section. Documentary evidence described in § 1.6049–5(c)(1) provided to establish a payee's foreign status that contains an expiration date may, however, be treated as valid until that expiration date if doing so would provide a longer period of validity than the three-year period. Additionally, a withholding certificate or documentary evidence with a period of validity that is valid on December 31, 2013 will not be treated as invalid based solely on the period described in this paragraph (e)(4)(ii) before January 1, 2015. Notwithstanding the validity periods prescribed by this paragraph (e)(4)(ii)(A) and paragraphs (e)(4)(ii)(B) and (C) of this section, a withholding certificate and documentary evidence will cease to be valid if a change in circumstances makes the information on the documentation incorrect.

(B) *Indefinite validity period.* Notwithstanding paragraph (e)(4)(ii)(A) of this section, the following certificates (or parts of certificates) and documentary evidence described in paragraphs (e)(4)(ii)(B)(*1*) through (*11*) of this section shall remain valid until the a change in circumstances makes the information on the documentation incorrect under paragraph (e)(4)(ii)(D)(*3*). See, however, § 1.1471–3(c)(6)(ii) for when a withholding certificate or documentary evidence remains valid (or is subject to renewal) when also provided with respect to a withholdable payment made to an entity (including an intermediary) for purposes of whether a withholding agent may continue to rely on the entity's claim of chapter 4 status. Additionally, the provisions of paragraphs (e)(4)(ii)(B)(1), (2), and (12) of this section do not apply to documentary evidence or a withholding certificate furnished prior to July 1, 2014.

(*1*) A beneficial owner withholding certificate (other than the portion of the certificate making a claim for treaty benefits) and documentary evidence supporting a claim of foreign status when both are provided together by an individual claiming foreign status if the withholding agent does not have a current U.S. residence address or U.S. mailing address for the payee, does not have one or more current U.S. telephone numbers that are the only telephone numbers the withholding agent has for the payee, and, for a payment described in § 1.6049–5(c)(1), the withholding agent has not been provided standing instructions to make a payment to an account in the United States for the obligation.

(*2*) A beneficial owner withholding certificate (other than the portion of the certificate making a claim for treaty benefits) described in § 1.1471–3(c)(6)(ii)(C)(2) and documentary evidence provided by an entity supporting the entity's claim of foreign status.

(*3*) A beneficial owner withholding certificate provided by an entity claiming status as a tax-exempt entity under section 501(c) that is not a foreign private foundation under section 509, provided that the withholding agent reports at least one payment annually to the entity under § 1.1461–1(c).

(*4*) A certificate described in paragraph (e)(3)(ii) of this section (a qualified intermediary withholding certificate) but not including the withholding certificates, documentary evidence, statements or other information associated with the certificate.

(*5*) A certificate described in paragraph (e)(3)(iii) of this section (a nonqualified intermediary certificate), but not including the withholding certificates, documentary evidence, statements or other information associated with the certificate.

(*6*) A certificate described in paragraph (e)(3)(v) of this section (a U.S. branch (including a territory financial institution) withholding certificate that is not provided by the beneficial owner), but not including the withholding certificates, documentary evidence, statements or other information associated with the certificate.

(*7*) [Reserved]. For further guidance, see § 1.1441–1(e)(4)(ii)(B)(*7*).

(*8*) A withholding certificate provided by a withholding foreign trust described in § 1.1441–5(e)(5)(v).

(*9*) A certificate described in § 1.1441–5(c)(2)(iv) (dealing with a certificate from a person representing to be a withholding foreign partnership).

(*10*) A certificate described in § 1.1441–5(c)(3)(iii) (a withholding certificate from a nonwithholding foreign partnership) but not including the withholding certificates, documentary evidence, statements or other information required to be associated with the certificate.

(*11*) A certificate furnished by a person representing to be an integral part of a foreign government (within the meaning of § 1.892–2T(a)(2)) in accordance with § 1.1441–8(b), or by a person representing to be a foreign central bank of issue (within the meaning of § 1.861–2(b)(4)) or the Bank for International Settlements in accordance with § 1.1441–8(c)(1); and

(*12*) Documentary evidence that is not generally renewed or amended (such as a certificate of incorporation).

(C) *Withholding certificate for effectively connected income.* Notwithstanding paragraph (e)(4)(ii)(B) of this section, the period of validity of a withholding certificate furnished to a withholding agent to claim a reduced rate of withholding for income that is effectively connected with the conduct of a trade or business within the United States shall be limited to the three-year period described in paragraph (e)(4)(ii)(A) of this section.

(D) *Change in circumstances*—(*1*) *Defined.* A certificate or documentation becomes invalid from the date of a change in circumstances affecting the correctness of the certificate or documentation to the extent provided in this paragraph (e)(4)(ii)(D). For purposes of this section, a person is considered to have a change in circumstances only if such change affects the person's claim of chapter 3 status. Thus, for example, a change of address is not a change in circumstances with respect to a claim of only foreign status under this paragraph (e)(4)(ii)(D) if the change is to another address outside the United States, but is a change in circumstances if the change is to an address in the U.S.

(*2*) *Obligation to notify a withholding agent of a change in circumstances.* If a change in circumstances makes any information on a certificate or other documentary evidence incorrect, then the person whose name is on the certificate or other documentation must inform the withholding agent within 30 days of the change and furnish a new certificate or new documentary evidence. If an intermediary (including a U.S. branch or territory financial institution described in paragraph (b)(2)(iv)(A) of this section) or a flow-through entity becomes aware that a certificate or other appropriate documentation it has furnished to the person from whom it collects a payment is no longer valid because of a change in the circumstances of the person who issued the certificate or furnished the other appropriate documentation, then the intermediary or flow-through entity must notify the person from whom it collects the payment of the change of circumstances within 30 days of the date that it knows or has reason to know of the change in circumstances. It must also obtain a new withholding certificate or new appropriate documentation to replace the existing certificate or documentation the validity of which has expired due to the change in circumstances to continue to treat the person who provided the certificate or documentary evidence under its claimed chapter 3 status.

(*3*) *Withholding agent's obligation with respect to a change in circumstances.* A withholding agent may rely on a certificate without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed, as permitted under paragraph (e)(4)(viii) of this section. A withholding agent is required to notify any person providing documentary evidence (in lieu of a withholding certificate) of the person's obligation to notify the withholding agent of a change in circumstances. However, a withholding agent may choose to apply the provisions of paragraph (b)(3)(iv) of this section regarding the 90-day grace period as of that date while awaiting a new certificate or documentation or while seeking information regarding changes, or suspected changes, in the person's circumstances. A withholding agent may also require a new certificate at any time prior to a payment, even though the withholding agent has no actual knowledge or reason to know that any information stated on the certificate has changed.

(iii) *Retention of documentation.* A withholding agent must retain each withholding certificate and other documentation for purposes of this section for as long as it may be relevant to the determination of the withholding agent's tax liability under section 1461 and § 1.1461–1. A withholding agent may retain a withholding certificate or documentary evidence that is an original, certified copy, or a scanned document (as described in paragraph (e)(4)(iv)(C) of this section). A withholding agent may also retain a withholding certificate by other means (such as microfiche) that allows a reproduction of the document provided that the withholding agent has recorded its receipt of a form described in the preceding sentence and is able to produce a hard copy of the form. See § 1.6049–5(c)(1) for the requirements for maintaining documentary evidence that also apply for purposes of determining a payee's U.S. or foreign status for purposes of chapter 3.

(iv) *Electronic transmission of information*—(A) *In general.* A withholding agent may establish a system for a beneficial owner or payee to electronically furnish a Form W–8, an acceptable substitute Form W–8, or such other form as the Internal Revenue Service may prescribe. The system must meet the requirements described in paragraph (e)(4)(iv)(B) of this section. See paragraph (e)(iv)(4)(C) of this section for other cases in which a Form W–8 (or other documentation) may be furnished electronically.

(B) [Reserved]. For further guidance, see § 1.1441–1(e)(4)(iv)(B).

(C) *Forms and documentary evidence received by facsimile or email.* A withholding agent may rely upon an otherwise valid Form W–8 (or documentary evidence) received by facsimile or a form or document scanned and received electronically, such as, for example, an image embedded in an email or as a Portable Document Format (.pdf) attached to an email. A withholding agent may not rely on a form or document received by such means, however, if the withholding agent knows that the form or document was transmitted to the withholding agent by a person not authorized to do so by the person required to execute the form. A withholding agent may establish other procedures to authenticate and verify a form or document sent by such means and may reject any form or document that fails to satisfy the requirements of such procedures.

(v) *Additional procedures for certificates provided electronically.* The IRS may prescribe procedures in a

revenue procedure (see § 601.601(d)(2) of this chapter) or may issue other appropriate guidance (including a written directive for revenue agents) to further prescribe the conditions by which the IRS will determine that a system developed by a withholding agent to permit beneficial owners and payees to provide Forms W–8 electronically satisfies the requirements of paragraph (e)(4)(iv)(B) of this section.

(vi) *Acceptable substitute form.* A withholding agent may substitute its own form instead of an official Form W–8 or 8233 (or such other official form as the IRS may prescribe). Such a substitute for an official form will be acceptable if it contains provisions that are substantially similar to those of the official form, it contains the same certifications relevant to the transactions as are contained on the official form and these certifications are clearly set forth, and the substitute form includes a signature-under-penalties-of-perjury statement identical to the one stated on the official form. The substitute form is acceptable even if it does not contain all of the provisions contained on the official form, so long as it contains those provisions that are relevant to the transaction for which it is furnished (including those required for purposes of chapter 4). For example, a withholding agent that pays no income for which treaty benefits are claimed may develop a substitute form that is identical to the official form, except that it does not include information regarding claims of benefits under an income tax treaty. Similarly, a withholding agent that is not required to determine the chapter 4 status of a payee providing a form may develop a substitute form that does not contain chapter 4 statuses. A withholding agent who uses a substitute form must furnish instructions relevant to the substitute form only to the extent and in the manner specified in the instructions to the official form. A withholding agent may use a substitute form that is written in a language other than English and may accept a form that is filled out in a language other than English, but the withholding agent must make available an English translation of the form and its contents to the IRS upon request. A withholding agent may refuse to accept a certificate from a payee or beneficial owner (including the official Form W–8 or 8233) if the certificate provided is not an acceptable substitute form provided by the withholding agent, but only if the withholding agent furnishes the payee or beneficial owner with an acceptable substitute form within 5 business days of receipt of an unacceptable form from the payee or beneficial owner. In that case, the substitute form is acceptable only if it contains a notice that the withholding agent has refused to accept the form submitted by the payee or beneficial owner and that the payee or beneficial owner must submit the acceptable form provided by the withholding agent in order for the payee or beneficial owner to be treated as having furnished the required withholding certificate.

(vii) *Requirement of taxpayer identifying number.* A TIN must be stated on a withholding certificate when required by this paragraph (e)(4)(vii) for the withholding certificate to be valid for purposes of this section. A TIN is required to be stated on—

(A) A withholding certificate on which a beneficial owner is claiming the benefit of a reduced rate under an income tax treaty (other than for amounts described in § 1.1441–6(c)(2) or amounts for which a foreign tax identifying number has been provided, as described in § 1.1441–6(c)(2));

(B) through (E) [Reserved]. For further guidance, see § 1.1441–1(e)(4)(vii)(B) through (E).

(F) A withholding certificate from a person representing to be a withholding foreign partnership or a withholding foreign trust;

(G) [Reserved]. For further guidance, see § 1.1441–1(e)(4)(vii)(G).

(H) A withholding certificate from a person representing to be a U.S. branch or territory financial institution described in paragraph (b)(2)(iv) of this section; and

(I) A withholding certificate provided by an entity acting as a qualified securities lender, as defined for purposes of chapter 3, with respect to a substitute dividend paid in a securities lending or similar transaction.

(viii) [Reserved]. For further guidance, see § 1.1441–1(e)(4)(viii) introductory text and (e)(4)(viii)(A).

(B) *Status of payee as an intermediary or as a person acting for its own account.* A withholding agent may rely on the type of certificate furnished as indicative of the payee's status as an intermediary or as an owner, unless the withholding agent has actual knowledge or reason to know otherwise. For example, a withholding agent that receives a beneficial owner withholding certificate from a foreign financial institution may treat the institution as the beneficial owner, unless it has information in its records that would indicate otherwise or the certificate contains information that is not consistent with beneficial owner status (*e.g.,* sub-account numbers that do not correspond to accounts maintained by the withholding agent for such person or names of one or more persons other than the person submitting the withholding certificate). If the financial institution also acts as an intermediary, the withholding agent may request that the institution furnish two certificates, *i.e.,* a beneficial owner certificate described in paragraph (e)(2)(i) of this section for the amounts that it receives as a beneficial owner, and an intermediary withholding certificate described in paragraph (e)(3)(i) of this section for the amounts that it receives as an intermediary. In the absence of reliable representation or information regarding the status of the payee as an owner or as an intermediary, see paragraph (b)(3)(v)(A) for applicable presumptions.

(C) *Reliance on a prior version of a withholding certificate.* Upon the issuance by the IRS of an updated version of a withholding certificate, a withholding agent may continue to accept the prior version of the withholding certificate for six months after the revision date shown on the updated withholding certificate, unless the IRS has issued guidance that indicates otherwise, and may continue to rely upon a previously signed prior version of the withholding certificate until its period of validity expires.

(ix) *Certificates to be furnished to withholding agent for each obligation unless exception applies.* Unless otherwise provided in paragraphs (e)(4)(ix)(A) through (D) of this section, a withholding agent that is a financial institution with which a customer may open an account shall obtain a withholding certificate or documentary evidence on an obligation-by-obligation basis and may not rely upon such documentation collected by another person or another branch of the withholding agent.

(A) *Exception for certain branch or account systems or system maintained by agent.* A withholding agent may rely on a withholding certificate or documentary evidence furnished by a customer as part of a single branch system, universal account system, or shared account system described in § 1.1471–3(c)(8) (substituting the term chapter 3 status for chapter 4 status each place it appears in that paragraph). Furthermore, a withholding agent may rely on a shared documentation system maintained by an agent as described in § 1.1471–3(c)(9)(i) (also substituting the term chapter 3 status for chapter 4 status each place it appears in that paragraph).

(B) *Reliance on certification provided by introducing brokers—(1) In general.* A withholding agent may rely on the certification of a broker indicating the

broker's determination of a payee's chapter 3 status and that the broker holds a valid beneficial owner withholding certificate described in paragraph (e)(2)(i) of this section or other appropriate documentation for that beneficial owner with respect to any readily tradable instrument, as defined in § 31.3406(h)–1(d) of this chapter, if the broker is a United States person (including a U.S. branch treated as a U.S. person under paragraph (b)(2)(iv) of this section) that is acting as the agent of a beneficial owner. A withholding agent may also rely on a certification described in the preceding sentence that is provided by a qualified intermediary that makes payments to beneficial owners that it receives from the withholding agent. The certification must be in writing or in electronic form and contain all of the information required of a nonqualified intermediary under paragraphs (e)(3)(iv)(B) and (C) of this section. If a broker chooses to use this paragraph (e)(4)(ix)(B), that broker will be solely responsible for applying the rules of § 1.1441–7(b) to the withholding certificates or other appropriate documentation and shall be liable for any underwithholding as a result of the broker's failure to apply such rules. See § 1.1471–3(c)(9)(iii) for a similar allowance that applies to a broker's determination of a payee's chapter 4 status for purposes of chapter 4. For purposes of this paragraph (e)(4)(ix)(B), the term *broker* means a person treated as a broker under § 1.6045–1(a).

(*2*) *Example.* The following example illustrates the rules of this paragraph (e)(4)(x)(B) with respect to a U.S. broker:

*Example.* SCO is a U.S. securities clearing organization that provides clearing services for correspondent broker, CB, a U.S. corporation. Pursuant to a fully disclosed clearing agreement, CB fully discloses the identity of each of its customers to SCO. Part of SCO's clearing duties include the crediting of income and gross proceeds of readily tradable instruments (as defined in § 31.3406(h)–1(d)) to each customer's account. For each disclosed customer that is a foreign beneficial owner, CB provides SCO with information required under paragraphs (e)(3)(iv)(B) and (C) of this section that is necessary to apply the correct rate of withholding and to file Forms 1042–S. SCO may use the representations and beneficial owner information provided by CB to determine the proper amount of withholding and to file Forms 1042–S. CB is responsible for determining the validity of the withholding certificates or other appropriate documentation under § 1.1441–1(b).

(C) *Reliance on documentation and certifications provided between principals and agents*—(*1*) *Withholding agent as agent.* A withholding agent may rely upon documentation and certifications provided by a principal for purposes of determining a payee's chapter 3 status only if the principal is a U.S. withholding agent, a qualified intermediary (when acting as such for determining a payee's status), or a withholding foreign partnership or withholding foreign trust with respect to a partner, owner, or beneficiary in the entity. Thus an agent (such as a paying agent or transfer agent) may not rely upon a certification provided by a principal that is a participating FFI but is not also a qualified intermediary, withholding foreign partnership, or withholding foreign trust for purposes of this section, even though it may rely on the certification when provided solely for purposes of chapter 4 under § 1.1471–3(c)(9)(iv).

(*2*) *Withholding agent as principal.* A withholding agent may also rely on documentation collected by an agent of the withholding agent in order to fulfill its chapter 3 obligations because such agent's actions are imputed to the principal (the withholding agent). For example, a withholding agent may contract an agent to collect Forms W–8 from account holders, but the withholding agent remains liable for any tax liability resulting from a failure of the agent to comply with the requirements of chapter 3.

(D) *Reliance upon documentation for accounts acquired in merger or bulk acquisition for value.* A withholding agent that acquires an account from a predecessor or transferor in a merger or bulk acquisition of accounts for value is permitted to rely upon valid documentation (or copies of valid documentation) collected by the predecessor or transferor for determining the chapter 3 status of an account holder of such an account. In addition, a withholding agent that acquires an account in a merger or bulk acquisition of accounts for value, other than a related party transaction, from a U.S. withholding agent (or a qualified intermediary when the withholding agent is also a qualified intermediary) may also rely upon the predecessor's or transferor's determination of the account holder's chapter 3 status for a transition period of the lesser of six months from the date of the merger or until the acquirer knows that the claim of entity classification and status is inaccurate or a change in circumstances occurs with respect to the account. At the end of the transition period, the acquirer will be permitted to rely upon the predecessor's determination as to the chapter 3 status of the account holder only if the documentation that the acquirer has for the account holder, including documentation obtained from the predecessor or transferor, supports the status claimed. An acquirer that discovers at the end of the transition period that the chapter 3 status assigned by the predecessor or transferor to the account holder was incorrect and has not withheld as it would have been required to but for its reliance upon the predecessor's determination, will be required to withhold on future payments, if any, made to the account holder the amount of tax that should have been withheld during the transition period but for the erroneous classification as to the account holder's status. For purposes of this paragraph (e)(4)(ix)(D), a related party transaction is a merger or sale of accounts in which the acquirer is in the same expanded affiliated group, within the meaning of § 1.1471–5(i)(2), as the predecessor or transferor either prior to or after the merger or acquisition or the predecessor or transferor (or shareholders of the predecessor or transferor) obtain a controlling interest in the acquirer or in a newly formed entity created for purposes of the merger or acquisition. See § 1.1471–3(c)(v) for a similar reliance rule that applies for purposes of chapter 4.

(5) *Qualified intermediaries*—(i) *General rule.* A qualified intermediary, as defined in paragraph (e)(5)(ii) of this section, may furnish a qualified intermediary withholding certificate to a withholding agent. The withholding certificate provides certifications on behalf of other persons for the purpose of claiming and verifying reduced rates of withholding under section 1441 or 1442 and for the purpose of reporting and withholding under other provisions of the Internal Revenue Code, such as the provisions under chapters 4 and 61 and section 3406 (and the regulations under those provisions). Furnishing such a certificate is in lieu of transmitting to a withholding agent withholding certificates or other appropriate documentation for the persons for whom the qualified intermediary receives the payment, including interest holders in a qualified intermediary that is fiscally transparent under the regulations under section 894. Although the qualified intermediary is required to obtain withholding certificates or other appropriate documentation from beneficial owners, payees, or interest holders pursuant to its agreement with the IRS, it is generally not required to attach such documentation to the intermediary withholding certificate. Notwithstanding the preceding sentence a qualified intermediary must provide a

withholding agent with the Forms W–9, or disclose the names, addresses, and taxpayer identifying numbers, if known, of those U.S. non-exempt recipients for whom the qualified intermediary receives reportable amounts (within the meaning of paragraph (e)(3)(vi) of this section) to the extent required in the qualified intermediary's agreement with the IRS and except as otherwise provided in paragraph (e)(5)(v)(C)(*1*) of this section.

(ii) *Definition of qualified intermediary.* With respect to a payment to a foreign person, the term qualified intermediary means a person that is a party to a withholding agreement with the IRS and such person is—

(A) A foreign financial institution that is a participating FFI (including a reporting Model 2 FFI), a registered deemed-compliant FFI (including a reporting Model 1 FFI), or an FFI treated as a deemed-compliant FFI under an applicable IGA that is subject to due diligence and reporting requirements with respect to its U.S. accounts similar to those applicable to a registered deemed-compliant FFI under § 1.1471–5(f)(1), excluding a U.S. branch of any of the foregoing entities;

(B) A foreign branch or office of a U.S. financial institution or a foreign branch or office of a U.S. clearing organization that is either a reporting Model 1 FFI or agrees to the reporting requirements applicable to a participating FFI with respect to its U.S. accounts;

(C) A foreign corporation for purposes of presenting claims of benefits under an income tax treaty on behalf of its shareholders to the extent permitted to act as a qualified intermediary by the IRS; or

(D) Any other person acceptable to the IRS.

(iii) *Withholding agreement*—(A) *In general.* The IRS may, upon request, enter into a withholding agreement with a foreign person described in paragraph (e)(5)(ii) of this section pursuant to such procedures as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). Under the withholding agreement, a qualified intermediary shall generally be subject to the applicable withholding and reporting provisions applicable to withholding agents and payors under chapters 3, 4, and 61 of the Internal Revenue Code, section 3406, the regulations under those provisions, and other withholding provisions of the Internal Revenue Code, except to the extent provided under the agreement.

(B) *Terms of the withholding agreement.* The agreement shall specify the obligations of the qualified intermediary under chapters 3 and 4 and, for a qualified intermediary that is an FFI, require the qualified intermediary to satisfy the documentation, withholding, and reporting obligations required of a participating FFI or registered deemed-compliant FFI (including a reporting Model 1 FFI as defined in § 1.1471–1(b)(114)) with respect to each branch of the qualified intermediary other than a U.S. branch that is treated as a U.S. person under paragraph (b)(2)(iv)(A) of this section. The agreement will specify the type of certifications and documentation upon which the qualified intermediary may rely to ascertain the classification (*e.g.,* corporation or partnership), status (*i.e.,* U.S. or foreign and chapter 4 status) of beneficial owners and payees who receive reportable amounts and reportable payments collected by the qualified intermediary for purposes of chapters 3 and 61, section 3406, and, if necessary, entitlement to the benefits of a reduced rate under an income tax treaty. The agreement shall specify if, and to what extent, the qualified intermediary may assume primary withholding responsibility in accordance with paragraph (e)(5)(iv) of this section. It shall also specify the extent to which applicable return filing and information reporting requirements are modified so that, in appropriate cases, the qualified intermediary may report payments to the IRS on an aggregated basis, without having to disclose the identity of beneficial owners and payees. However, the qualified intermediary may be required to provide to the IRS the name and address of those foreign customers who benefit from a reduced rate under an income tax treaty pursuant to the qualified intermediary arrangement for purposes of verifying entitlement to such benefits, particularly under an applicable limitation on benefits provision. Under the agreement, a qualified intermediary may agree to act as an acceptance agent to perform the duties described in § 301.6109–1(d)(3)(iv)(A) of this chapter. The agreement may specify the manner in which applicable procedures for adjustments for underwithholding and overwithholding, including refund procedures, apply in the context of a qualified intermediary arrangement and the extent to which applicable procedures may be modified. In particular, a withholding agreement may allow a qualified intermediary to claim refunds of overwithheld amounts. The agreement shall specify the manner in which the qualified intermediary may deal with payments to other intermediaries and flow-through entities and the obligations of a qualified intermediary that acts as a qualified securities lender with respect to payments of substitute dividends under chapters 3 and 4. In addition, the agreement shall specify the manner in which the IRS will verify compliance with the agreement, including the time and manner for which a qualified intermediary will be required to certify to the IRS regarding its compliance with the agreement (including its performance of a periodic review) and the types of information required to be disclosed as part of the certification. In appropriate cases, the IRS may require review procedures be performed by an approved auditor (in addition to those performed as part of the periodic review) and may conduct a review of the auditor's findings. The agreement may include provisions for the assessment and collection of tax in the event that failure to comply with the terms of the agreement results in the failure by the withholding agent or the qualified intermediary to withhold and deposit the required amount of tax. Further, the agreement may specify the procedures by which amounts withheld are to be deposited, if different from the deposit procedures under the Internal Revenue Code and applicable regulations. To determine whether to enter a qualified intermediary withholding agreement and the terms of any particular withholding agreement, the IRS will consider the type of local know-your-customer laws and practices to which the entity is subject, as well as the extent and nature of supervisory and regulatory control exercised under the laws of the foreign country over the foreign entity.

(iv) *Assignment of primary withholding responsibility.* Any person who meets the definition of a withholding agent under § 1.1441–7(a) (for payments subject to chapter 3 withholding) and § 1.1473–1(d) (for withholdable payments) (whether a U.S. person or a foreign person) is required to withhold and deposit any amount withheld under §§ 1.1461–1(a) and 1.1474–1(b) and to make the returns prescribed by §§ 1.1461–1(b) and (c), and by 1.1474–1(c), and (d). Under its qualified intermediary agreement, a qualified intermediary agreement may, however, inform a withholding agent from which it receives a payment that it will assume the primary obligation to withhold, deposit, and report amounts under chapters 3 and 4 of the Internal Revenue Code and/or under chapter 61 of the Internal Revenue Code and section 3406. For assuming withholding

obligations as described in the previous sentence, a qualified intermediary that assumes primary withholding responsibility for payments made to an account under chapter 3 is also required to assume primary withholding responsibility under chapter 4 for payments made to the account that are withholdable payments. Additionally, a qualified intermediary may represent that it assumes chapter 61 reporting and section 3406 obligations for a payment when the qualified intermediary reports the payment (or the account to which the payment is made) as part of its applicable U.S. account reporting requirements as a participating FFI or registered deemed-compliant FFI. If a withholding agent makes a payment of an amount subject to withholding under chapter 3, a reportable payment (as defined in section 3406(b)), or a withholdable payment to a qualified intermediary that represents to the withholding agent that it has assumed primary withholding responsibility for the payment, the withholding agent is not required to withhold on the payment. The withholding agent is not required to determine that the qualified intermediary agreement actually performs its primary withholding responsibilities. A qualified intermediary that assumes primary withholding responsibility under chapters 3 and 4 or primary reporting and backup withholding responsibility under chapter 61 and section 3406 is not required to assume primary withholding responsibility for all accounts it has with a withholding agent but must assume primary withholding responsibility for all payments made to any one account that it has with the withholding agent.

(v) *Withholding statement*—(A) *In general.* A qualified intermediary must provide each withholding agent from which it receives reportable amounts as a qualified intermediary with a written statement (the withholding statement) containing the information specified in paragraph (e)(5)(v)(B) of this section. A withholding statement is not required, however, if all of the information a withholding agent needs to fulfill its withholding and reporting requirements is contained in the withholding certificate. The qualified intermediary agreement will require the qualified intermediary to include information in its withholding statement relating to withholdable payments for purposes of withholding under chapter 4 as described in paragraph (e)(5)(v)(C)(*2*) of this section. The withholding statement forms an integral part of the qualified intermediary's qualified intermediary withholding certificate and the penalties of perjury statement provided on the withholding certificate shall apply to the withholding statement as well. The withholding statement may be provided in any manner, and in any form, to which qualified intermediary and the withholding agent mutually agree, including electronically. If the withholding statement is provided electronically, the statement must satisfy the requirements described in paragraph (e)(3)(iv) of this section (applicable to a withholding statement provided by a nonqualified intermediary). The withholding statement shall be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under chapters 3, 4, and 61 and section 3406. For purposes of this section, a withholding agent will be liable for tax, interest, and penalties in accordance with paragraph (b)(7) of this section to the extent it does not follow the presumption rules of paragraph (b)(3) of this section, §§ 1.1441–5(d) and (e)(6), and 1.6049–5(d) for a payment, or portion thereof, for which it does not have a valid withholding statement prior to making a payment.

(B) *Content of withholding statement.* The withholding statement must contain sufficient information for a withholding agent to apply the correct rate of withholding on payments from the accounts identified on the statement and to properly report such payments on Forms 1042–S and Forms 1099, as applicable. The withholding statement must—

(*1*) Designate those accounts for which the qualified intermediary acts as a qualified intermediary;

(*2*) Designate those accounts for which qualified intermediary assumes primary withholding responsibility under chapter 3 and chapter 4 of the Code and/or primary reporting and backup withholding responsibility under chapter 61 and section 3406;

(*3*) If applicable, designate those accounts for which the qualified intermediary is acting as a qualified securities lender with respect to a substitute dividend paid in a securities lending or similar transaction; and

(*4*) Provide information regarding withholding rate pools, as described in paragraph (e)(5)(v)(C) of this section.

(C) *Withholding rate pools*—(*1*) *In general.* Except to the extent it has assumed both primary withholding responsibility under chapters 3 and 4 of the Internal Revenue Code and primary reporting and backup withholding responsibility under chapter 61 and section 3406 with respect to a payment, a qualified intermediary shall provide as part of its withholding statement the chapter 3 withholding rate pool information that is required for the withholding agent to meet its withholding and reporting obligations under chapters 3 and 61 of the Internal Revenue Code and section 3406. See, however, paragraph (e)(5)(v)(C)(*2*) of this section for when a qualified intermediary may provide a chapter 4 withholding rate pool (as described in paragraph (c)(48) of this section) with respect to a payment that is a withholdable payment. A chapter 3 withholding rate pool is a payment of a single type of income, determined in accordance with the categories of income reported on Form 1042–S that is subject to a single rate of withholding paid to a payee that is a foreign person and for which withholding under chapter 4 does not apply except as otherwise provided in this paragraph (e)(5)(v)(C)(*1*). A chapter 3 withholding rate pool may be established by any reasonable method on which the qualified intermediary and a withholding agent agree (*e.g.,* by establishing a separate account for a single chapter 3 withholding rate pool, or by dividing a payment made to a single account into portions allocable to each chapter 3 withholding rate pool). A qualified intermediary may include a separate pool for account holders that are U.S. exempt recipients or may include such accounts in a chapter 3 withholding rate pool to which withholding does not apply. The withholding statement must identify each applicable chapter 4 exemption code (as provided in the instructions to Form 1042–S) applicable to a chapter 3 withholding rate pool contained on the withholding statement (subdividing a chapter 3 withholding rate pool into sub-pools as necessary based on the applicable chapter 4 exemption code). To the extent a qualified intermediary does not assume primary reporting and backup withholding responsibility under chapter 61 and section 3406, a qualified intermediary's withholding statement must establish a separate withholding rate pool for each U.S. non-exempt recipient account holder that the qualified intermediary has disclosed to the withholding agent unless the qualified intermediary uses the alternative procedures in paragraph (e)(5)(v)(C)(*3*) of this section or the account holder is a payee that the qualified intermediary is permitted to include in a chapter 4 withholding rate pool of U.S. payees. A qualified intermediary may include a chapter 4 withholding rate pool of U.S. payees on a withholding statement by applying the

rules under paragraph (e)(3)(iv)(A) of this section (by substituting ''qualified intermediary'' for ''nonqualified intermediary'') with respect to an account that it maintains (as described in § 1.1471–5(b)(5)) for the payee of the payment. A qualified intermediary shall determine withholding rate pools based on valid documentation that it obtains under its withholding agreement with the IRS, or if a payment cannot be reliably associated with valid documentation, under the applicable presumption rules. If a qualified intermediary has an account holder that is another intermediary (whether a qualified intermediary or a nonqualified intermediary) or a flow-through entity, the qualified intermediary may combine the account holder information provided by the other intermediary or flow-through entity with the qualified intermediary's direct account holder information to determine the qualified intermediary's chapter 3 withholding rate pools and each of the qualified intermediary's chapter 4 withholding rate pools to the extent provided in the agreement described in (e)(5)(iii) of this section.

(*2*) *Withholding rate pool requirements for a withholdable payment.* This paragraph (e)(5)(v)(C)(*2*) modifies the requirements of a withholding statement described in paragraph (e)(5)(v)(C)(*1*) provided by a qualified intermediary with respect to a withholdable payment (including a reportable amount that is a withholdable payment). For such a payment, the regulations applicable to a withholding statement described in paragraph (e)(5)(v)(C)(*1*) of this section shall apply, except that—

(*i*) If the qualified intermediary provides a withholding statement described in § 1.1471–3(c)(3)(iii)(B)(*2*) (describing an FFI withholding statement), the withholding statement may include chapter 4 withholding rate pools with respect to the portions of the payment allocated to recalcitrant account holders and nonparticipating FFIs (to the extent permitted) in lieu of reporting chapter 3 withholding rate pools with respect to such persons as described in paragraph (e)(5)(v)(C)(*1*) of this section); or

(*ii*) If the qualified intermediary provides a withholding statement described in § 1.1471–3(c)(3)(iii)(B)(*3*) (describing a chapter 4 withholding statement), the withholding statement may include a chapter 4 withholding rate pool with respect to the portion of the payment allocated to nonparticipating FFIs.

(*3*) *Alternative procedure for U.S. non-exempt recipients.* If permitted under its agreement with the IRS, a qualified intermediary may, by mutual agreement with a withholding agent, establish a single zero withholding rate pool that includes U.S. non-exempt recipient account holders for whom the qualified intermediary has provided Forms W–9 prior to the withholding agent paying any reportable payments, as defined in the qualified intermediary agreement, and a separate withholding rate pool (subject to 28-percent withholding, or other applicable statutory back-up withholding tax rate) that includes only U.S. non-exempt recipient account holders for whom a qualified intermediary has not provided Forms W–9 prior to the withholding agent paying any reportable payments. If a qualified intermediary chooses the alternative procedure of this paragraph (e)(5)(v)(C)(3), the qualified intermediary must provide the information required by its qualified intermediary agreement to the withholding agent no later than January 15 of the year following the year in which the payments are paid. Failure to provide such information will result in the application of penalties to the qualified intermediary under sections 6721 and 6722, as well as any other applicable penalties, and may result in the termination of the qualified intermediary's withholding agreement with the IRS. A withholding agent shall not be liable for tax, interest, or penalties for failure to backup withhold or report information under chapter 61 of the Internal Revenue Code due solely to the errors or omissions of the qualified intermediary. If a qualified intermediary fails to provide the allocation information required by this paragraph (e)(5)(v)(C)(*3*), with respect to U.S. non-exempt recipients, the withholding agent shall report the unallocated amount paid from the withholding rate pool to an unknown recipient, or otherwise in accordance with the appropriate Form 1099 and the instructions accompanying the form.

(D) *Example.* The following example illustrates the application of paragraph (e)(5)(v)(C) for a qualified intermediary providing chapter 4 withholding rate pools on an FFI withholding statement provided to a withholding agent. WA makes a payment of U.S. source interest that is a withholdable payment to QI, a qualified intermediary that is an FFI and a non-U.S. payor (as defined in § 1.6049–5(c)(5)), and A and B are account holders of QI (as defined under § 1.1471–5(a)) and are both U.S. non-exempt recipients (as defined paragraph (c)(21) of this section). Ten percent of the payment is attributable to both A and B. A has provided WA with a Form W–9, but B has not provided WA with a Form W–9. QI assumes primary withholding responsibility under chapters 3 and 4 with respect to the payment, 80-percent of which is allocable to foreign payees who are account holders other than A and B. As a participating FFI, QI is required to report with respect to its U.S. accounts under § 1.1471–4(d) (as incorporated into the agreement described in paragraph (e)(5)(iii) of this section). Provided that QI reports A's account as a U.S. account under the requirements referenced in the preceding sentence, QI is not required to provide WA with a Form W–9 from A and may instead include A in a chapter 4 withholding rate pool of U.S. payees, allocating 10% of the payment to this pool. See § 1.6049–4(c)(4)(iii) concerning when reporting under section 6049 for a payment of interest is not required when an FFI that is a non-U.S. payor reports an account holder receiving the payment under its chapter 4 requirements. With respect to B, the interest payment is subject to backup withholding under section 3406. Because B is a recalcitrant account holder of QI for withholdable payments and because QI assumes primary chapter 4 withholding responsibility, however, QI may include the portion of the payment allocated to B with the remaining 80% of the payment for which QI assumes primary withholding responsibility. WA can reliably associate the full amount of the payment based on the withholding statement and does so regardless of whether WA knows B is a U.S. non-exempt recipient that is receiving a portion of the payment. See § 31.3406(g)–1(e) (providing exemption to backup withholding when withholding was applied under chapter 4).

(f) [Reserved]. For further guidance, see § 1.1441–1(f)(1) and (2).

(3) *Effective/applicability date.* This section applies to payments made after June 30, 2014. (For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

(g) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 6.** Section 1.1441–3 is amended by revising paragraphs (a), (c)(4)(i), and (d) and adding paragraph (j) to read as follows:

**§ 1.1441–3 Determination of amounts to be withheld.**

(a) [Reserved]. For further guidance, see § 1.1441–3T(a).

* * * * *

(c) * * *

(4) * * *

(i) [Reserved]. For further guidance, see § 1.1441–3T(c)(4)(i).

* * * * *

(d) [Reserved]. For further guidance, see § 1.1441–3T(d).

* * * * *

(j) [Reserved]. For further guidance, see § 1.1441–3T(j).

■ **Par. 7.** Section 1.1441–3T is added to read as follows:

**§ 1.1441–3T Determination of amounts to be withheld (temporary).**

(a) *General rule*—(1) *Withholding on gross amount.* Except as otherwise provided in regulations under section 1441, the amount subject to withholding under § 1.1441–1 is the gross amount of income subject to withholding that is paid to a foreign person. The gross amount of income subject to withholding may not be reduced by any deductions, except to the extent that one or more personal exemptions are allowed as provided under § 1.1441–4(b)(6).

(2) *Coordination with chapter 4.* A withholding agent making a payment that is both a withholdable payment and an amount subject to withholding under § 1.1441–2(a) and that has withheld tax as required under chapter 4 from such payment, is not an amount required to be withheld under this section notwithstanding paragraph (a)(1) of this section. See § 1.1474–6(b)(1) for the allowance for a withholding agent to credit withholding applied under chapter 4 against its liability for tax due under sections 1441, 1442, or 1443, and see § 1.1474–6(b)(1) for the rule allowing a withholding agent to credit withholding applied under chapter 4 against its liability for tax due under sections 1441, 1442, or 1443, and § 1.1474–6(b)(2) for when such withholding is considered applied by a withholding agent. If the withholdable payment is not required to be withheld upon under chapter 4, then the withholding agent must apply the provisions of § 1.1441–1 to determine whether withholding is required under sections 1441, 1442, or 1443.

(b) through (c)(3) [Reserved]. For further guidance, see § 1.1441–3(b) through (c)(3).

(4) *Coordination with withholding under section 1445*—(i) *In general.* A distribution from a U.S. Real Property Holding Corporation (USRPHC) (or from a corporation that was a USRPHC at any time during the five-year period ending on the date of distribution) with respect to stock that is a U.S. real property interest under section 897(c) or from a Real Estate Investment Trust (REIT) or other entity that is a qualified investment entity (QIE) under section 897(h)(4) with respect to its stock is subject to the withholding provisions under section 1441 (or section 1442 or 1443) and section 1445. A USRPHC making a distribution shall be treated as satisfying its withholding obligations under both sections if it withholds in accordance with one of the procedures described in either paragraph (c)(4)(i)(A) or (B) of this section. A USRPHC must apply the same withholding procedure to all the distributions made during the taxable year. However, the USRPHC may change the applicable withholding procedure from year to year. For rules regarding distributions by REITs and other entities that are QIEs, see paragraph (c)(4)(i)(C) of this section. To the extent withholding under sections 1441, 1442, or 1443 applies under this paragraph (c)(4)(i) to any portion of a distribution that is a withholdable payment, see paragraph (a)(2) for rules coordinating withholding under chapter 4.

(A) *Withholding under section 1441.* The USRPHC may choose to withhold on a distribution only under section 1441 (or 1442 or 1443) and not under section 1445. In such a case, the USRPHC must withhold under section 1441 (or 1442 or 1443) on the full amount of the distribution, whether or not any portion of the distribution represents a return of basis or capital gain. If a reduced tax rate under an income tax treaty applies to the distribution by the USRPHC, then the applicable rate of withholding on the distribution shall be no less than 10-percent, unless the applicable treaty specifies an applicable lower rate for distributions from a USRPHC, in which case the lower rate may apply.

(B) *Withholding under both sections 1441 and 1445.* As an alternative to the procedure described in paragraph (c)(4)(i)(A) of this section, a USRPHC may choose to withhold under both sections 1441 (or 1442 or 1443) and 1445 under the procedures set forth in this paragraph (c)(4)(i)(B). The USRPHC must make a reasonable estimate of the portion of the distribution that is a dividend under paragraph (c)(2)(ii)(A) of this section, and must—

(*1*) Withhold under section 1441 (or 1442 or 1443) on the portion of the distribution that is estimated to be a dividend under paragraph (c)(2)(ii)(A) of this section; and

(*2*) Withhold under section 1445(e)(3) and § 1.1445–5(e) on the remainder of the distribution or on such smaller portion based on a withholding certificate obtained in accordance with § 1.1445–5(e)(3)(iv).

(C) Coordination with REIT/QIE withholding. Withholding is required under section 1441 (or 1442 or 1443) on the portion of a distribution from a REIT or other entity that is a QIE that is not designated (for REITs) or reported (for regulated investment companies that are QIEs) as a capital gain dividend, a return of basis, or a distribution in excess of a shareholder's adjusted basis in the stock of the REIT or QIE that is treated as a capital gain under section 301(c)(3). A distribution in excess of a shareholder's adjusted basis in the stock of the REIT or QIE is, however, subject to withholding under section 1445, unless the interest in the REIT or QIE is not a U.S. real property interest (*e.g.,* an interest in a domestically controlled REIT or QIE under section 897(h)(2)). In addition, withholding is required under section 1445 on the portion of the distribution designated (for REITs) or reported (for regulated investment companies that are QIEs) as a capital gain dividend to the extent that it is attributable to the sale or exchange of a U.S. real property interest. See § 1.1445–8.

(ii) [Reserved]. For further guidance, see § 1.1441–3(c)(4)(ii).

(d) *Withholding on payments that include an undetermined amount of income*—(1) *In general.* Where the withholding agent makes a payment and does not know at the time of payment the amount that is subject to withholding because the determination of the source of the income or the calculation of the amount of income subject to tax depends upon facts that are not known at the time of payment, then the withholding agent must withhold an amount under § 1.1441–1 based on the entire amount paid that is necessary to ensure that the tax withheld is not less than 30 percent (or other applicable percentage) of the amount that could be from sources within the United States or income subject to tax. See § 1.1471–2(a)(5) for similar rules under chapter 4 that apply to payments made to payees that are entities. The amount so withheld shall not exceed 30 percent of the amount paid. With respect to a payment described in paragraph (d)(1) or (2) of this section, the withholding agent may elect to retain 30 percent of the payment to hold in escrow until the earlier of the date that the amount of income from sources within the United States or the taxable amount can be determined or

one year from the date the amount is placed is in escrow, at which time the withholding becomes due under § 1.1441–1, or, to the extent that withholding is not required, the escrowed amount must be paid to the payee.

(2) *Withholding on certain gains.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim regarding the amount of gain described in § 1.1441–2(c) if the beneficial owner withholding certificate, or other appropriate withholding certificate, states the beneficial owner's basis in the property giving rise to the gain. In the absence of a reliable representation on a withholding certificate, the withholding agent must withhold an amount under § 1.1441–1 that is necessary to assure that the tax withheld is not less than 30 percent (or other applicable percentage) of the recognized gain. For this purpose, the recognized gain is determined without regard to any deduction allowed by the Code from the gains. The amount so withheld shall not exceed 30 percent of the amount payable by reason of the transaction giving rise to the recognized gain. See § 1.1441–1(b)(8) regarding adjustments in the case of overwithholding.

(e) through (i) [Reserved]. For further guidance, see § 1.1441–3(e) through (i).

(j) *Effective/applicability date.* (1) Except as otherwise provided in paragraph (g) of this section, this section applies to payments made after June 30, 2014. (For payments made after December 31, 2000, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

(2) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 8.** Section 1.1441–4 is amended by revising paragraphs (a)(2)(ii), (b)(2)(i), (b)(2)(iii), (b)(2)(v), and (b)(3) and adding paragraphs (g)(3) and (h) to read as follows:

**§ 1.1441–4 Exemptions from withholding for certain effectively connected income and other amounts.**

(a) * * *

(2) * * *

(ii) [Reserved]. For further guidance, see § 1.1441–4T(a)(2)(ii).

* * * * *

(b) * * *

(2) * * *

(i) [Reserved]. For further guidance, see § 1.1441–4T(b)(2)(i).

* * * * *

(iii) [Reserved]. For further guidance, see § 1.1441–4T(b)(2)(iii).

* * * * *

(v) [Reserved]. For further guidance, see § 1.1441–4T(b)(2)(v).

(3) [Reserved]. For further guidance, see § 1.1441–4T(b)(3).

* * * * *

(g) * * *

(3) [Reserved]. For further guidance, see § 1.1441–4T(g)(3).

(h) [Reserved]. For further guidance, see § 1.1441–4T(h).

■ **Par. 9.** Section 1.1441–4T is added to read as follows:

**§ 1.1441–4T Exemptions from withholding for certain effectively connected income and other amounts (temporary).**

(a)(1) through (a)(2)(i) [Reserved]. For further guidance, see § 1.1441–4(a) through (a)(2)(i).

(ii) *Special rules for U.S. branches of foreign persons*—(A) *U.S. branches of certain foreign banks or foreign insurance companies.* A payment to a U.S. branch described in § 1.1441–1(b)(2)(iv)(B)(3) is presumed to be effectively connected with the conduct of a trade or business in the United States without the need to furnish a certificate if the withholding agent obtains an EIN for the entity, unless the U.S. branch provides a U.S. branch withholding certificate described in § 1.1441–1(e)(3)(v) that represents otherwise. If no certificate is furnished but the income is not, in fact, effectively connected income, then the branch must withhold whether the payment is collected on behalf of other persons or on behalf of another branch of the same entity. See § 1.1441–1(b)(2)(iv) and (b)(6) for general rules applicable to payments to U.S. branches of foreign persons.

(B) *Other U.S. branches.* See § 1.1441–1(b)(2)(iv)(E) for similar procedures for other U.S. branches to the extent provided in a determination letter from the IRS.

(3) [Reserved]. For further guidance, see § 1.1441–4(a)(3).

(b)(1) [Reserved]. For further guidance, see § 1.1441–4(b)(1).

(2) *Manner of obtaining withholding exemption under tax treaty*—(i) *In general.* In order to obtain the exemption from withholding by reason of a tax treaty, provided by paragraph (b)(1)(iv) of this section, a nonresident alien individual must submit a withholding certificate (described in paragraph (b)(2)(ii) of this section) to each withholding agent from whom amounts are to be received. A separate withholding certificate must be filed for each taxable year of the alien individual. If the withholding agent is satisfied that an exemption from withholding is warranted (see paragraph (b)(2)(iii) of this section), the withholding certificate shall be accepted in the manner set forth in paragraph (b)(2)(iv) of this section. The exemption from withholding becomes effective for payments made at least ten days after a copy of the accepted withholding certificate is forwarded to the IRS. The withholding agent may rely on an accepted withholding certificate only if the IRS has not objected to the certificate. For purposes of this paragraph (b)(2)(i), the IRS will be considered to have not objected to the certificate if it has not notified the withholding agent within a 10-day period beginning from the date that the withholding certificate is forwarded to the IRS pursuant to paragraph (b)(2)(v) of this section. After expiration of the 10-day period, the withholding agent may rely on the withholding certificate retroactive to the date of the first payment covered by the certificate. The fact that the IRS does not object to the withholding certificate within the 10-day period provided in this paragraph (b)(2)(i) shall not preclude the IRS from examining the withholding agent at a later date with respect to facts that the withholding agent knew or had reason to know regarding the payment and eligibility for a reduced rate and that were not disclosed to the IRS as part of the 10-day review process.

(ii) [Reserved]. For further guidance, see § 1.1441–4(b)(2)(ii).

(iii) *Review by withholding agent.* The exemption from withholding provided by paragraph (b)(1)(iv) of this section shall not apply unless the withholding agent accepts (in the manner provided in paragraph (b)(2)(iv) of this section) the statement on Form 8233, ''Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual,'' (or successor form) supplied by the nonresident alien individual. Before accepting the statement, the withholding agent must examine the statement. If the withholding agent knows or has reason to know that any of the facts or assertions on Form 8233 may be false or that the eligibility of the individual's compensation for the exemption cannot be readily determined, the withholding agent may not accept the statement on Form 8233 and is required to withhold under this section. If the withholding agent accepts the statement and subsequently finds that any of the facts or assertions contained on Form 8233 may be false or that the eligibility of the individual's compensation for the exemption can no longer be readily determined, then the withholding agent shall promptly so notify the IRS by letter, and the

withholding agent is not relieved of liability to withhold on any amounts still to be paid. If the withholding agent is notified by the IRS that the eligibility of the individual's compensation for the exemption is in doubt or that such compensation is not eligible for the exemption, the withholding agent is required to withhold under this section. The rules of this paragraph (b)(2) are illustrated by the following examples.

*Example 1.* C, a nonresident alien individual, submits Form 8233 to W, a withholding agent. The statement on Form 8233 does not include all the information required by paragraph (b)(2)(ii) of this section. Therefore, W has reason to know that he or she cannot readily determine whether C's compensation for personal services is eligible for an exemption from withholding and, therefore, W must withhold.

*Example 2.* D, a nonresident alien individual, is performing services for W, a withholding agent. W has accepted a statement on Form 8233 submitted by D, according to the provisions of this section. W receives notice from the Internal Revenue Service that the eligibility of D's compensation for a withholding exemption is in doubt. Therefore, W has reason to know that the eligibility of the compensation for a withholding exemption cannot be readily determined, as of the date W receives the notification, and W must withhold tax under section 1441 on amounts paid after receipt of the notification.

*Example 3.* E, a nonresident alien individual, submits Form 8233 to W, a withholding agent for whom E is to perform personal services. The statement contains all the information requested on Form 8233. E claims an exemption from withholding based on a personal exemption amount computed on the number of days E will perform personal services for W in the United States. If W does not know or have reason to know that any statement on the Form 8233 is false or that the eligibility of E's compensation for the withholding exemption cannot be readily determined, W can accept the statement on Form 8233 and exempt from withholding the appropriate amount of E's income.

(iv) [Reserved]. For further guidance, see § 1.1441–4(b)(2)(iv).

(v) *Copies of Form 8233.* The withholding agent shall forward one copy of each Form 8233 that is accepted under paragraph (b)(2)(iv) of this section to the IRS within five days of such acceptance. The withholding agent shall retain a copy of Form 8233.

(3) *Withholding agreements.* Compensation for personal services of a nonresident alien individual who is engaged during the taxable year in the conduct of a trade or business within the United States may be wholly or partially exempted from the withholding required by § 1.1441–1 if an agreement is reached between the IRS and the alien individual with respect to the amount of withholding required. Such agreement shall be available in the circumstances and in the manner set forth by the Internal Revenue Service, and shall be effective for payments covered by the agreement that are made after the agreement is executed by all parties. The alien individual must agree to timely file an income tax return for the current taxable year.

(b)(4) through (g)(2) [Reserved]. For further guidance, see § 1.1441–4(b)(4) through (g)(2).

(g)(3) *Effective/applicability date.* This section applies to payments made after June 30, 2014. (For payments made after December 31, 2000, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

(h) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 10.** Section 1.1441–5 is amended by:

■ 1. Revising paragraph (b)(2)(iii).
■ 2. Adding paragraph (b)(2)(vi).
■ 3. Revising paragraphs (c)(1)(i) introductory text, (c)(1)(i)(C), and (c)(1)(iv).
■ 4. Adding paragraph (c)(1)(v).
■ 5. Revising paragraphs (c)(2)(i) through (iii), (c)(2)(iv)(A) and (B), (c)(3)(i), (c)(3)(ii), (c)(3)(iii)(A), (c)(3)(iv), (c)(3)(v), and (d)(2) through (4).
■ 6. Adding paragraph (e)(3)(iii).
■ 7. Revising paragraphs (e)(5)(i), (e)(5)(ii), (e)(5)(iii)(A), (e)(5)(iv), (e)(5)(v), (e)(6)(ii), and (f).
■ 8. Adding paragraph (g)(3).

The revisions and additions read as follows:

**§ 1.1441–5 Withholding on payments to partnerships, trusts, and estates.**

* * * * *

(b) * * *

(2) * * *

(iii) [Reserved]. For further guidance, see § 1.1441–5T(b)(2)(iii).

* * * * *

(vi) [Reserved]. For further guidance, see § 1.1441–5T(b)(2)(vi).

(c) * * *

(1) * * *

(i) [Reserved]. For further guidance, see § 1.1441–5T(c)(1)(i).

* * * * *

(C) [Reserved]. For further guidance, see § 1.1441–5T(c)(1)(i)(C).

* * * * *

(iv) and (v) [Reserved]. For further guidance, see § 1.1441–5T(c)(1)(iv) and (v).

(2) * * *

(i) through (iii) [Reserved]. For further guidance, see § 1.1441–5T(c)(2)(i) through (c)(2)(iii).

(iv) * * *

(A) and (B) [Reserved]. For further guidance, see § 1.1441–5T(c)(2)(iv)(A) and (B).

* * * * *

(3) * * *

(i) and (ii) [Reserved]. For further guidance, see § 1.1441–5T(c)(3)(i) and (ii)

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1441–5T(c)(3)(iii)(A).

* * * * *

(iv) and (v) [Reserved]. For further guidance, see § 1.1441–5T(c)(3)(iv) and (v).

(d) * * *

(2) through (4) [Reserved]. For further guidance, see § 1.1441–5T(d)(2) through (d)(4).

(e) * * *

(3) * * *

(iii) [Reserved]. For further guidance, see § 1.1441–5T(e)(3)(iii).

* * * * *

(5) * * *

(i) and (ii) [Reserved]. For further guidance, see § 1.1441–5T(e)(5)(i) and (ii).

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1441–5T(e)(5)(iii)(A).

* * * * *

(iv) and (v) [Reserved]. For further guidance, see § 1.1441–5T(e)(5)(iv) and (v).

(6) * * *

(ii) [Reserved]. For further guidance, see § 1.1441–5T(e)(6)(ii).

* * * * *

(f) [Reserved]. For further guidance, see § 1.1441–5T(f).

(g) * * *

(3) [Reserved]. For further guidance, see § 1.1441–5T(g)(3).

■ **Par. 11.** Section 1.1441–5T is added to read as follows:

**§ 1.1441–5T Withholding on payments to partnerships, trusts, and estates (temporary).**

(a) through (b)(2)(ii) [Reserved]. For further guidance, see § 1.1441–5(a) through (b)(2)(ii).

(b)(2)(iii) *U.S. complex trusts and U.S. estates.* A U.S. trust that is not a trust described in section 651(a) (see paragraph (b)(2)(ii) of this section) or sections 671 through 679 (see paragraph (b)(2)(iv) of this section) (a U.S. complex trust) is required to withhold under chapter 3 of the Internal Revenue Code (Code) as a withholding agent on the distributable net income includible in the gross income of a foreign beneficiary to the extent the distributable net income consists of an amount subject to withholding (as defined in § 1.1441–2(a)) that is, or is required to be,

distributed currently. The U.S. complex trust shall withhold when a distribution is made to a foreign beneficiary. The trust may use the same procedures regarding an estimate of the amount subject to withholding as a U.S. simple trust under paragraph (b)(2)(ii) of this section. To the extent an amount subject to withholding is required to be, but is not actually distributed, the U.S. complex trust must withhold on the foreign beneficiary's allocable share at the time the income is required to be reported on Form 1042–S under § 1.1461–1(c), without extension. A U.S. estate is required to withhold under chapter 3 of the Code on the distributable net income includible in the gross income of a foreign beneficiary to the extent the distributable net income consists of an amount subject to withholding (as defined in § 1.1441–2(a)) that is actually distributed. A U.S. estate may also use the reasonable estimate procedures of paragraph (b)(2)(ii) of this section. However, those procedures apply to an estate that has a taxable year other than a calendar year only if the estate files an amended return on Form 1042 for the calendar year in which the distribution was made and pays the underwithheld tax and interest within 60 days after the close of the taxable year in which the distribution was made.

(iv) and (v) [Reserved]. For further guidance, see § 1.1441–5 (b)(2)(iv) and (v).

(vi) *Coordination with chapter 4 requirements for U.S. partnerships, trusts, and estates.* To the extent that a U.S. partnership is required to withhold on an amount under chapter 4 with respect to a partner, beneficiary or owner, the partnership, trust, or estate must apply the rules described in § 1.1473–1(a)(5) to determine when it must withhold on the amount under chapter 4. In a case in which withholding applies under chapter 4 to such an amount, see § 1.1441–3(a)(2) to coordinate with withholding that otherwise applies to such an amount under this paragraph (b).

(c) *Foreign partnerships*—(1) *Determination of payee.* (i) *Payments treated as made to partners.* Except as otherwise provided in paragraph (c)(1)(ii) or (iv) of this section, the payees of a payment to a person that the withholding agent may treat as a nonwithholding foreign partnership under paragraph (c)(3)(i) or (d)(2) of this section are the partners (looking through partners that are foreign intermediaries or flow-through entities) as follows—

(A) and (B) [Reserved]. For further guidance, see § 1.1441–5(c)(1)(i)(A) and (B).

(C) If the withholding agent can reliably associate a partner's distributive share of the payment with a qualified intermediary withholding certificate under § 1.1441–1(e)(3)(ii), a nonqualified intermediary withholding certificate under § 1.1441–1(e)(3)(iii), or a U.S. branch certificate under § 1.1441–1(e)(3)(v) (including one provided by a territory financial institution), then the rules of § 1.1441–1(b)(2)(v) shall apply to determine who the payee is in the same manner as if the partner's distributive share of the payment had been paid directly to such intermediary or U.S. branch or territory financial institution;

(c)(1)(i)(D) through (c)(1)(iii) [Reserved]. For further guidance, see § 1.1441–5 (c)(1)(i)(D) through (c)(1)(iii).

(iv) *Coordination with chapter 4 for payments made to foreign partnerships.* A withholding agent that makes a payment of U.S. source FDAP income to a foreign partnership that is a withholdable payment to which withholding under chapter 4 applies must apply the rules described in § 1.1473–1(a)(5)(vi) to determine when the payment is treated as made to a partner in the partnership for purposes of chapter 4. In a case in which withholding applies under chapter 4 to a withholdable payment made to a foreign partnership, see § 1.1441–3(a)(2) to coordinate with withholding otherwise required under this paragraph (c) with respect to the amount of the payment included in the gross income of a partner. For when a withholding agent may reliably associate a withholdable payment with a chapter 4 withholding rate pool in lieu of obtaining documentation for each payee include in the pool, see § 1.1441–1(e)(3)(iv)(C)(*2*) (substituting the term *nonwithholding foreign partnership* for the term *nonqualified intermediary*).

(v) *Examples.* The rules of paragraphs (c)(1)(i) and (ii) of this section are illustrated by the following examples. Each example assumes that all payments are not withholdable payments and thus no withholding applies under chapter 4.

*Example 1.* FP is a nonwithholding foreign partnership organized in Country X. FP has two partners, FC, a foreign corporation, and USP, a U.S. partnership. USWH, a U.S. withholding agent, makes a payment of U.S. source interest to FP that is not a withholdable payment. FP has provided USWH with a valid nonwithholding foreign partnership certificate, as described in paragraph (c)(3)(iii) of this section, with which it associates a beneficial owner withholding certificate from FC and a Form W–9, ''Request for Taxpayer Identification Number and Certification,'' from USP together with the withholding statement required by paragraph (c)(3)(iv) of this section. USWH can reliably associate the payment of interest with the withholding certificates from FC and USP. Under paragraph (c)(1)(i) of this section, the payees of the interest payment are FC and USP.

*Example 2.* The facts are the same as in *Example 1,* except that FP1, a nonwithholding foreign partnership, is a partner in FP rather than USP. FP1 has two partners, A and B, both foreign persons. FP provides USWH with a valid nonwithholding foreign partnership certificate, as described in paragraph (c)(3)(iii) of this section, with which it associates a beneficial owner withholding certificate from FC and a nonwithholding foreign partnership certificate from FP1. In addition, foreign beneficial owner withholding certificates from A and B are associated with the nonwithholding foreign partnership withholding certificate from FP1. FP also provides the withholding statement required by paragraph (c)(3)(iv) of this section. USWH can reliably associate the interest payment with the withholding certificates provided by FC, A, and B. Therefore, under paragraph (c)(1)(i) of this section, the payees of the interest payment are FC, A, and B.

*Example 3.* USWH makes a payment of U.S. source dividends to WFP, a withholding foreign partnership, that is not a withholdable payment. WFP has two partners, FC1 and FC2, both foreign corporations. USWH can reliably associate the payment with a valid withholding foreign partnership withholding certificate from WFP. Therefore, under paragraph (c)(1)(ii)(A) of this section, WFP is the payee of the interest.

*Example 4.* USWH makes a payment of U.S. source royalties that is not a withholdable payment to FP, a foreign partnership. USWH can reliably associate the royalties with a valid withholding certificate from FP on which FP certifies that the income is effectively connected with the conduct of a trade or business in the United States. Therefore, under paragraph (c)(1)(ii)(B) of this section, FP is the payee of the royalties.

(2) *Withholding foreign partnerships*—(i) *Reliance on claim of withholding foreign partnership status.* A withholding foreign partnership is a foreign partnership that has entered into an agreement with the Internal Revenue Service (IRS), as described in paragraph (c)(2)(ii) of this section, with respect to distributions and guaranteed payments it makes to its partners. A withholding agent that can reliably associate a payment with a certificate described in paragraph (c)(2)(iv) of this section may treat the person to whom it makes the payment as a withholding foreign partnership for purposes of withholding under chapters 3 and 4 of the Code, information reporting under chapter 61 of the Code, backup withholding under section 3406, and withholding under other provisions of the Code. Furnishing such a certificate is in lieu of

transmitting to a withholding agent withholding certificates or other appropriate documentation for its partners. Although the withholding foreign partnership generally will be required to obtain withholding certificates or other appropriate documentation from its partners pursuant to its agreement with the IRS, it will generally not be required to attach such documentation to its withholding foreign partnership withholding certificate to the extent it is permitted to act as a withholding foreign partnership with respect to the payment under its agreement. A foreign partnership may act as a qualified intermediary under § 1.1441–1(e)(5) with respect to payments it makes to persons other than its partners. In addition, the IRS may permit a foreign partnership to act as a qualified intermediary under § 1.1441–1(e)(5)(ii)(D) with respect to its partners in appropriate circumstances.

(ii) *Withholding agreement.* The IRS may, upon request, enter into a withholding agreement with a foreign partnership pursuant to such procedures as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). Under the withholding agreement, a foreign partnership shall generally be subject to the applicable withholding and reporting provisions applicable to withholding agents (and payors as defined in § 1.6049–4(a) under chapters 3, 4, and 61 of the Code, section 3406, the regulations under those provisions, and other withholding provisions of the Code, except to the extent provided under the agreement. Under the agreement, a foreign partnership may agree to act as an acceptance agent to perform the duties described in § 301.6109–1(d)(3)(iv)(A) of this chapter. For a partnership that receives withholdable payments on behalf of its partners and that is an FFI, the agreement will require the partnership to assume the requirements of a participating FFI, a registered deemed-compliant FFI, or an FFI treated as a deemed-compliant FFI under an applicable IGA that is subject to due diligence and reporting requirements with respect to its U.S. accounts similar to those applicable to a registered deemed-compliant FFI under § 1.1471–5(f)(1). The agreement may specify the manner in which applicable procedures for adjustments for underwithholding and overwithholding, including refund procedures, apply to the withholding foreign partnership and its partners and the extent to which applicable procedures may be modified. In particular, a withholding agreement may allow a withholding foreign partnership to claim refunds of overwithheld amounts on behalf of its customers. In addition, the agreement must specify the manner in which the IRS will verify the partnership's compliance with its agreement, including the requirements for a periodic review of the partnership's compliance with the agreement and the procedures for the partnership to certify to its compliance with the agreement. A withholding foreign partnership must file a return on Form 1042, ''Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,'' and information returns on Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding.'' The withholding foreign partnership agreement may also require a withholding foreign partnership to file a partnership return under section 6031(a) and partner statements under 6031(b), including for each U.S. partner to the extent required in the agreement. Additionally, a partnership that is an FFI will be required to file Form 8966, ''FATCA Report,'' to the extent provided in the agreement.

(iii) *Withholding responsibility.* A withholding foreign partnership must assume primary withholding responsibility under both chapters 3 and 4 of the Code. It is not required to provide information to the withholding agent regarding each partner's distributive share of the payment (including a withholdable payment). The withholding foreign partnership will be responsible for reporting the payments under § 1.1461–1(c), § 1.1474–1(d), and chapter 61 of the Code and filing Form 1042 (to the extent required in the agreement). A withholding agent making a payment to a withholding foreign partnership is not required to withhold any amount under chapters 3 and 4 of the Code on the payment unless it has actual knowledge or reason to know that the foreign partnership is not acting as a withholding foreign partnership with respect to the payment or has not withheld to the extent required. The withholding foreign partnership shall withhold the payments under the same procedures and at the same time as prescribed for withholding by a U.S. partnership under paragraph (b)(2) of this section, except that, for purposes of determining the partner's status, the provisions of paragraph (d)(4) of this section shall apply.

(iv) [Reserved]. For further guidance, see § 1.1441–5(c)(2)(iv).

(A) The name, permanent residence address (as described in § 1.1441–1(e)(2)(ii)), the employer identification number of the partnership, the country under the laws of which the partnership is created or governed, and, for a withholding certificate furnished for a partnership receiving a withholdable payment, the chapter 4 status of the partnership (and GIIN of the partnership, if applicable);

(B) A certification that the partnership is a withholding foreign partnership within the meaning of paragraph (c)(2)(i) of this section, and, for a partnership that is an FFI receiving a withholdable payment, a certification that the partnership is acting as a participating FFI, a registered deemed-compliant FFI, or a nonreporting IGA FFI (as defined in § 1.1471–1(b)(83)); and

(C) [Reserved]. For further guidance, see § 1.1441–5(c)(2)(iv)(C).

(3) *Nonwithholding foreign partnerships*—(i) *Reliance on claim of foreign partnership status.* A withholding agent may treat a person as a nonwithholding foreign partnership if it receives from that person a nonwithholding foreign partnership withholding certificate as described in paragraph (c)(3)(iii) of this section. A withholding agent that does not receive a nonwithholding foreign partnership withholding certificate, or does not receive a valid withholding certificate, from an entity it knows, or has reason to know, is a foreign partnership, must apply the presumption rules of §§ 1.1441–1(b)(3) and 1.6049–5(d) and paragraphs (d) and (e)(6) of this section. In addition, to the extent a withholding agent cannot, prior to a payment, reliably associate the payment with valid documentation from a payee that is associated with the nonwithholding foreign partnership withholding certificate or has insufficient information to report the payment on Form 1042–S or Form 1099, to the extent reporting is required, the withholding agent must apply the presumption rules. See § 1.1441–1(b)(2)(vii)(A) and (b)(2)(vii)(B) for rules regarding reliable association. See, however, § 1.1441–1(e)(3)(iv)(C)(*2*) for when a withholding agent may reliably associate a withholdable payment with a chapter 4 withholding rate pool in lieu of obtaining documentation for each payee included in the pool (substituting the term nonwithholding foreign partnership for the term nonqualified intermediary). See also § 1.1441–1(e)(3)(iv)(A) for when a withholding agent may reliably associate a payment with a chapter 4 withholding rate pool of U.S. payees. See paragraph (c)(3)(iv) of this section and § 1.1441–1(e)(3)(iv) for alternative procedures permitting

allocation information to be received after a payment is made.

(ii) *Reliance on claim of reduced withholding by a partnership for its partners.* This paragraph (c)(3)(ii) describes the manner in which a withholding agent may rely on a claim of reduced withholding when making a payment to a nonwithholding foreign partnership. To the extent that a withholding agent treats a payment to a nonwithholding foreign partnership as a payment to the nonwithholding foreign partnership's partners (whether direct or indirect) in accordance with paragraph (c)(1)(i) of this section, it may rely on a claim for reduced withholding by the partner if, prior to the payment, the withholding agent can reliably associate the payment (within the meaning of § 1.1441–1(b)(2)(vii)) with a valid withholding certificate or other appropriate documentation from the partner that establishes entitlement to a reduced rate of withholding. A withholding certificate or other appropriate documentation that establishes entitlement to a reduced rate of withholding is a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i), documentary evidence described in § 1.1441–6(c)(3) or (4) or § 1.6049–5(c)(1) (for a partner claiming to be a foreign person and a beneficial owner, determined under the provisions of § 1.1441–1(c)(6)), a Form W–9 described in § 1.1441–1(d) (for a partner claiming to be a U.S. payee), a withholding foreign partnership withholding certificate described in paragraph (c)(2)(iv) of this section, or a withholding statement allocating the payment to a chapter 4 withholding rate pool of U.S. payees. For when the withholding agent can reliably associate the payment with a chapter 4 withholding rate pool, see paragraph (c)(3)(i) of this section. See also § 1.1441–3(a)(2) (coordinating withholding under chapter 3 when withholding under chapter 4 is applied to a payment). Unless a nonwithholding foreign partnership withholding certificate is provided for income claimed to be effectively connected with the conduct of a trade or business in the United States, a claim must be presented for each portion of the payment that represents an item of income includible in the distributive share of a partner as required under paragraph (c)(3)(iii)(C) of this section. When making a claim for several partners, the partnership may present a single nonwithholding foreign partnership withholding certificate to which the partners' certificates or other appropriate documentation are associated. Where the nonwithholding foreign partnership withholding certificate is provided for income claimed to be effectively connected with the conduct of a trade or business in the United States under paragraph (c)(3)(iii)(D) of this section, the claim may be presented without having to identify any partner's distributive share of the payment.

(iii) [Reserved]. For further guidance, see § 1.1441–5(c)(3)(iii).

(A) The name, permanent residence address (as described in § 1.1441–1(e)(2)(ii)), the employer identification number of the partnership, if any, the country under the laws of which the partnership is created or governed, and the chapter 4 status of the partnership (for a nonwithholding foreign partnership receiving a withholdable payment or providing a withholding statement associated with the Form W–8 allocating a payment to a chapter 4 withholding rate pool of U.S. payees), and the GIIN of the partnership (if applicable);

(B) through (E) [Reserved]. For further guidance, see § 1.1441–5(c)(3)(iii)(B) through (c)(3)(iii)(E).

(iv) *Withholding statement provided by nonwithholding foreign partnership and coordination with chapter 4.* The provisions of § 1.1441–1(e)(3)(iv) (regarding a withholding statement) shall apply to a nonwithholding foreign partnership by substituting the term nonwithholding foreign partnership for the term nonqualified intermediary, including when a nonwithholding foreign partnership may provide to a withholding agent a withholding statement that includes a chapter 4 withholding rate pool in lieu of information with respect to each partner that is a payee of a payment.

(v) *Withholding and reporting by a foreign partnership.* A nonwithholding foreign partnership described in this paragraph (c)(3) that receives an amount subject to withholding (as defined in § 1.1441–2(a)) shall be required to withhold and report such payment under chapter 3 of the Code and the regulations thereunder except as otherwise provided in this paragraph (c)(3)(v). A nonwithholding foreign partnership shall not be required to withhold and report if it has provided a valid nonwithholding foreign partnership withholding certificate, it has provided all of the information required by paragraph (c)(3)(iv) of this section (withholding statement), and it does not know, and has no reason to know, that another withholding agent failed to withhold the correct amount or failed to report the payment correctly under § 1.1461–1(c). A nonwithholding foreign partnership is also not required to withhold and report under this paragraph (c)(3) to the extent that withholding under chapter 4 was applied to a payment that is includible in the gross income of a partner in the partnership. See also § 1.1441–3(a)(2) for coordination rules when withholding under chapter 4 has been applied to a withholdable payment. A withholding foreign partnership's obligations to withhold and report shall be determined in accordance with its withholding foreign partnership agreement.

(d)(1) [Reserved]. For further guidance, see § 1.1441–5(d)(1).

(2) *Determination of partnership status as U.S. or foreign in the absence of documentation.* In the absence of a valid representation of U.S. partnership status in accordance with paragraph (b)(1) of this section or of foreign partnership status in accordance with paragraph (c)(2)(i) or (c)(3)(i) of this section, the withholding agent shall determine the classification of the payee under the presumptions set forth in § 1.1441–1(b)(3)(ii). If the withholding agent treats the payee as a partnership under § 1.1441–1(b)(3)(ii), the withholding agent shall apply the presumptions set forth in § 1.1441–1(b)(3)(iii) to determine whether to treat the partnership as a U.S. person or foreign person. For rules regarding reliable association with a withholding certificate from a domestic or a foreign partnership, see § 1.1441–1(b)(2)(vii).

(3) *Determination of partners' status in the absence of certain documentation.* If a nonwithholding foreign partnership has provided a nonwithholding foreign partnership withholding certificate under paragraph (c)(3)(iii) of this section that would be valid except that the withholding agent cannot reliably associate all or a portion of the payment with valid documentation from a partner of the partnership, then the withholding agent may apply the presumption rule of this paragraph (d)(3) with respect to all or a portion of the payment for which documentation has not been received. See § 1.1441–1(b)(2)(vii)(A) and (B) for rules regarding reliable association. The presumption rule of this paragraph (d)(3) also applies to a person that is presumed to be a foreign partnership under the rule of paragraph (d)(2) of this section. Any portion of a payment that the withholding agent cannot treat as reliably associated with valid documentation from a partner may be presumed made to a foreign payee. As a result, any payment of an amount subject to withholding is subject to withholding at a rate of 30 percent. Any

payment that is presumed to be made to an undocumented foreign payee must be reported on Form 1042–S. See § 1.1461–1(c). For a payment described in this paragraph (d)(3) that is a withholdable payment, see § 1.1471–3(f)(5) for the presumption rule for determining the payee's chapter 4 status to determine whether withholding under chapter 4 applies to the payment.

(4) *Determination by a withholding foreign partnership of the status of its partners.* Except as otherwise provided in the agreement described in paragraph (c)(2) of this section, a withholding foreign partnership shall determine whether the partners or some other persons are the payees of the partners' distributive shares of any payment made by a withholding foreign partnership by applying the rules of § 1.1441–1(b)(2), paragraph (c)(1) of this section (in the case of a partner that is a foreign partnership), and paragraph (e)(3) of this section (in the case of a partner that is a foreign estate or a foreign trust). Further, the provisions of paragraph (d)(3) of this section shall apply to determine the status of partners and the applicable withholding rates to the extent that, at the time the foreign partnership is required to withhold on a payment, it cannot reliably associate the amount with documentation for any one or more of its partners.

(e)(1) through (e)(3)(ii) [Reserved]. For further guidance, see § 1.1441–5(e)(1) through (e)(3)(ii).

(iii) *Coordination with chapter 4 for payments made to foreign simple trusts and foreign grantor trusts.* A withholding agent that makes a payment of U.S. source FDAP income to a foreign simple trust or foreign grantor trust that is a withholdable payment to which withholding under chapter 4 applies must apply the rules described in § 1.1473–1(a)(5)(vi) to determine when the payment is treated as made to a beneficiary or owner of the trust for purposes of chapter 4. In a case in which withholding applies under chapter 4 to a withholdable payment made to a foreign simple trust or foreign grantor trust, see § 1.1441–3(a)(2) to coordinate withholding otherwise required under this paragraph (e) with respect to the amount of the payment included in the gross income of the payee of the payment. For when a withholding agent may reliably associate a withholdable payment with a chapter 4 withholding rate pool in lieu of obtaining documentation for each payee included in the pool, see § 1.1441–1(e)(3)(iv)(C)(*2*) (substituting the term nonwithholding foreign trust for the term nonqualified intermediary).

(4) [Reserved]. For further guidance, see § 1.1441–5(e)(4).

(5) *Foreign simple trust and foreign grantor trust*—(i) *Reliance on claim of foreign simple trust or foreign grantor trust status.* A withholding agent may treat a person as a foreign simple trust or foreign grantor trust if it receives from that person a foreign simple trust or foreign grantor trust withholding certificate as described in paragraph (e)(5)(iii) of this section. A withholding agent must apply the presumption rules of §§ 1.1441–1(b)(3) and 1.6049–5(d) and paragraphs (d) and (e)(6) of this section to the extent it cannot, prior to the payment, reliably associate a payment (within the meaning of § 1.1441–1(b)(2)(vii)) with a valid foreign simple trust or foreign grantor trust withholding certificate, it cannot reliably determine how much of the payment relates to valid documentation provided by a payee (*e.g.,* a person that is not itself a nonqualified intermediary, flow-through entity, or U.S. branch) associated with the foreign simple trust or foreign grantor trust withholding certificate, or it does not have sufficient information to report the payment on Form 1042–S or Form 1099, if reporting is required. See § 1.1441–1(b)(2)(vii)(A) and (b)(2)(vii)(B). See, however, § 1.1441–1(e)(3)(iv)(C)(*2*) for when a withholding agent may reliably associate a withholdable payment with a chapter 4 withholding rate pool in lieu of obtaining documentation for each payee included in a pool (substituting the term nonwithholding foreign trust for the term nonqualified intermediary). See also § 1.1441–1(e)(3)(iv)(A) for when a withholding agent may reliably associate a payment with a chapter 4 withholding rate pool of U.S. payees.

(ii) *Reliance on claim of reduced withholding by a foreign simple trust or foreign grantor trust for its beneficiaries or owners.* This paragraph (e)(5)(ii) describes the manner in which a withholding agent may rely on a claim of reduced withholding when making a payment to a foreign simple trust or foreign grantor trust. To the extent that a withholding agent treats a payment to a foreign simple trust or foreign grantor trust as a payment to payees other than the trust in accordance with paragraph (e)(3)(i) of this section, it may rely on a claim for reduced withholding by a beneficiary or owner if, prior to the payment, the withholding agent can reliably associate the payment (within the meaning of § 1.1441–1(b)(2)(vii)) with a valid withholding certificate or other appropriate documentation from a payee or beneficial owner that establishes entitlement to a reduced rate of withholding. A withholding certificate or other appropriate documentation that establishes entitlement to a reduced rate of withholding is a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) or documentary evidence described in § 1.1441–6(c)(3) or (c)(4) or in § 1.6049–5(c)(1) (for a beneficiary or owner claiming to be a foreign person and a beneficial owner, determined under the provisions of § 1.1441–1(c)(6)), a Form W–9 described in § 1.1441–1(d) (for a beneficiary or owner claiming to be a U.S. payee), a withholding foreign partnership withholding certificate described in paragraph (c)(2)(iv) of this section, or a withholding statement allocating the payment to a chapter 4 withholding rate pool of U.S. payees. For when the withholding agent can reliably associate the payment with a chapter 4 withholding rate pool, see paragraph (c)(3)(i) of this section. See also § 1.1441–3(a)(2) (coordinating withholding under chapter 3 when withholding under chapter 4 is applied to a withholdable payment). Unless a foreign simple trust or foreign grantor trust withholding certificate is provided for income treated as income effectively connected with the conduct of a trade or business in the United States, a claim must be presented for each payee's portion of the payment. When making a claim for several payees, the trust may present a single foreign simple trust or foreign grantor trust withholding certificate with which the payees' certificates or other appropriate documentation are associated. Where the foreign simple trust or foreign grantor trust withholding certificate is provided for income that is treated as effectively connected with the conduct of a trade or business in the United States under paragraph (e)(5)(iii)(D) of this section, the claim may be presented without having to identify any beneficiary's or grantor's distributive share of the payment.

(iii) [Reserved]. For further guidance, see § 1.1441–5(e)(5)(iii).

(A) The name, permanent residence address (as described in § 1.1441–1(e)(2)(ii)), the employer identification number, if required, of the trust, the country under the laws of which the trust is created, the chapter 4 status of the trust (for a nonwithholding foreign trust receiving a withholdable payment or providing a withholding statement associated with the Form W–8 allocating a payment to a chapter 4 withholding rate pool of U.S. payees), and the GIIN of the trust (if applicable);

(B) through (E) [Reserved]. For further guidance, see § 1.1441–5 (e)(5)(iii)(B) through (e)(5)(iii)(E).

(iv) *Withholding statement provided by a foreign simple trust or foreign grantor trust.* The provisions of § 1.1441–1(e)(3)(iv) (regarding a withholding statement) shall apply to a foreign simple trust or foreign grantor trust by substituting the term foreign simple trust or foreign grantor trust for the term nonqualified intermediary, including when a withholding statement provided by a foreign simple trust or foreign grantor trust may include a chapter 4 withholding rate pool in lieu of information with respect to each owner or beneficiary that is a payee of a payment.

(v) *Withholding foreign trusts.* The IRS may enter an agreement with a foreign trust to treat the trust or estate as a withholding foreign trust. Such an agreement shall generally follow the same principles as an agreement with a withholding foreign partnership under paragraph (c)(2)(ii) of this section. A withholding agent may treat a payment to a withholding foreign trust in the same manner the withholding agent would treat a payment (including a withholdable payment) to a withholding foreign partnership. The IRS may also enter an agreement to treat a trust as a qualified intermediary in appropriate circumstances. See § 1.1441–1(e)(5)(ii)(D). For a withholding foreign trust that is an FFI and that receives withholdable payments on behalf of its owners or beneficiaries, the agreement will require the withholding foreign trust to assume the requirements of either a participating FFI, registered deemed-compliant FFI, or an FFI treated as a deemed-compliant FFI under an applicable IGA that is subject to due diligence and reporting requirements with respect to its U.S. accounts similar to those applicable to a registered deemed-compliant FFI under § 1.1471–5(f)(1).

(6)(i) [Reserved]. For further guidance, see § 1.1441–5(e)(6)(i).

(ii) *Determination of status as U.S. or foreign trust or estate in the absence of documentation.* In the absence of valid documentation that establishes the U.S. status of a trust or estate under paragraph (b)(1) of this section and of documentation that establishes the foreign status of a trust or estate under paragraph (e)(4) or (e)(5)(iii) of this section, the withholding agent shall determine the classification of the payee based upon the presumptions set forth in § 1.1441–1(b)(3)(ii). If, based upon those presumptions, the withholding agent classifies the payee as a trust or estate, the withholding agent shall apply the presumptions set forth in § 1.1441–1(b)(3)(iii) to determine whether the trust or estate is a U.S. person or foreign person. An undocumented payee presumed to be a foreign trust shall be presumed to be a foreign complex trust. If a withholding agent has documentary evidence that establishes that an entity is a foreign trust, but the withholding agent cannot determine whether the foreign trust is a complex trust, a simple trust, or foreign grantor trust, the withholding agent shall presume that the trust is a foreign complex trust. Notwithstanding the preceding sentence, in the case of a foreign trust with a settlor that is a U.S. person and for which a withholding agent has both a U.S. address and TIN, the withholding agent shall presume that the trust is a grantor trust when it cannot determine the status of the trust as a simple trust, complex trust, or grantor trust. See § 1.1471–3(f)(4) and (5) to determine the status of the payee for purposes of chapter 4.

(iii) [Reserved]. For further guidance, see § 1.1441–5(e)(6)(iii).

(f) *Failure to receive withholding certificate timely or to act in accordance with applicable presumptions.* See applicable procedures described in § 1.1441–1(b)(7) in the event the withholding agent does not hold an appropriate withholding certificate or other appropriate documentation at the time of payment or fails to rely on the presumptions set forth in § 1.1441–1(b)(3) or in paragraph (d) or (e) of this section. For a payment that is a withholdable payment, see § 1.1471–3(f) for the presumption rule for determining the payee's chapter 4 status.

(g)(1) and (2) [Reserved]. For further guidance, see § 1.1441–5(g)(1) and (2).

(g)(3) *Effective/applicability date.* This section applies to payments made after June 30, 2014. (For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR Part 1, as revised April 1, 2013.)

(h) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 12.** Section 1.1441–6 is amended by revising paragraphs (a), (b)(1), (b)(2)(i), (b)(2)(iv), (c)(1) and adding paragraph (i)(3) to read as follows:

**§ 1.1441–6 Claim of reduced withholding under an income tax treaty.**

(a) [Reserved]. For further guidance, see § 1.1441–6T(a).

(b)(1) [Reserved]. For further guidance, see § 1.1441–6T(b)(1).

(2)(i) [Reserved]. For further guidance, see § 1.1441–6T(b)(2)(i).

* * * * *

(iv) [Reserved]. For further guidance, see § 1.1441–6T(b)(2)(iv).

* * * * *

(c)(1) [Reserved]. For further guidance, see § 1.1441–6T(c)(1).

* * * * *

(i) * * *

(3) [Reserved]. For further guidance, see § 1.1441–6T(i)(3).

■ **Par. 13.** Section 1.1441–6T is added to read as follows:

**§ 1.1441–6T Claim of reduced withholding under an income tax treaty (temporary).**

(a) *In general.* The rate of withholding on a payment of income subject to withholding may be reduced to the extent provided under an income tax treaty in effect between the United States and a foreign country. Most benefits under income tax treaties are to foreign persons who reside in the treaty country. In some cases, benefits are available under an income tax treaty to U.S. citizens or U.S. residents or to residents of a third country. See paragraph (b)(5) of this section for claims of benefits by U.S. persons. If the requirements of this section are met, the amount withheld from the payment may be reduced at source to account for the treaty benefit. See, however, § 1.1471–2(a) and § 1.1472–1(b) for when withholding at source on a withholdable payment may not be reduced to account for a treaty benefit and the beneficial owner of the payment may need to file a claim for refund to obtain a refund for the overwithheld amount of tax. See also § 1.1441–4(b)(2) for rules regarding claims of reduced rate of withholding under an income tax treaty in the case of compensation from personal services.

(b) *Reliance on claim of reduced withholding under an income tax treaty*—(1) *In general.* The withholding imposed under section 1441, 1442, or 1443 on any payment to a foreign person is eligible for reduction under the terms of an income tax treaty only to the extent that such payment is treated as derived by a resident of an applicable treaty jurisdiction, such resident is a beneficial owner, and all other requirements for benefits under the treaty are satisfied. See section 894 and the regulations under section 894 to determine whether a resident of a treaty country derives the income. Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim that a beneficial owner is entitled to a reduced rate of withholding based upon an income tax treaty if, prior to the payment, the withholding agent can reliably associate the payment with a beneficial owner withholding certificate, as described in § 1.1441–

1(e)(2), that contains the information necessary to support the claim, or, in the case of a payment of income described in paragraph (c)(2) of this section made outside the United States with respect to an offshore obligation, documentary evidence described in paragraphs (c)(3), (c)(4), and (c)(5) of this section. See § 1.6049–5(e) for the definition of payments made outside the United States and § 1.6049–5(c)(1) for the definition of an offshore obligation. For purposes of this paragraph (b)(1), a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) contains information necessary to support the claim for a treaty benefit only if it includes the beneficial owner's taxpayer identifying number (except as otherwise provided in paragraph (c)(1) and (g) of this section, or the beneficial owner provides its foreign tax identifying number issued by its country of residence and such country has with the United States an income tax treaty or information exchange agreement in effect) and the representations that the beneficial owner derives the income under section 894 and the regulations under section 894, if required, and meets the limitation on benefits provisions of the treaty, if any. The withholding certificate must also contain any other representations required by this section and any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in place of, the information and certifications described in this section. Absent actual knowledge or reason to know that the claims are incorrect (applying the standards of knowledge in § 1.1441–7(b)), a withholding agent may rely on the claims made on a withholding certificate or on documentary evidence. A withholding agent may also rely on the information contained in a withholding statement provided under §§ 1.1441–1(e)(3)(iv) and 1.1441–5(c)(3)(iv) and (e)(5)(iv) to determine whether the appropriate statements regarding section 894 and limitation on benefits have been provided in connection with documentary evidence. The Internal Revenue Service (IRS) may apply the provisions of § 1.1441–1(e)(1)(ii)(B) to notify the withholding agent that the certificate cannot be relied upon to grant benefits under an income tax treaty. See § 1.1441–1(e)(4)(viii) regarding reliance on a withholding certificate by a withholding agent. The provisions of § 1.1441–1(b)(3)(iv) dealing with a 90-day grace period shall apply for purposes of this section.

(2) *Payment to fiscally transparent entity*—(i) *In general.* If the person claiming a reduced rate of withholding under an income tax treaty is an interest holder of an entity that is considered to be fiscally transparent (as defined in the regulations under section 894) by the interest holder's jurisdiction with respect to an item of income, then, with respect to such income derived by that person through the entity, the entity shall be treated as a flow-through entity and may provide a flow-through withholding certificate with which the withholding certificate or other documentary evidence of the interest holder that supports the claim for treaty benefits is associated. In the case of a payment that is a withholdable payment, see, however, § 1.1471–3(c) for determining the payee of the payment and §§ 1.1471–2(a) and 1472–1(b) for when withholding at source may apply to the payment based on the status of the payee notwithstanding a claim for treaty benefits made under this paragraph (b)(2) by an interest holder in the payee. In such a case, the interest holder may file a claim for refund of the overwithheld amount of tax. For purposes of this paragraph (b)(2)(i), interest holders do not include any direct or indirect interest holders that are themselves treated as fiscally transparent entities with respect to that income by the interest holder's jurisdiction. See § 1.1441–1(c)(23) and (e)(3)(i) for the definition of flow-through entity and flow-through withholding certificate. The entity may provide a beneficial owner withholding certificate, or beneficial owner documentation, with respect to any remaining portion of the income to the extent the entity is receiving income and is not treated as fiscally transparent by its own jurisdiction. Further, the entity may claim a reduced rate of withholding with respect to the portion of a payment for which it is not treated as fiscally transparent if it meets all the requirements to make such a claim and, in the case of treaty benefits, it provides the documentation required by paragraph (b)(1) of this section. If dual claims, as described in paragraph (b)(2)(iii) of this section, are made, multiple withholding certificates may have to be furnished. Multiple withholding certificates may also have to be furnished if the entity receives income for which a reduction of withholding is claimed under a provision of the Internal Revenue Code (*e.g.,* portfolio interest) and income for which a reduction of withholding is claimed under an income tax treaty.

(ii) and (iii) [Reserved]. For further guidance, see § 1.1441–6(b)(2)(ii) and (iii).

(iv) *Examples.* The following examples illustrate the rules of paragraph (b)(2) of this section. Each of the following examples describes a payment of U.S. source royalties, which are not withholdable payments under chapter 4. See § 1.1473–1(a)(4)(iii) (describing nonfinancial payments that are not treated as withholdable payments). Thus, withholding under chapter 4 shall not apply with respect to the U.S. source royalties in any of the following examples:

*Example 1.* (i) *Facts.* Entity E is a business organization formed under the laws of country Y. Country Y has an income tax treaty with the United States. The treaty contains a limitation on benefits provision. E receives U.S. source royalties from withholding agent W and claims a reduced rate of withholding under the U.S.-Y tax treaty on its own behalf (rather than on behalf of its interest holders). E furnishes a beneficial owner withholding certificate described in paragraph (b)(1) of this section that represents that E is a resident of country Y (within the meaning of the U.S.-Y tax treaty), is the beneficial owner of the income, derives the income under section 894 and the regulations under section 894, and is not precluded from claiming benefits by the treaty's limitation on benefits provision.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, W may rely on the representations made by E to apply a reduced rate of withholding.

*Example 2.* (i) *Facts.* The facts are the same as under *Example 1,* except that one of E's interest holders, H, is an entity organized in country Z. The U.S.-Z tax treaty reduces the rate on royalties to zero whereas the rate on royalties under the U.S.-Y tax treaty applicable to E is 5%. H is not fiscally transparent under country Z's tax law with respect to such income. H furnishes a beneficial owner withholding certificate to E that represents that H derives, within the meaning of section 894 and the regulations under section 894, its share of the royalty income paid to E as a resident of country Z, is the beneficial owner of the royalty income, and is not precluded from claiming treaty benefits by virtue of the limitation on benefits provision in the U.S.-Z treaty. E furnishes to W a flow-through withholding certificate described in § 1.1441–1(e)(3)(i) to which it attaches H's beneficial owner withholding certificate and a withholding statement for the portion of the payment that H claims as its distributive share of the royalty income. E also furnishes to W a beneficial owner withholding certificate for itself for the portion of the payment that H does not claim as its distributive share.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, W may rely on the documentation furnished by E to treat the royalty payment to a single foreign entity (E) as derived by different residents of tax treaty countries as a result of the claims presented under different treaties. W may, at its option,

grant dual treatment, that is, a reduced rate of zero percent under the U.S.-Z treaty on the portion of the royalty payment that H claims to derive as a resident of country Z and a reduced rate of 5% under the U.S.-Y treaty for the balance. However, under paragraph (b)(2)(iii) of this section, W may, at its option, treat E as the only relevant person deriving the royalty and grant benefits under the U.S.-Y treaty only.

*Example 3.* (i) *Facts.* E is a business organization formed under the laws of country X. Country X has an income tax treaty with the United States. E has two interest holders, H1, organized in country Y, and H2, organized in country Z. E receives from W, a U.S. withholding agent, a payment of U.S. source royalties and interest, with respect to an obligation issued before July 1, 2014, that is eligible for the portfolio interest exception under sections 871(h) and 881(c), provided W receives the appropriate beneficial owner statement required under section 871(h)(5). E is classified as a corporation under U.S. tax law principles. Country X, E's country of organization, treats E as an entity that is not fiscally transparent with respect to items of income under the regulations under section 894. Under the U.S.-X income tax treaty, royalties are subject to a 5% rate of withholding. Country Y, H1's country of organization, treats E as fiscally transparent with respect to items of income under section 894 and H1 as not fiscally transparent with respect to items of income. Under the country Y-U.S. income tax treaty, royalties are exempt from U.S. tax. Country Z, H2's country of organization, treats E as not fiscally transparent under section 894 with respect to items of income. E provides W with a flow-through beneficial owner withholding certificate with which it associates a beneficial owner withholding certificate from H1. H1's withholding certificate states that H1 is a resident of country Y, derives the royalty income under section 894, meets the applicable limitations on benefits provisions of the U.S.-Y treaty, and is the beneficial owner of the income. The withholding statement attached to E's flow-through withholding certificate allocates one-half of the royalty payment to H1. E also provides W with a beneficial owner withholding certificate for the interest income and the remaining one-half of the royalty income. The withholding certificate states that E is a resident of country X, derives the royalty income under section 894, meets the limitation on benefits provisions of the U.S.-X treaty, and is the beneficial owner of the income.

(ii) *Analysis.* Absent actual knowledge or reason to know that the claims are incorrect, W may treat one-half of the royalty derived by E as subject to a 5% withholding rate and one-half of the royalty as derived by H1 and subject to no withholding. Further, it may treat all of the interest as being paid to E and as qualifying for the portfolio interest exception. W can, at its option, treat the entire royalty as paid to E and subject it to withholding at a 5% rate of withholding. In that case, H1 would be entitled to claim a refund with respect to its one-half of the royalty.

(3) and (4) [Reserved]. For further guidance, see § 1.1441–6(b)(3) and (4).

(c) *Exemption from requirement to furnish a taxpayer identifying number and special documentary evidence rules for certain income*—(1) *General rule.* In the case of income described in paragraph (c)(2) of this section, a withholding agent may rely on a beneficial owner withholding certificate described in paragraph (b)(1) of this section without regard to the requirement that the withholding certificate include the beneficial owner's taxpayer identifying number. In the case of a payment of income not described in paragraph (c)(2) of this section, a withholding agent may rely on a withholding certificate that includes the beneficial owner's foreign taxpayer identifying number described in paragraph (b)(1) of this section instead of the beneficial owner's taxpayer identifying number. In the case of payments of income described in paragraph (c)(2) of this section made outside the United States (as defined in § 1.6049–5(e)) with respect to an offshore obligation (as defined in § 1.6049–5(c)(1)), a withholding agent may, as an alternative to a withholding certificate described in paragraph (b)(1) of this section, rely on a certificate of residence described in paragraph (c)(3) of this section or documentary evidence described in paragraph (c)(4) of this section, relating to the beneficial owner, that the withholding agent has reviewed and maintains in its records in accordance with § 1.1441–1(e)(4)(iii). In the case of a payment to a person other than an individual, the certificate of residence or documentary evidence must be accompanied by the statements described in paragraphs (c)(5)(i) and (ii) of this section regarding limitation on benefits and whether the amount paid is derived by such person or by one of its interest holders. The withholding agent maintains the reviewed documents by retaining the original, certified copy, or photocopy (microfiche, electronic scan, or similar means of electronic storage) of such documents. With respect to documentary evidence, the withholding agent must also note in its records the date on which the documents were received and reviewed. This paragraph (c)(1) shall not apply to amounts that are exempt from withholding based on a claim that the income is effectively connected with the conduct of a trade or business in the United States.

(2) through (i)(2) [Reserved]. For further guidance, see § 1.1441–6(c)(2) through (i)(2).

(i)(3) *Effective/applicability dates.* This section applies to payments made after June 30, 2014. (For payments made after December 31, 2000 (except for payments to which paragraph (g) of this section applies, in which case substitute December 31, 2001 for December 31, 2000), and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

(j) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 14.** Section 1.1441–7 is amended by *revising paragraphs (b), (c), and (f)(2)(ii) and adding paragraph (h) to read as follows:*

**§ 1.1441–7 General provisions relating to withholding agents.**

* * * * *

(b) [Reserved]. For further guidance, see § 1.1441–7T(b).

(c) [Reserved]. For further guidance, see § 1.1441–7T(c).

* * * * *

(f) * * *

(2) * * *

(ii) [Reserved]. For further guidance, see § 1.1441–7T(f)(2)(ii).

* * * * *

(h) [Reserved]. For further guidance, see § 1.1441–7T(h).

■ **Par. 15.** Section 1.1441–7T is added to read as follows:

**§ 1.1441–7T General provisions relating to withholding agents (temporary).**

(a) [Reserved]. For further guidance, see § 1.1441–7(a).

(b) *Standards of knowledge*—(1) *In general.* A withholding agent must withhold at the full 30-percent rate under section 1441, 1442, or 1443(a) or at the full 4-percent rate under section 1443(b) if it has actual knowledge or reason to know that a claim of U.S. status or of a reduced rate of withholding under section 1441, 1442, or 1443 is unreliable or incorrect. A withholding agent shall be liable for tax, interest, and penalties to the extent provided under sections 1461 and 1463 and the regulations under those sections if it fails to withhold the correct amount despite its actual knowledge or reason to know the amount required to be withheld. For purposes of the regulations under sections 1441, 1442, and 1443, a withholding agent may rely on information or certifications contained in, or associated with, a withholding certificate or other documentation furnished by or for a beneficial owner or payee unless the withholding agent has actual knowledge or reason to know that the information or certifications are incorrect or unreliable and, if based on such knowledge or reason to know, it should withhold (under chapter 3 of the Code

or another withholding provision of the Code) an amount greater than would be the case if it relied on the information or certifications, or it should report (under chapter 3 of the Code or under another provision of the Code) an amount that would not otherwise be reportable if it relied on the information or certifications. See § 1.1441–1(e)(4)(viii) for applicable reliance rules. A withholding agent that has received notification by the Internal Revenue Service (IRS) that a claim of U.S. status or of a reduced rate is incorrect has actual knowledge beginning on the date that is 30 calendar days after the date the notice is received. A withholding agent that fails to act in accordance with the presumptions set forth in §§ 1.1441–1(b)(3), 1.1441–4(a), 1.1441–5 (d) and (e), or 1.1441–9(b)(3) may also be liable for tax, interest, and penalties. See § 1.1441–1(b)(3)(ix) and (7). In the case of a withholding agent making a withholdable payment to a payee that the withholding agent is required to treat as a foreign entity, see § 1.1471–3(e) for standards of knowledge and §§ 1.1471–2 and 1.1472–1(b) for withholding that may apply under chapter 4.

(2) *Reason to know.* A withholding agent shall be considered to have reason to know if its knowledge of relevant facts or of statements contained in the withholding certificates or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the chapter 3 claims made. For an obligation that is a preexisting obligation, a withholding agent will have reason to know that a chapter 3 claim made by the holder of the obligation (account holder) is unreliable or incorrect if any information contained in its account opening files or other files pertaining to the obligation (account information), including documentation collected for purposes of AML due diligence (as defined under § 1.1471–1(b)(4)), conflicts with the account holder's claim. A withholding agent will not, however, be considered to have reason to know that a person's chapter 3 claim is unreliable or incorrect based on documentation collected for AML due diligence until the date that is 30 days after the obligation is executed (or the account is opened for an obligation that is an account with a financial institution).

(3) *Financial institutions—limits on reason to know*—(i) *In general.* For purposes of this paragraph (b)(3) and paragraphs (b)(4) through (10) of this section, the terms withholding certificate, documentary evidence, and documentation are defined in § 1.1441–1(c)(16), (17) and (18). Except as otherwise provided in paragraphs (b)(4) through (9) of this section, a withholding agent that is an FFI under § 1.1471–5(e), an insurance company (without regard to whether such company is a specified insurance company), or a broker or dealer in securities that maintains an account for a beneficial owner (a direct account holder) has reason to know that documentation provided by the direct account holder is unreliable or incorrect only if one or more of the circumstances described in paragraphs (b)(4) through (9) of this section exist. If a direct account holder has provided documentation that is unreliable or incorrect under the rules of paragraph (b)(4) through (9) of this section, the withholding agent may require new documentation. Alternatively, the withholding agent may rely on the documentation originally provided if the rules of paragraphs (b)(4) through (9) of this section permit such reliance based on additional statements and documentation obtained by the withholding agent from the beneficial owner. Paragraph (b)(10) of this section provides rules regarding reason to know for withholding agents that receive beneficial owner documentation from persons (indirect account holders) that have an account relationship with, or an ownership interest in, a direct account holder of the withholding agent. Paragraph (b)(11) of this section provides limitations on a withholding agent's reason to know for multiple obligations held by the same person. Paragraph (b)(12) of this section defines a reasonable explanation provided by an individual with respect to the individual's claim of foreign status. For rules regarding reliance on Form W–9, see § 31.3406(g)–3(e)(2) of this chapter. For payments that are withholdable payments, see § 1.1471–3(e)(3) and (4) for additional rules regarding a withholding agent's reason to know with respect to a payee's claim of chapter 4 status and § 1.1471–3(f) for presumption rules that apply when the claim of chapter 4 status is unreliable or incorrect.

(ii) *Limits on reason to know for preexisting obligations.* With respect to a preexisting obligation, a withholding agent that has documented the foreign status of the direct account holder for purposes of chapter 3 or chapter 61 before July 1, 2014 may continue to rely on such documentation. If, however, the withholding agent reviews documentation for an individual account holder claiming foreign status that contains a U.S. place of birth (as described in paragraph (b)(5)(ii) of this section) or if the withholding agent is notified of a change in circumstances under the criteria of paragraphs (b)(5) and (8) of this section (as effective on July 1, 2014), the obligation will be treated as having experienced a change in circumstances under § 1.1441–1(e)(4)(ii)(D) as of the date that the withholding agent reviews the documentation or receives the notification, and the withholding agent will then have reason to know that the documentation is unreliable or incorrect. See § 1.1441–1(b)(3)(iv) for the grace period following a changes in circumstances.

(4) *Rules applicable to withholding certificates*—(i) *In general.* A withholding agent has reason to know that a beneficial owner withholding certificate provided by a direct account holder is unreliable or incorrect if the withholding certificate is incomplete with respect to any item on the certificate that is relevant to the claims made by the direct account holder, the withholding certificate contains any information that is inconsistent with the direct account holder's claim, the withholding agent has account information that is inconsistent with the direct account holder's claim, or the withholding certificate lacks information necessary to establish entitlement to a reduced rate of withholding. For purposes of establishing a direct account holder's status as a foreign person or resident of a treaty country a withholding certificate shall be considered unreliable or inconsistent with an account holder's claims only if it is not reliable under the rules of paragraphs (b)(5) and (6) of this section. A withholding agent that relies on an agent to review and maintain a withholding certificate is considered to know or have reason to know the facts within the knowledge of the agent.

(ii) *Examples.* The rules of paragraph (b)(4) of this section are illustrated by the following examples:

*Example 1.* F, a foreign person that has a direct account relationship with USB, a bank that is a U.S. person, provides USB with a beneficial owner withholding certificate for the purpose of claiming a reduced rate of withholding on U.S. source dividends (which is a withholdable payment). F resides in a treaty country that has a limitation on benefits provision in its income tax treaty with the United States. The withholding certificate includes a certification of F's status for chapter 4 purposes to except the payment from withholding under chapter 4, but does not contain a statement regarding limitations on benefits or deriving the income under section 894 as required by § 1.1441–6(b)(1). USB cannot rely on the withholding certificate to grant a reduced

rate of withholding for chapter 3 purposes because it is incomplete with respect to the claim made by F.

*Example 2.* F, a foreign person and entity that has a direct account relationship with USB, a broker that is a U.S. person, provides USB with a withholding certificate for the purpose of claiming the portfolio interest exception under section 881(c) with respect to interest paid on an obligation issued before July 1, 2014. The payment of interest is not a withholdable payment under § 1.1471–2(b) (referring to payments made with respect to grandfathered obligations), and, therefore, withholding does not apply to the payment under chapter 4. See § 1.1441–3(c)(4)(i) for rules coordinating withholding under chapters 3 and 4. F indicates on its withholding certificate, however, that it is a partnership. USB may not treat F as a beneficial owner of the interest for purposes of the portfolio interest exception because F has indicated on its withholding certificate that it is a foreign partnership, and such entity classification is inconsistent with its claim as a beneficial owner.

(5) *Withholding certificate—establishment of foreign status.* A withholding agent has reason to know that a beneficial owner withholding certificate (as defined in § 1.1441–1(e)(2)) provided by a direct account holder is unreliable or incorrect for purposes of establishing the account holder's status as a foreign person as set forth in paragraphs (b)(5)(i) through (iii) of this section.

(i) *Classification of U.S. status, U.S. address, or U.S. telephone number.* A withholding certificate is unreliable or incorrect if the withholding agent has classified the person as a U.S. person in its account information, the withholding certificate has a current permanent residence address (as defined in § 1.1441–1(e)(2)(ii)) in the United States, the withholding certificate has a current mailing address in the United States, the withholding agent has a current residence or mailing address as part of its account information that is an address in the United States, or the direct account holder notifies the withholding agent of a new residence or mailing address in the United States (whether or not provided on a withholding certificate). A withholding agent also has reason to know that a withholding certificate provided by a person is unreliable or incorrect if the withholding agent has a current telephone number for the account holder in the United States and has no telephone number for the account holder outside of the United States. When any of the foregoing indicia are present (U.S. indicia), a withholding agent may nevertheless rely on the beneficial owner withholding certificate to establish the account holder's foreign status if it may do so under the provisions of paragraph (b)(5)(i)(A) or (B) of this section.

(A) A withholding agent may treat a direct account holder as a foreign person if the beneficial owner withholding certificate has been provided by an individual and—

(*1*) The withholding agent has in its possession or obtains documentary evidence establishing foreign status (as described in § 1.1471–3(c)(5)(i)) that does not contain a U.S. address and the individual provides the withholding agent with a reasonable explanation, in writing, supporting the claim of foreign status (as defined in paragraph (b)(12) of this section);

(*2*) For a payment made outside the U.S. with respect to an offshore obligation (as described in § 1.6049–5(c)(1)), the withholding agent has in its possession or obtains documentary evidence establishing foreign status (as described in § 1.1471–3(c)(5)(i)), that does not contain a U.S. address;

(*3*) For a payment made with respect to an offshore obligation (with offshore obligation defined as in § 1.6049–5(c)(1)), the withholding agent classifies the individual as a resident of the country in which the obligation is maintained, the withholding agent is required to report a payment made to the individual annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States; or

(*4*) For a case in which the withholding agent classified the account holder as a U.S. person in its account information, the withholding agent has in its possession or obtains documentary evidence described in § 1.1471–3(c)(5)(i)(B) evidencing citizenship in a country other than the United States.

(B) A withholding agent may treat a direct account holder as a foreign person if the beneficial owner withholding certificate has been provided by an entity that the withholding agent does not know, or does not have reason to know, is a flow-through entity and—

(*1*) The withholding agent has in its possession or obtains documentation establishing foreign status (as described in § 1.1471–3(c)(5)(i) and as applicable to entities) that substantiates that the entity is actually organized or created under the laws of a foreign country; or

(*2*) For a payment made with respect to an offshore obligation (with offshore obligation defined as in § 1.6049–5(c)(1)), the withholding agent classifies the entity as a resident of the country in which the account is maintained, the withholding agent is required to report a payment made to the entity annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

(ii) *U.S. place of birth.* A withholding agent has reason to know that a withholding certificate claiming foreign status provided by a direct account holder that is an individual is unreliable or incorrect if the withholding agent has, either on accompanying documentation or as part of its account information, an unambiguous indication of a place of birth for the individual in the United States. A withholding agent may treat the individual as a foreign person, notwithstanding the U.S. place of birth, if the withholding agent has in its possession or obtains documentary evidence described in § 1.1471–3(c)(5)(i)(B) evidencing citizenship in a country other than the United States and either a copy of the individual's Certificate of Loss of Nationality of the United States or a reasonable written explanation of the account holder's renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth.

(iii) *Standing instructions with respect to offshore obligations.* A beneficial owner withholding certificate is unreliable or incorrect if it is provided with respect to an offshore obligation (as defined in § 1.6049–5(c)(1)) of a direct account holder that has provided standing instructions to pay amounts to an address or an account maintained in the United States. The withholding agent may treat the account holder as a foreign person, however, if the account holder provides either a reasonable explanation in writing that supports its foreign status or documentary evidence establishing foreign status described in § 1.1471–3(c)(5)(i).

(6) *Withholding certificate—claim of reduced rate of withholding under treaty.* A withholding agent has reason to know that a withholding certificate (other than Form W–9) provided by a direct account holder is unreliable or incorrect for purposes of establishing that the account holder is a resident of a country with which the United States has an income tax treaty if it is described in paragraphs (b)(6)(i) through (iii) of this section.

(i) *Permanent residence address.* A beneficial owner withholding certificate

is unreliable or incorrect if the permanent residence address on the beneficial owner withholding certificate is not in the country whose treaty is invoked, or the direct account holder notifies the withholding agent of a new permanent residence address that is not in the treaty country. A withholding agent may, however, treat a direct account holder as entitled to a reduced rate of withholding under an income tax treaty if the account holder provides a reasonable explanation for the permanent residence address outside the treaty country (*e.g.,* the address is the address of a branch of the beneficial owner located outside the treaty country in which the entity is a resident) or the withholding agent has in its possession or obtains documentary evidence described in § 1.1471–3(c)(5)(i) that establishes residency in a treaty country.

(ii) *Mailing address.* A beneficial owner withholding certificate is unreliable or incorrect if the permanent residence address on the withholding certificate is in the applicable treaty country but the withholding certificate contains a mailing address outside the treaty country or the withholding agent has a current mailing address as part of its account information for the direct account holder that is outside the treaty country. A mailing address that is a P.O. Box, in-care-of address, or address at a financial institution (if the financial institution is not a beneficial owner) shall not preclude a withholding agent from treating the account holder as a resident of a treaty country if such address is in the treaty country. If a withholding agent has a mailing address (whether or not contained on the withholding certificate) outside the applicable treaty country, the withholding agent may nevertheless treat a direct account holder as a resident of an applicable treaty country if—

(A) The withholding agent has in its possession or obtains documentary evidence described in § 1.1471–3(c)(5)(i) supporting the account holder's claim of residence in the applicable treaty country (and the additional documentation does not contain an address outside the treaty country);

(B) The withholding agent has in its possession, or obtains, documentation that establishes that the direct account holder is an entity organized in a treaty country (or an entity managed and controlled in a treaty country, if the applicable treaty so requires);

(C) The withholding agent knows that the address outside the applicable treaty country (other than a P.O. box, or in-care-of address) is a branch of the account holder that is an entity that is a resident of the applicable treaty country; or

(D) The withholding agent obtains a written statement from the direct account holder that reasonably establishes entitlement to treaty benefits.

(iii) *Standing instructions.* A beneficial owner withholding certificate is unreliable or incorrect to establish entitlement to a reduced rate of withholding under an income tax treaty if the direct account holder has standing instructions to pay amounts directing the withholding agent to pay amounts from its account to an address or an account outside the treaty country unless the account holder provides a reasonable explanation, in writing, or the withholding agent has in its possession or obtains documentary evidence described in § 1.1471–3(c)(5)(i) establishing the account holder's residence in the applicable treaty country.

(7) *Documentary evidence.* A withholding agent shall not treat documentary evidence provided by a direct account holder as valid if the documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence. For example, documentary evidence is not valid if it is provided in person by a direct account holder that is a natural person and the photograph or signature on the documentary evidence, if any, does not match the appearance or signature of the person presenting the document. A withholding agent shall not rely on documentary evidence to reduce the rate of withholding that would otherwise apply under the presumption rules of §§ 1.1441–1(b)(3), 1.1441–5(d) and (e)(6), and 1.6049–5(d) if the documentary evidence contains information that is inconsistent with the direct account holder's claim of a reduced rate of withholding, the withholding agent has other account information that is inconsistent with the direct account holder's claim, or the documentary evidence lacks information necessary to establish entitlement to a reduced rate of withholding. For example, if a direct account holder provides documentary evidence to claim treaty benefits and the documentary evidence establishes the direct account holder's status as a foreign person and a resident of a treaty country, but the account holder fails to provide the treaty statements required by § 1.1441–6(c)(5), the documentary evidence does not establish the direct account holder's entitlement to a reduced rate of withholding. For purposes of establishing a direct account holder's status as a foreign person or resident of a country with which the United States has an income tax treaty, documentary evidence shall be considered unreliable or incorrect only if it is not reliable under the rules of paragraph (b)(8) and (9) of this section.

(8) *Documentary evidence—establishment of foreign status.* A withholding agent has reason to know that documentary evidence is unreliable or incorrect for purposes of establishing the direct account holder's status as a foreign person if the documentary evidence is described in paragraphs (b)(8)(i), (ii), (iii), or (iv) of this section.

(i) *Documentary evidence received prior to January 1, 2001.* A withholding agent shall not treat documentary evidence provided by a direct account holder before January 1, 2001, as valid for purposes of establishing the account holder's status as a foreign person if it has actual knowledge that the account holder is a U.S. person or if it has a mailing or residence address for the account holder in the United States. If a withholding agent has an address for the direct account holder in the United States, the withholding agent may nevertheless treat the account holder as a foreign person if it can so treat the account holder under the rules of paragraph (b)(8)(ii) of this section. See, however, paragraph (b)(3)(ii) of this section regarding changes in circumstances with respect to preexisting obligations.

(ii) *Documentary evidence received after December 31, 2000.* A withholding agent shall not treat documentary evidence provided by an account holder after December 31, 2000, as valid for purposes of establishing the direct account holder's foreign status if the withholding agent does not have a permanent residence address for the account holder. Documentary evidence is also unreliable or incorrect to establish a direct account holder's status as a foreign person if the withholding agent has classified the account holder as a U.S. person in its account information, if the withholding agent has a current mailing or permanent residence address (whether or not on the documentation) for the direct account holder in the United States, the direct account holder notifies the withholding agent of a new residence or mailing address in the United States, or if the withholding agent has a current telephone number for the account holder in the United States and has no telephone number for the account holder outside of the United States. Notwithstanding the foregoing, a

withholding agent may rely on documentary evidence as establishing the direct account holder's foreign status if it may do so under the provisions of paragraph (b)(8)(ii)(A) or (B) of this section.

(A) *Treatment of individual's foreign status.* A withholding agent may treat a direct account holder that is an individual as a foreign person even if it has any of the U.S. indicia described in paragraph (b)(8)(ii) of this section for the account holder if—

(*1*) The withholding agent has in its possession or obtains additional documentary evidence supporting the claim of foreign status (described in § 1.1471–3(c)(5)(i)) that does not contain a U.S. address and a reasonable explanation in writing supporting the account holder's foreign status;

(*2*) The withholding agent obtains a valid beneficial owner withholding certificate on Form W–8 and the Form W–8 contains a permanent residence address outside the United States and a mailing address outside the United States (or if a mailing address is inside the United States the account holder provides a reasonable explanation in writing supporting the account holder's foreign status); or

(*3*) For a payment made with respect to an offshore obligation (with offshore obligation defined as in § 1.6049–5(c)(1)), the withholding agent classifies the individual as a resident of the country in which the obligation is maintained, the withholding agent is required to report a payment made to the individual annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

(B) *Presumption of entity's foreign status.* A withholding agent may treat a direct account holder that is an entity (other than a flow-through entity) as a foreign person even if it has any of the U.S. indicia described in paragraph (b)(8)(ii) of this section for the account holder in the United States if—

(*1*) The withholding agent has in its possession or obtains documentary evidence establishing foreign status (as described in § 1.1471–3(c)(5)(i)) that substantiates that the entity is actually organized or created under the laws of a foreign country;

(*2*) The withholding agent obtains a valid beneficial owner withholding certificate on Form W–8 and the Form W–8 contains a permanent residence address outside the United States and a mailing address outside the United States (or if a mailing address is inside the United States the account holder provides additional documentary evidence sufficient to establish the account holder's foreign status); or

(*3*) For a payment made with respect to an offshore obligation (with offshore obligation defined as in § 1.6049–5(c)(1)), the withholding agent classifies the entity as a resident of the country in which the account is maintained, the withholding agent is required to report a payment made to the entity annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

(iii) *U.S. place of birth.* A withholding agent has reason to know that documentary evidence provided by a direct account holder to support an individual's foreign status is unreliable or incorrect if the withholding agent has, either on the documentary evidence or as part of its account information, an unambiguous place of birth for the individual in the United States. A withholding agent may treat the individual as a foreign person, notwithstanding the U.S. birth place, if the withholding agent has in its possession or obtains documentary evidence described in § 1.1471–3(c)(5)(i)(B) evidencing citizenship in a country other than the United States and a copy of the individual's Certificate of Loss of Nationality of the United States. Alternatively, a withholding agent may treat the individual as a foreign person if the withholding agent obtains a valid beneficial owner withholding certificate on Form W–8 from the individual that establishes the account holder's foreign status, documentary evidence described in § 1.1471–3(c)(5)(i)(B) evidencing citizenship in a country other than the United States, and a reasonable written explanation of the individual's renunciation of U.S. citizenship or the reason the individual did not obtain U.S. citizenship at birth.

(iv) *Standing instructions with respect to offshore obligations.* Documentary evidence is unreliable or incorrect if it is provided with respect to an offshore obligation (as defined in § 1.6049–5(c)(1)) of a direct account holder that has provided the withholding agent with standing instructions to pay amounts to an address or an account maintained in the United States. The withholding agent may treat the direct account holder as a foreign person, however, if the account holder provides either a reasonable explanation in writing that supports its foreign status or a valid beneficial owner withholding certificate claiming foreign status.

(9) *Documentary evidence—claim of reduced rate of withholding under treaty.* A withholding agent has reason to know that documentary evidence is unreliable or incorrect for purposes of establishing that a direct account holder is a resident of a country with which the United States has an income tax treaty if it is described in paragraph (b)(9)(i) or (ii) of this section.

(i) *Permanent residence address and mailing address.* Documentary evidence is unreliable or incorrect if the withholding agent has a current mailing or current permanent residence address for the direct account holder (whether or not on the documentary evidence) that is outside the applicable treaty country, or the withholding agent has no permanent residence address for the account holder. If a withholding agent has a current mailing or current permanent residence address for the direct account holder outside the applicable treaty country, the withholding agent may nevertheless treat a direct account holder as a resident of an applicable treaty country if the withholding agent—

(A) Has in its possession or obtains additional documentary evidence described in § 1.1471–3(c)(5)(i) supporting the direct account holder's claim of residence in the applicable treaty country (and the documentary evidence does not contain an address outside the applicable treaty country, a P.O. box, an in-care-of address, or the address of a financial institution);

(B) Has in its possession or obtains documentary evidence described in § 1.1471–3(c)(5)(i) that establishes the direct account holder is an entity organized in a treaty country (or an entity managed and controlled in a treaty country, if the applicable treaty so requires); or

(C) Obtains a valid beneficial owner withholding certificate on Form W–8 that contains a permanent residence address and a mailing address in the applicable treaty country.

(ii) *Standing instructions.* Documentary evidence is unreliable or incorrect if the direct account holder has provided the withholding agent with standing instructions to pay amounts to an address or an account maintained outside the treaty country unless the direct account holder provides a reasonable explanation, in writing, establishing the direct account holder's residence in the applicable treaty country, or a valid beneficial

owner withholding certificate that contains a permanent residence address and a mailing address in the applicable treaty country.

(10) *Indirect account holders.* A withholding agent that receives documentation from a payee through a nonqualified intermediary, a flow-through entity, or a U.S. branch (including a territory financial institution) described in § 1.1441–1(b)(2)(iv) (other than a U.S. branch or territory financial institution that is treated as a U.S. person) has reason to know that the documentation is unreliable or incorrect if a reasonably prudent person in the position of a withholding agent would question the claims made. This standard requires, but is not limited to, a withholding agent's compliance with the rules of paragraphs (b)(10)(i) through (iii).

(i) The withholding agent must review the withholding statement described in § 1.1441–1(e)(3)(iv) and may not rely on information in the statement to the extent the information does not support the claims made for any payee. For this purpose, a withholding agent may not treat a payee as a foreign person if an address in the United States is provided for such payee and may not treat a person as a resident of a country with which the United States has an income tax treaty if the address for that person is outside the applicable treaty country. Notwithstanding a U.S. address or an address outside a treaty country, the withholding agent may treat a payee as a foreign person or a foreign person as a resident of a treaty country if the withholding statement is accompanied by a valid withholding certificate and documentary evidence (as described in § 1.1471–3(c)(5)(i)) or a reasonable explanation is provided, in writing, by the nonqualified intermediary, flow-through entity, or U.S. branch supporting the payee's foreign status or the foreign person's residency in a treaty country.

(ii) The withholding agent must review each withholding certificate in accordance with the requirements of paragraphs (b)(5) and (6) of this section and verify that the information on the withholding certificate is consistent with the information on the withholding statement required under § 1.1441–1(e)(3)(iv). If there is a discrepancy between the withholding certificate and the withholding statement, the withholding agent may choose to rely on the withholding certificate, if valid, and instruct the nonqualified intermediary, flow-through entity, or U.S. branch to correct the withholding statement or apply the presumption rules of §§ 1.1441–1(b), 1.1441–5(d) and (e)(6), 1.6049–5(d), and 1.1471–3(f) (for a withholdable payment for chapter 4 purposes) to the payment allocable to the payee who provided the withholding certificate. If the withholding agent chooses to rely upon the withholding certificate, the withholding agent is required to instruct the intermediary or flow-through entity to correct the withholding statement and confirm that the intermediary or flow-through entity does not know or have reason to know that the withholding certificate is unreliable or inaccurate.

(iii) The withholding agent must review the documentary evidence provided by the nonqualified intermediary, flow-through entity, or U.S. branch to determine that there is no obvious indication that the payee is a U.S. non-exempt recipient or that the documentary evidence does not establish the identity of the person who provided the documentation (*e.g.,* the documentary evidence does not appear to be an identification document).

(11) *Limits on reason to know for multiple obligations belonging to a single person.* A withholding agent that maintains multiple obligations for a single person will have reason to know that a claim of foreign status for the person is inaccurate based on account information for another obligation held by the person only to the extent that—

(i) The withholding agent's computerized systems link the obligations by reference to a data element such as client number, EIN, or foreign tax identifying number and consolidates the account information and payment information for the obligations; or

(ii) The withholding agent has treated the obligations as consolidated obligations for purposes of sharing documentation pursuant to § 1.1441–1(e)(4)(ix) or for purposes of treating one or more accounts as preexisting obligations.

(12) *Reasonable explanation supporting claim of foreign status.* A reasonable explanation supporting an individual's claim of foreign status for purposes of paragraphs (b)(5) and (8) of this section means a written statement prepared by the individual or the individual's completion of a checklist provided by the withholding agent, stating that the individual meets the requirements of one of paragraphs (b)(12)(i) through (iv) of this section.

(i) The individual certifies that he or she—

(A) Is a student at a U.S. educational institution and holds the appropriate visa;

(B) Is a teacher, trainee, or intern at a U.S. educational institution or a participant in an educational or cultural exchange visitor program, and holds the appropriate visa;

(C) Is a foreign individual assigned to a diplomatic post or a position in a consulate, embassy, or international organization in the United States; or

(D) Is a spouse or unmarried child under the age of 21 years of one of the persons described in paragraphs (b)(12)(i)(A) through (C) of this section;

(ii) The individual provides information demonstrating that he or she has not met the substantial presence test set forth in § 301.7701(b)–1(c) of this chapter (*e.g.,* a written statement indicating the number of days present in the United States during the three-year period that includes the current year);

(iii) The individual certifies that he or she meets the closer connection exception described in § 301.7701(b)–2, states the country to which the individual has a closer connection, and demonstrates how that closer connection has been established; or

(iv) With respect a payment entitled to a reduced rate of tax under a U.S. income tax treaty, the individual certifies that he or she is treated as a resident of a country other than the United States and is not treated as a U.S. resident or U.S. citizen for purposes of that income tax treaty.

(13) *Additional guidance.* The IRS may prescribe other circumstances for which a withholding certificate or documentary evidence is unreliable or incorrect in addition to the circumstances described in paragraph (b) of this section to establish an account holder's status as a foreign person or a beneficial owner entitled to a reduced rate of withholding in published guidance (see § 601.601(d)(2) of this chapter).

(c) *Agent*—(1) *In general.* A withholding agent may authorize an agent to fulfill its obligations under chapter 3 if the requirements of paragraph (c)(2) of this section are satisfied. The acts of an agent of a withholding agent (including the receipt of withholding certificates, the payment of amounts of income subject to withholding, and the deposit of tax withheld) are imputed to the withholding agent on whose behalf it is acting.

(2) *Authorized agent.* An agent is an authorized agent only if—

(i) There is a written agreement between the withholding agent and the foreign person acting as agent that clearly provides which obligations under chapter 3 that the agent is authorized to fulfill;

(ii) A Form 8655, ''Reporting Agent Authorization,'' is filed with the IRS if the agent (including any sub-agent) is acting as a reporting agent for filing Form 1042 or making tax deposits and payments;

(iii) Books and records and relevant personnel of the agent (including any sub-agent) are available to the withholding agent (on a continuous basis, including after termination of the relationship) in order to evaluate the withholding agent's compliance with the provisions of chapters 3, 4, and 61 of the Code, section 3406, and the regulations under those provisions; and

(iv) The U.S. withholding agent remains fully liable for the acts of its agent (or for any sub-agent) and does not assert any of the defenses that may otherwise be available, including under common law principles of agency in order to avoid tax liability under the Internal Revenue Code.

(3) *Liability of withholding agent acting through an agent.* An authorized agent is subject to the same withholding and reporting obligations that apply to any withholding agent under the provisions of chapter 3 of the Code and the regulations thereunder. See the instructions to Form 1042–S for the manner for filing the form when an authorized agent acts on behalf of a withholding agent. Except as otherwise provided in the QI, WP, and WT agreements, an authorized agent does not benefit from the special procedures or exceptions that may apply to a qualified intermediary, WP, or WT. A withholding agent acting through an authorized agent is liable for any failure of the agent, such as failure to withhold an amount or make payment of tax, in the same manner and to the same extent as if the agent's failure had been the failure of the withholding agent. For this purpose, the agent's actual knowledge or reason to know shall be imputed to the withholding agent. The withholding agent's liability shall exist irrespective of the fact that the authorized agent is also a withholding agent and is itself separately liable for failure to comply with the provisions of the regulations under section 1441, 1442, or 1443. However, the same tax, interest, or penalties shall not be collected more than once.

(d) through (f)(2)(i) [Reserved]. For further guidance, see § 1.1441–7(d) through (f)(2)(i).

(f)(2)(ii) *Examples.* The following examples illustrate the operation of paragraph (d)(2) of this section. Each example assumes that withholding under chapter 4 does not apply.

*Example 1.* (i) DS is a U.S. subsidiary of FP, a corporation organized in Country N, a country that does not have an income tax treaty with the United States. FS is a special purpose subsidiary of FP that is incorporated in Country T, a country that has an income tax treaty with the United States that prohibits the imposition of withholding tax on payments of interest. FS is capitalized with $10,000,000 in debt from BK, a Country N bank, and $1,000,000 in capital from FS.

(ii) On May 1, 1995, C, a U.S. person, purchases an automobile from DS in return for an installment note. On July 1, 1995, DS sells a number of installment notes, including C's, to FS in exchange for $10,000,000. DS continues to service the installment notes for FS and C is not notified of the sale of its obligation and continues to make payments to DS. But for the withholding tax on payments of interest by DS to BK, DS would have borrowed directly from BK, pledging the installment notes as collateral.

(iii) The C installment note is a financing transaction, whether held by DS or by FS, and the FS note held by BK also is a financing transaction. After FS purchases the installment note, and during the time the installment note is held by FS, the transactions constitute a financing arrangement, within the meaning of § 1.881–3(a)(2)(i). BK is the financing entity, FS is the intermediate entity, and C is the financed entity. Because the participation of FS in the financing arrangement reduces the tax imposed by section 881 and because there was a tax avoidance plan, FS is a conduit entity.

(iv) Because C does not know or have reason to know of the tax avoidance plan (and by extension that the financing arrangement is a conduit financing arrangement), C is not required to withhold tax under section 1441. However, DS, who knows that FS's participation in the financing arrangement is pursuant to a tax avoidance plan and is a withholding agent for purposes of section 1441, is not relieved of its withholding responsibilities.

*Example 2.* Assume the same facts as in *Example 1* except that C receives a new payment booklet on which DS is described as ''agent''. Although C may deduce that its installment note has been sold, without more C has no reason to know of the existence of a financing arrangement. Accordingly, C is not liable for failure to withhold, although DS still is not relieved of its withholding responsibilities.

*Example 3.* (i) DC is a U.S. corporation that is in the process of negotiating a loan of $10,000,000 from BK1, a bank located in Country N, a country that does not have an income tax treaty with the United States. Before the loan agreement is signed, DC's tax lawyers point out that interest on the loan would not be subject to withholding tax if the loan were made by BK2, a subsidiary of BK1 that is incorporated in Country T, a country that has an income tax treaty with the United States that prohibits the imposition of withholding tax on payments of interest. BK1 makes a loan to BK2 to enable BK2 to make the loan to DC. Without the loan from BK1 to BK2, BK2 would not have been able to make the loan to DC.

(ii) The loan from BK1 to BK2 and the loan from BK2 to DC are both financing transactions and together constitute a financing arrangement within the meaning of § 1.881–3(a)(2)(i). BK1 is the financing entity, BK2 is the intermediate entity, and DC is the financed entity. Because the participation of BK2 in the financing arrangement reduces the tax imposed by section 881 and because there is a tax avoidance plan, BK2 is a conduit entity.

(iii) Because DC is a party to the tax avoidance plan (and accordingly knows of its existence), DC must withhold tax under section 1441. If DC does not withhold tax on its payment of interest, BK2, a party to the plan and a withholding agent for purposes of section 1441, must withhold tax as required by section 1441.

*Example 4.* (i) DC is a U.S. corporation that has a long-standing banking relationship with BK2, a U.S. subsidiary of BK1, a bank incorporated in Country N, a country that does not have an income tax treaty with the United States. DC has borrowed amounts of as much as $75,000,000 from BK2 in the past. On January 1, 1995, DC asks to borrow $50,000,000 from BK2. BK2 does not have the funds available to make a loan of that size. BK2 considers asking BK1 to enter into a loan with DC but rejects this possibility because of the additional withholding tax that would be incurred. Accordingly, BK2 borrows the necessary amount from BK1 with the intention of on-lending to DC. BK1 does not make the loan directly to DC because of the withholding tax that would apply to payments of interest from DC to BK1. DC does not negotiate with BK1 and has no reason to know that BK1 was the source of the loan.

(ii) The loan from BK2 to DC and the loan from BK1 to BK2 are both financing transactions and together constitute a financing arrangement within the meaning of § 1.881–3(a)(2)(i). BK1 is the financing entity, BK2 is the intermediate entity, and DC is the financed entity. The participation of BK2 in the financing arrangement reduces the tax imposed by section 881. Because the participation of BK2 in the financing arrangement reduces the tax imposed by section 881 and because there was a tax avoidance plan, BK2 is a conduit entity.

(iii) Because DC does not know or have reason to know of the tax avoidance plan (and by extension that the financing arrangement is a conduit financing arrangement), DC is not required to withhold tax under section 1441. However, BK2, who is also a withholding agent under section 1441 and who knows that the financing arrangement is a conduit financing arrangement, is not relieved of its withholding responsibilities.

(3) and (g) [Reserved]. For further guidance, see § 1.1441–7(f)(3) and (g).

(h) *Effective date/Applicability.* Except as otherwise provided in paragraph (f)(3) of this section, this section applies to payments made after June 30, 2014. (For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

(i) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 16.** Section 1.1461–1 is amended by revising paragraphs (b)(1), (c)(1)(i), (c)(1)(ii), (c)(2)(ii)(E), (c)(2)(ii)(H), (c)(2)(ii)(I), (c)(3)(i), (c)(3)(iii), (c)(4)(i), (c)(4)(ii)(A), (c)(4)(iv), (c)(4)(v), (c)(5), and (i) to read as follows:

**§ 1.1461–1 Payments and returns of tax withheld.**

* * * * *

(b)(1) [Reserved]. For further guidance, see § 1.1461–1T(b)(1).

* * * * *

(c)(1)(i) and (ii) [Reserved]. For further guidance, see § 1.1461–1T(c)(1)(i) and (ii).

* * * * *

(2) * * *

(ii) * * *

(E) [Reserved]. For further guidance, see § 1.1.461–1T(c)(2)(ii)(E).

* * * * *

(c)(2)(ii)(H) and (I) [Reserved]. For further guidance, see § 1.1.461–1T(c)(2)(ii)(H) and (I).

(3) * * *

(i) [Reserved]. For further guidance, see § 1.1461–1T(c)(3)(i).

* * * * *

(iii) [Reserved]. For further guidance, see § 1.1461–1T(c)(3)(iii).

* * * * *

(4) * * *

(i) [Reserved]. For further guidance, see § 1.1461–1T(c)(4)(i).

(ii) * * *

(A) [Reserved]. For further guidance, see § 1.1461–1T(c)(4)(ii)(A).

* * * * *

(iv) [Reserved]. For further guidance, see § 1.1461–1T(c)(4)(iv).

(v) [Reserved]. For further guidance, see § 1.1461–1T(c)(4)(v).

* * * * *

(5) [Reserved]. For further guidance, see § 1.1461–1T(c)(5).

* * * * *

(i) [Reserved]. For further guidance, see § 1.1461–1T(i).

■ **Par. 17.** Section 1.1461–1T is added to read as follows:

**§ 1.1461–1T Payments and returns of tax withheld (temporary).**

(a) [Reserved]. For further guidance, see § 1.1461–1(a).

(b) *Income tax return*—(1) *General rule.* A withholding agent shall make an income tax return on Form 1042 (or such other form as the IRS may prescribe) for income paid during the preceding calendar year that the withholding agent is required to report on an information return on Form 1042–S (or such other form as the IRS may prescribe) under paragraph (c)(1) of this section. See section 6011 and § 1.6011–1(c). The withholding agent must file the return on or before March 15 of the calendar year following the year in which the income was paid. The return must show the aggregate amount of income paid and tax withheld required to be reported on all the Forms 1042–S for the preceding calendar year by the withholding agent, in addition to such information as is required by the form and accompanying instructions. See § 1.1474–1(c) for the requirement to show the aggregate chapter 4 reportable amounts and tax withheld on Form 1042. A single Form 1042 may be filed by a withholding agent to report amounts under chapters 3 and 4, including tax withheld. Withholding certificates or other statements or information provided to a withholding agent are not required to be attached to the return. A return must be filed under this paragraph (b)(1) even though no tax was required to be withheld during the preceding calendar year. The withholding agent must retain a copy of Form 1042 for the applicable statute of limitations on assessments and collection with respect to the amounts required to be reported on the Form 1042. See section 6501 and the regulations thereunder for the applicable statute of limitations. Adjustments to the total amount of tax withheld, as described in § 1.1461–2, shall be stated on the return as prescribed by the form and accompanying instructions.

(2) [Reserved]. For further guidance, see § 1.1461–1(b)(2).

(c) *Information returns*—(1) *Filing requirement*—(i) *In general.* A withholding agent (other than an individual who is not acting in the course of a trade or business with respect to a payment) must make an information return on Form 1042–S (or such other form as the IRS may prescribe) to report the amounts subject to reporting, as defined in paragraph (c)(2) of this section, that were paid during the preceding calendar year. Notwithstanding the preceding sentence, any person that withholds or is required to withhold an amount under sections 1441, 1442, 1443, or § 1.1446–4(a) (applicable to publicly traded partnerships required to pay tax under section 1446 on distributions) must file a Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' for the payment withheld upon whether or not that person is engaged in a trade or business and whether or not the payment is an amount subject to reporting. The reference in the previous sentence to withholding under § 1.1446–4 shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 apply by reason of an election under § 1.1446–7. A Form 1042–S shall be prepared for each recipient of an amount subject to reporting and for each single type of income payment. The Form 1042–S shall be prepared in such manner as the form and accompanying instructions prescribe. One copy of the Form 1042–S shall be filed with the IRS on or before March 15th of the calendar year following the year in which the amount subject to reporting was paid. It shall be filed with a transmittal form as provided in the instructions to the Form 1042–S and to the transmittal form. Withholding certificates, documentary evidence, or other statements or documentation provided to a withholding agent are not required to be attached to the form. Another copy of the Form 1042–S must be furnished to the recipient for whom the form is prepared (or any other person, as required under this paragraph (c) or the instructions to the form) on or before March 15th of the calendar year following the year in which the amount subject to reporting was paid. The withholding agent must retain a copy of each Form 1042–S for the statute of limitations on assessment and collection applicable to the Form 1042 to which the Form 1042–S relates.

(ii) *Recipient*—(A) *Defined.* For purposes of this section, the term *recipient* means—

(*1*) A beneficial owner as defined in § 1.1441–1(c)(6), including a foreign estate or a foreign complex trust, as defined in § 1.1441–1(c)(25);

(*2*) A qualified intermediary as defined in § 1.1441–1(e)(5)(ii);

(*3*) A withholding foreign partnership as defined in § 1.1441–5(c)(2) or a withholding foreign trust under § 1.1441–5(e)(5)(v);

(*4*) A territory financial institution treated as a U.S. person under § 1.1441–1(b)(2)(iv)(A);

(*5*) A U.S. branch that is treated as a U.S. person under § 1.1441–1(b)(2)(iv)(A);

(*6*) A nonwithholding foreign partnership or a foreign simple trust as defined in § 1.1441–1(c)(24), but only to the extent the income is (or is treated as) effectively connected with the conduct of a trade or business in the United States by such entity;

(*7*) A payee, as defined in § 1.1441–1(b)(2) that is presumed to be a foreign person under the presumption rules of

§ 1.1441–1(b)(3); 1.1441–5(d) or (e)(6), or 1.6049–5(d);

(*8*) A partner receiving a distribution from a publicly traded partnership subject to withholding under section 1446 and § 1.1446–4 on distributions of effectively connected income. This paragraph (c)(1)(ii)(A)(*8*) shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 apply by reason of an election under § 1.1446–7.

(*9*) A foreign intermediary, nonwithholding foreign partnership or nonwithholding foreign trust that is a participating FFI or registered deemed-compliant FFI with respect to a chapter 4 reporting pool of U.S. payees;

(*10*) A participating FFI or a registered deemed-compliant FFI that is a recipient of a withholdable payment described in § 1.1474–1(d)(1)(ii)(A)(*1*)(*iii*); and

(*11*) Any other person as required on Form 1042–S or the instructions to the form.

(B) *Persons that are not recipients.* A recipient does not include—

(*1*) A nonqualified intermediary, except with respect to a payment (or portion of a payment) for which a nonqualified intermediary that is an FFI is a recipient reporting as described in § 1.1474–1(d)(1)(ii)(A)(*1*)(*iii*);

(*2*) A payee included in a chapter 3 or chapter 4 withholding rate pool;

(*3*) A flow-through entity, as defined in § 1.1441–1(c)(23) (to the extent it is receiving amounts subject to reporting other than income effectively connected with the conduct of a trade or business in the United States), that is not a recipient described in paragraphs (c)(1)(ii)(9) or (c)(1)(ii)(10) of this section; and

(*4*) A U.S. branch (including a territory financial institution) described in § 1.1441–1(b)(2)(iv)(A) that is not treated as a U.S. person under that section and is not a recipient described in paragraphs (c)(1)(ii)(9) or (c)(1)(ii)(10) of this section.

(C) *Coordination with chapter 4 reporting.* See § 1.1474–1(d)(1)(ii)(A) for persons that are defined as recipients of a withholdable payment of U.S. source FDAP income for purposes of chapter 4 in addition to the persons that are recipients under this paragraph (c)(1)(ii).

(c)(2) introductory text through (c)(2)(ii)(D)[Reserved]. For further guidance, see § 1.1461–1(c)(2) introductory text through (c)(2)(ii)(D).

(A) through (D) [Reserved]. For further guidance, see § 1.1461–1(c)(2)(ii)(A).

(E) Any item required to be reported on Form 1099, and such other forms as are prescribed pursuant to the information reporting provisions of sections 6041 through 6050W and the regulations under those sections;

(F) and (G) [Reserved]. For further guidance, see § 1.1461–1(c)(2)(ii)(F) and (G).

(H) Interest (including original issue discount) paid with respect to foreign-targeted registered obligations issued before January 1, 2016, that are described in § 1.871–14(e)(2) to the extent the documentation requirements described in § 1.871–14(e)(3) and (e)(4) are required to be satisfied (taking into account the provisions of § 1.871–14(e)(4)(ii), if applicable;

(I) Interest on a foreign-targeted bearer obligation (see §§ 1.1441–1(b)(4)(i) and 1.1441–2(a)) issued before March 19, 2012;

(J) and (K) [Reserved]. For further guidance, see § 1.1461–1(c)(2)(ii)(J) and (K).

(3) [Reserved]. For further guidance, see § 1.1461–1(c)(3).

(i) The name, address, taxpayer identifying number of the withholding agent, and the withholding agent's status for chapter 3 purposes (based on the status codes applicable for chapter 3 purposes provided on the form);

(ii) [Reserved]. For further guidance, see § 1.1461–1(c)(3)(ii).

(iii) For a payment not subject to withholding under chapter 4, the rate of withholding applied or the basis for exempting the payment from withholding under chapter 3, and the exemption applicable to the payment for chapter 4 purposes (based on the exemption codes provided on the form);

(iv) through (ix) [Reserved]. For further guidance, see § 1.1461–1(c)(3)(iv) through (ix).

(4) *Method of reporting*—(i) *Payments by U.S. withholding agents to recipients.* A withholding agent that is a U.S. person (other than a foreign branch of a U.S. person that is a qualified intermediary as defined in § 1.1441–1(e)(5)(ii) that makes payments of amounts subject to reporting on Form 1042–S must file a separate Form 1042–S for each recipient who receives such amount. For purposes of this paragraph (c)(4), a U.S. person includes a U.S. branch (including a territory financial institution) described in § 1.1441–1(b)(2)(iv)(A) that is treated as a U.S. person. Except as may otherwise be required on Form 1042–S or the instructions to the form, only payments for which the income code, exemption code, withholding rate and recipient code are the same may be reported on a single Form 1042–S. See paragraph (c)(4)(ii) of this section for reporting of payments made to a person that is not a recipient. See § 1.1474–1(d)(4) for additional requirements that may apply for reporting on Form 1042–S with respect to a withholdable payment that is a chapter 4 reportable amount.

(A) *Payments to beneficial owners.* If a U.S. withholding agent makes a payment directly to a beneficial owner it must complete Form 1042–S treating the beneficial owner as the recipient. Under the grace period rule of § 1.1441–1(b)(3)(iv), a U.S. withholding agent may, under certain circumstances, treat a payee as a foreign person while the withholding agent awaits a valid withholding certificate. A U.S. withholding agent who relies on the grace period rule to treat a payee as a foreign person must file a Form 1042–S to report all payments on Form 1042–S during the period that person was presumed to be foreign even if that person is later determined to be a U.S. person based on appropriate documentation or is presumed to be a U.S. person after the grace period ends. In the case of joint owners, a withholding agent may provide a single Form 1042–S made out to the owner whose status the U.S. withholding agent relied upon to determine the applicable rate of withholding. If, however, any one of the owners requests its own Form 1042–S, the withholding agent must furnish a Form 1042–S to the person who requests it. If more than one Form 1042–S is issued for a single payment, the aggregate amount paid and tax withheld that is reported on all Forms 1042–S cannot exceed the total amounts paid to joint owners and the tax withheld thereon.

(B) *Payments to a qualified intermediary, a withholding foreign partnership, or a withholding foreign trust.* A U.S. withholding agent that makes payments to a qualified intermediary (whether or not the qualified intermediary assumes primary withholding responsibility for purposes of chapter 3 and chapter 4 of the Code), a withholding foreign partnership, or a withholding foreign trust shall complete Forms 1042–S treating the qualified intermediary, withholding foreign partnership, or withholding foreign trust as the recipient. The U.S. withholding agent must complete a separate Form 1042–S for each chapter 3 and chapter 4 withholding rate pool with respect to each qualified intermediary. A qualified intermediary that does not assume primary withholding responsibility on all payments it receives provides information regarding the proportions of income subject to a particular withholding rate (that is, a chapter 3 withholding rate pool) to the withholding agent on a withholding

statement associated with a qualified intermediary withholding certificate. In such a case, the U.S. withholding agent must complete a separate Form 1042–S for each chapter 3 and chapter 4 withholding rate pool with respect to the qualified intermediary. To the extent a qualified intermediary is required to report a payment under chapter 61, it may provide a U.S. withholding agent with information regarding withholding rate pools for U.S. non-exempt recipients (as defined under § 1.1441–1(c)(21)). Amounts paid with respect to such withholding rate pools must be reported on a Form 1099 completed for each U.S. non-exempt recipient to the extent such U.S. non-exempt recipient is subject to Form 1099 reporting and is not reported on Form 1042–S. See, however, § 1.1441–1(e)(5)(v)(C) for when a qualified intermediary may provide a chapter 4 withholding rate pool of U.S payees (in lieu of reporting such payees on a withholding statement) and for the withholding rate pools (including chapter 4 withholding rate pools) otherwise reportable on a withholding statement provided by a qualified intermediary.

(C) *Amounts paid to U.S. branches treated as U.S. persons.* A U.S. withholding agent making a payment to a U.S. branch of a foreign person (including a territory financial institution) described in § 1.1441–1(b)(2)(iv)(A) shall complete Form 1042–S as follows—

(*1*) If the branch has provided the U.S. withholding agent with a withholding certificate that evidences its agreement with the withholding agent to be treated as a U.S. person, the U.S. withholding agent files Forms 1042–S treating the U.S. branch or territory financial institution as the recipient;

(*2*) If the branch has provided the U.S. withholding agent with a withholding certificate that transmits information regarding beneficial owners, qualified intermediaries, withholding foreign partnerships, or other recipients, the U.S. withholding agent must complete a separate Form 1042–S for each recipient whose documentation is associated with the U.S. branch's or territory financial institution's withholding certificate; or

(*3*) If the U.S. withholding agent cannot reliably associate a payment with a valid withholding certificate from the U.S. branch, it shall treat the U.S. branch as the recipient and report the income as effectively connected with the conduct of a trade or business in the United States except as otherwise provided in § 1.1441–1(b)(2)(iv)(B)(*4*).

(D) *Dual Claims.* A U.S. withholding agent may make a payment to a foreign entity that is simultaneously claiming a reduced rate of tax on its own behalf for a portion of the payment and a reduced rate on behalf of persons in their capacity as interest holders in that entity on the remaining portion. See § 1.1441–6(b)(2)(iii). If the claims are consistent and the withholding agent accepts the multiple claims, the withholding agent must file a separate Form 1042–S for those payments for which the entity is treated as the beneficial owner and Forms 1042–S for each of the interest holders in the entity for which the interest holder is treated as the recipient. For those payments for which the interest holder in an entity is treated as the recipient, the U.S. withholding agent shall prepare the Form 1042–S in the same manner as a payment made to a nonqualified intermediary or flow-through entity as set forth in paragraph (c)(4)(ii) of this section. If the claims are consistent but the withholding agent has not chosen to accept the multiple claims, or if the claims are inconsistent, the withholding agent must file a separate Form 1042–S for the person or persons it has chosen to treat as the recipients.

(ii) *Payments made by U.S. withholding agents to persons that are not recipients*—(A) *Amounts paid to a nonqualified intermediary, a flow-through entity, and certain U.S. branches.* If a U.S. withholding agent makes a payment to a nonqualified intermediary, a flow-through entity, or a U.S. branch (including a territory financial institution) described in § 1.1441–1(b)(2)(iv) (other than a U.S. branch or territory financial institution that is treated as a U.S. person), it must complete a separate Form 1042–S for each recipient to the extent the withholding agent can reliably associate a payment with valid documentation (within the meaning of § 1.1441–1(b)(2)(vii)) from the recipient which is associated with the withholding certificate provided by the nonqualified intermediary, flow-through entity, or U.S. branch or territory financial institution. See § 1.1474–1(d)(4)(i) for when a withholding agent may report a chapter 4 reportable amount made to such an entity in a chapter 4 withholding rate pool. See also § 1.1441–1(e)(3)(iv)(A) for when a withholding statement provided by a nonqualified intermediary may include a chapter 4 withholding rate pool of U.S. payees. If a payment is reported by the withholding agent in a chapter 4 withholding rate pool, the withholding agent must report on Form 1042–S the nonqualified intermediary or flow-through entity as a recipient associated with the applicable chapter 4 withholding rate pool. If a payment is made through tiers of nonqualified intermediaries or flow-through entities, the withholding agent must nevertheless complete Form 1042–S for the recipient to the extent it can reliably associate the payment with documentation from the recipient. A withholding agent that is completing a Form 1042–S for a recipient that receives a payment through a nonqualified intermediary, a flow-through entity, or a U.S. branch or territory financial institution must include on the Form 1042–S the name of the nonqualified intermediary, flow-through entity, U.S. branch or territory financial institution from which the recipient directly receives the payment. If a U.S. withholding agent cannot reliably associate the payment, or any portion of the payment, with valid documentation from a recipient either because no such documentation has been provided or because the nonqualified intermediary, flow-through entity, or U.S. branch or territory financial institution has failed to provide sufficient allocation information so that the withholding agent can associate the payment, or any portion thereof, with valid documentation, then the withholding agent must report the payments as made to an unknown recipient in accordance with the appropriate presumption rules for that payment. Thus, if the payment is not a withholdable payment and under the presumption rules the payment is presumed to be made to a foreign person, the withholding agent must generally withhold 30 percent of the payment and report the payment on Form 1042–S made out to an unknown recipient and shall also include the name of the nonqualified intermediary, flow-through entity, U.S. branch or territory financial institution that received the payment on behalf of the unknown recipient. If, however, the recipient is presumed to be a U.S. non-exempt recipient (as defined in § 1.1441–1(c)(21)), the withholding agent must withhold on the payment as required under section 3406 and report the payment as required under chapter 61 of the Internal Revenue Code. See § 1.1474–1(d)(4) for reporting requirements that apply to payments of chapter 4 reportable amounts paid to nonqualified intermediaries and flow-through entities. If, however, the payment is a withholdable payment, the withholding agent must report the payment as made to a chapter 4 withholding rate pool of nonparticipating FFIs in accordance with the presumption rule under § 1.1471–3(f)(5).

(B) [Reserved]. For further guidance, see § 1.1461–1(c)(4)(ii)(B).

(iii) [Reserved]. For further guidance, see § 1.1461–1(c)(4)(iii).

(iv) *Reporting by a nonqualified intermediary, flow-through entity, and certain U.S. branches.* A nonqualified intermediary, flow-through entity, or U.S. branch (including a territory financial institution) described in § 1.1441–1(e)(2)(iv) (other than a U.S. branch or territory financial institution, that is treated as a U.S. person) is a withholding agent and must file Forms 1042–S for amounts paid to recipients in the same manner as a U.S. withholding agent. A Form 1042–S will not be required, however, if another withholding agent has reported the same amount for which the nonqualified intermediary, flow-through entity, or U.S. branch would be required to file a return and the entire amount that should be withheld from such payment has been withheld (including withholding and reporting in accordance with the applicable presumption rule for the payment). A nonqualified intermediary, flow-through entity, or U.S. branch must report payments made to recipients to the extent it has failed to provide the appropriate documentation to another withholding agent together with the information required for that withholding agent to reliably associate the payment with the recipient documentation or to the extent it knows, or has reason to know, that less than the required amount has been withheld. A nonqualified intermediary or flow-through entity that is required to report a payment on Form 1042–S must follow the same rules as apply to a U.S. withholding agent under paragraph (c)(4)(i) and (c)(4)(ii) of this section.

(v) *Pro rata reporting for allocation failures.* If a nonqualified intermediary, flow-through entity, or U.S. branch (including a territory financial institution) described in § 1.1441–1(b)(2)(iv) (other than a U.S. branch or territory financial institution treated as a U.S. person) uses the alternative procedures of § 1.1441–1(e)(3)(iv)(D) and fails to provide information sufficient to allocate the amount subject to reporting paid to a withholding rate pool to the payees identified for that pool, then the withholding agent shall report the payment in accordance with the rule provided in § 1.1441–1(e)(3)(iv)(D)(*6*).

(vi) [Reserved]. For further guidance, see § 1.1461–1(c)(4)(vi).

(5) *Magnetic media reporting.* A withholding agent that makes 250 or more Form 1042–S information returns for a taxable year must file Form 1042–S returns on magnetic media. See, however, § 301.1474–1(a) of this chapter for the requirements for a withholding agent that is a financial institution to file Forms 1042–S on magnetic media. See, also, § 301.6011–2 of this chapter for requirements applicable to a withholding agent that files Forms 1042–S with the IRS on magnetic media and publications of the IRS relating to magnetic media filing.

(d) through (h) [Reserved]. For further guidance, see § 1.1461–1(d) through (h).

(i) *Effective/applicability date.* Unless otherwise provided in this section, this section shall apply to amounts reported under this section beginning for calendar year 2014. (For returns required for payments made after December 31, 2000, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

(j) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 18.** Section 1.1461–2 is amended by revising paragraphs (a)(2)(i), (a)(4), and (d) to read as follows:

**§ 1.1461–2 Adjustments for overwithholding or underwithholding of tax.**

(a) * * *

(2) * * *

(i) [Reserved]. For further guidance, see § 1.1461–2T(a)(2)(i).

* * * * *

(4) [Reserved]. For further guidance, see § 1.1461–2T(a)(4).

* * * * *

(d) Effective/applicability date—(1) Unless otherwise provided in this section, this section applies to payments made after December 31, 2000.

(2) [Reserved]. For further guidance, see § 1.1461–2T(d)(2).

■ **Par. 19.** Section 1.1461–2T is added to read as follows:

**§ 1.1461–2T Adjustments for overwithholding or underwithholding of tax (temporary).**

(a)(1) [Reserved]. For further guidance, see § 1.1461–2(a)(1).

(2) Reimbursement of tax—(i) *General rule.* Under the reimbursement procedure, the withholding agent repays the beneficial owner or payee for the amount overwithheld. In such a case, the withholding agent may reimburse itself by reducing, by the amount of tax actually repaid to the beneficial owner or payee, the amount of any deposit of tax made by the withholding agent under § 1.6302–2(a)(1)(iii) for any subsequent payment period occurring before the end of the calendar year following the calendar year of overwithholding. Any such reduction that occurs for a payment period in the calendar year following the calendar year of overwithholding shall be allowed only if—

(A) The repayment to the beneficial owner or payee occurs before the earlier of the due date (not including extensions) for filing Form 1042–S for the calendar year of overwithholding or the date the Form 1042–S is actually filed with the IRS;

(B) The withholding agent states on a timely filed (not including extensions) Form 1042 for the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with § 1.6414–1; and

(C) The withholding agent states, on a timely filed (not including extensions) Form 1042 for the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with § 1.6414–1.

(ii) and (3) [Reserved]. For further guidance, see § 1.1461–2(a)(2)(ii) and (3).

(4) *Examples.* The principles of this paragraph (a) are illustrated by the following examples:

*Example 1.* (i) N is a nonresident alien individual who is a resident of the United Kingdom. In December 2001, a domestic corporation C pays a dividend of $100 to N, at which time C withholds $30 and remits the balance of $70 to N. On February 10, 2002, prior to the time that C files its Form 1042 and Form 1042–S with respect to the payment, N furnishes a valid Form W–8 described in § 1.1441–1(e)(2)(i) upon which C may rely to reduce the rate of withholding to 15% under the provisions of the U.S.-U.K. tax treaty. Consequently, N advises C that its tax liability is only $15 and not $30 and requests reimbursement of $15. Although C has already deposited the $30 that was withheld, as required by § 1.6302–2(a)(1)(iv), C repays N in the amount of $15.

(ii) During 2001, C makes no other payments upon which tax is required to be withheld under chapter 3 of the Code; accordingly, its return on Form 1042 for such year, which is filed on March 15, 2002, shows total tax withheld of $30, an adjusted total tax withheld of $15, and $30 previously paid for such year. Pursuant to § 1.6414–1(b), C claims a credit for the overpayment of $15 shown on the Form 1042 for 2001. Accordingly, it is permitted to reduce by $15 any deposit required by § 1.6302–2 to be made of tax withheld during the calendar year 2002. The Form 1042–S required to be filed by C with respect to the dividend of $100 paid to N in 2001 is required to show tax withheld under chapter 3 of $30 and tax repaid to N of $15.

*Example 2.* The facts are the same as in *Example 1.* In addition, during 2002, C makes payments to N upon which it is required to withhold $200 under chapter 3 of the Code, all of which is withheld in June 2002. Pursuant to § 1.6302–2(a)(1)(iii), C deposits the amount of $185 on July 15, 2002 ($200 less the $15 for which credit is claimed on the Form 1042 for 2001). On March 15,

2003, C Corporation files its return on Form 1042 for calendar year 2002, which shows total tax withheld of $200, $185 previously deposited by C, and $15 allowable credit.

*Example 3.* The facts are the same as in *Example 1.* Under § 1.6302–2(a)(1)(ii), C is required to deposit on a quarter-monthly basis the tax withheld under chapter 3 of the Code. C withholds tax of $100 between February 8 and February 15, 2002, and deposits $75 [($100 × 90%) less $15] of the withheld tax within 3 banking days after February 15, 2002, and by depositing $10 [($100 − $15) less $75] within 3 banking days after March 15, 2002.

(b) through (d)(1) [Reserved]. For further guidance, see § 1.1461–2(b) through (d)(1).

(2) The provisions of this section apply to payments made after June 30, 2014.

(e) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 20.** In § 1.6041–1, paragraphs (d)(5)(i) and (ii) and (j) are revised to read as follows:

**§ 1.6041–1 Return of information as to payments of $600 or more.**

* * * * *

(d) * * *

(5) * * *

(i) and (ii) [Reserved]. For further guidance, see § 1.6041–1T(d)(5)(i) and (ii).

* * * * *

(j) *Effective/applicability date.* (1) The provisions of paragraphs (b), (c), (e), and (f) of this section apply to payments made after December 31, 2002. The provisions of paragraphs (a)(1)(iv) and (a)(1)(v) apply to payments made after December 31, 2010.

(2) [Reserved]. For further guidance, see § 1.6041–1T(j)(2).

■ **Par. 21.** Section 1.6041–1T is added to read as follows:

**§ 1.6041–1T Return of information as to payments of $600 or more (temporary).**

(a) through (d)(5) [Reserved]. For further guidance, see § 1.6041–1(a) through (d)(5).

(i) An amount paid with respect to a notional principal contract is not required to be reported if the amount is paid by a non-U.S. payor or a non-U.S. middleman and is paid and received outside the United States (as defined in § 1.6049–4(f)(16)).

(ii) An amount paid with respect to a notional principal contract is not required to be reported if the amount is paid by a payor that has no actual knowledge that the payee is a U.S. person and is paid and received outside the United States (as defined in § 1.6049–4(f)(16)), and the payor is—

(d)(5)(ii)(A) through (j)(1) [Reserved]. For further guidance, see § 1.6041–1(d)(5)(ii)(A) through (j)(1).

(2) The provisions of paragraphs (d)(5)(i) and (ii) of this section apply to payments made after June 30, 2014.

(k) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 22.** Section 1.6041–4 is amended by revising paragraphs (a)(1) through (3), adding paragraph (a)(7), and revising paragraphs (b) and (d) to read as follows:

**§ 1.6041–4 Foreign-related items and other exceptions.**

(a) * * *

(1) through (3) [Reserved]. For further guidance, see § 1.6041–4T(a)(1) through (3).

* * * * *

(7) [Reserved]. For further guidance, see § 1.6041–4T(a)(7).

(b) [Reserved]. For further guidance, see § 1.6041–4T(b).

* * * * *

(d) *Effective/applicability date.* (1) The provisions of this section apply to payments made after December 31, 2000.

(2) [Reserved]. For further guidance, see § 1.6041–4T(d)(2).

■ **Par. 23.** Section 1.6041–4T is added to read as follows:

**§ 1.6041–4T Foreign-related items and other exceptions (temporary).**

(a) [Reserved]. For further guidance, see § 1.6041–4(a).

(1) Returns of information are not required for payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049–5(d)(2), (3), (4), or (5). Returns of information are also not required for a payment that a payor or middleman can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign intermediary or flow-through entity in accordance with § 1.1441–1(b) if it obtains from the intermediary or flow-through entity a withholding statement described in § 1.6049–5(b)(14) that allocates the payment to a chapter 4 withholding rate pool (as defined in § 1.6049–4(f)(5)) or specific payees to which withholding applies under chapter 4. Payments excepted from reporting under this paragraph (a)(1) may be reportable, for purposes of chapter 3 of the Internal Revenue Code (Code), under § 1.1461–1(b) and (c) and, for purposes of chapter 4 of the Code, under § 1.1474–1(d)(2). The provisions in § 1.6049–5(c) regarding documentation of foreign status shall apply for purposes of this paragraph (a)(1). The provisions in § 1.6049–5(c)(5) regarding the definitions of U.S. payor and non-U.S. payor shall also apply for purposes of this paragraph (a)(1). See § 1.1441–1(b)(3)(iii)(B) and (C) for special payee rules regarding scholarships, grants, pensions, annuities, etc. The provisions of § 1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Code and the regulations under that chapter.

(2) Returns of information are not required for payments of amounts from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Code and the regulations under those provisions) paid by a non-U.S. payor or non-U.S. middleman and that are paid and received outside the United States. For a definition of non-U.S. payor and non-U.S. middleman, see § 1.6049–5(c)(5). For circumstances in which an amount is considered to be paid and received outside the United States, see § 1.6049–4(f)(16).

(3) If a foreign intermediary, as described in § 1.1441–1(c)(13), or a U.S. branch that is not treated as a U.S. person receives a payment from a payor, which payment the payor can reliably associate with a valid withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii), or § 1.1441–1(e)(3)(v), respectively, furnished by such intermediary or branch, then the intermediary or branch is not required to report such payment when it, in turn, pays the amount, unless, and to the extent, the intermediary or branch knows that the payment is required to be reported under this section and was not so reported. For example, if a U.S. branch described in § 1.1441–1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under § 1.6041–3(q) to the person from whom the U.S. branch receives the payment, the U.S. branch must report the payment on an information return. See, however, paragraph (a)(7) of this section for when reporting under section 6041is coordinated with reporting under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049–4(f)(7)). The exception described in this paragraph (a)(3) for amounts paid by a foreign intermediary shall not apply to a

qualified intermediary that assumes reporting responsibility under chapter 61 of the Code with respect to amounts reportable under the agreement described in § 1.1441–1(e)(5)(iii).

(4) through (6) [Reserved]. For further guidance, see § 1.6041–4(a)(4) through (6).

(7) Returns of information are not required for payments with respect to which a return is not required by applying the rules of § 1.6049–4(c)(4) (by substituting the term *a payment subject to reporting under section 6041* for the term *an interest payment*).

(b) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (a) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor or middleman cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5, or with documentation described in paragraph (a)(1) of this section furnished by each joint owner upon which the payor or middleman can rely to treat each joint owner as a foreign payee or foreign beneficial owner. However, in the case of a withholdable payment (as defined in § 1.6049–4(f)(15)) made to joint payees, if any joint payee does not appear to be an individual, the payment is presumed made to a foreign payee that is a nonparticipating FFI (as defined in § 1.1471–1(b)(82)). See § 1.1471–3(f)(7).

(c) through (d)(1) [Reserved]. For further guidance, see § 1.6041–4(c) through (d)(1).

(2) The provisions of paragraphs (a)(1) through (3), (a)(7), and (b) of this section apply to payments made after June 30, 2014.

(e) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 24.** Section 1.6042–2 is amended by revising paragraph (a)(1)(i) and adding paragraph (f) to read as follows:

**§ 1.6042–2 Returns of information as to dividends paid.**

(a) * * *

(1) * * *

(i) [Reserved]. For further guidance, see § 1.6042–2T(a)(1)(i).

* * * * *

(f) [Reserved]. For further guidance, see § 1.6042–2T(f).

■ **Par. 25.** Section 1.6042–2T is added to read as follows:

**§ 1.6042–2T Returns of information as to dividends paid (temporary).**

(a) [Reserved]. For further guidance, see § 1.6042–2(a).

(1) [Reserved]. For further guidance, see § 1.6042–2(a)(1).

(i) Every person who makes a payment of dividends (as defined in § 1.6042–3) to any other person during a calendar year. The information return shall show the aggregate amount of the dividends, the name, address, and taxpayer identifying number of the person to whom paid, the amount of tax deducted and withheld under section 3406 from the dividends, if any, and such other information as required by the forms. An information return is generally not required if the amount of dividends paid to the other person during the calendar year aggregates less than $10 or if the payment is made to a person who is an exempt recipient described in § 1.6049–4(c)(1)(ii) unless the payor backup withholds under section 3406 on such payment (because, for example, the payee has failed to furnish a Form W–9), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to § 31.6413(a)–3 of this chapter. Further, a return of information is not required under this section for—

(A) Payments with respect to which a return is not required by applying the rules of § 1.6049–4(c)(4) (by substituting the term *dividend* for the term *interest*); or

(B) Payments made by a paying agent on behalf of a corporation described in section 1297(a) with respect to a shareholder of the corporation if—

(*1*) The paying agent obtains from the corporation a written certification signed by an officer of the corporation, that states that the corporation is described in section 1297(a) for each calendar year during which the paying agent relies on the provisions of paragraph (a)(1)(i)(B) of this section, and the paying agent has no reason to know the written certification is unreliable or incorrect;

(*2*) The paying agent identifies, prior to payment, the corporation as a participating FFI (including a reporting Model 2 FFI) (as defined in § 1.6049–4(f)(10) or (14), respectively), or reporting Model 1 FFI (as defined in § 1.6049–4(f)(13)), in accordance with the requirements of § 1.1471–3(d)(4) (substituting the terms *paying agent* and *corporation* for the terms *withholding agent* and *payee*);

(*3*) The paying agent obtains, before each year the payment would otherwise be reported, a written certification representing that the corporation shall report the payment as part of its reporting obligations under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049–4(f)(7)) with respect to its U.S. accounts and provided the paying agent does not know that the corporation is not reporting the payment as required. A paying agent that knows that the corporation is not reporting the payment as required under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049–4(f)(7)) must report all payments reportable under this section that it makes during the year in which it obtains such knowledge; and

(*4*) The paying agent is not also acting in its capacity as a custodian, nominee, or other agent of the payee with respect to the payments.

(ii) through (e) [Reserved]. For further guidance, see § 1.6042–2(a)(1)(ii) through (e).

(f) *Effective/applicability date.* The provisions of paragraphs (a)(1)(i) of this section apply to payments made after June 30, 2014.

(g) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 26.** In § 1.6042–3 paragraphs (b)(1)(iii), (b)(1)(iv), (b)(1)(vi), (b)(3), and (b)(5) are revised to read as follows:

**§ 1.6042–3 Dividends subject to reporting.**

* * * * *

(b) * * *

(1) * * *

(iii) and (iv) [Reserved]. For further guidance, see § 1.6042–3T(b)(1)(iii) and (iv).

* * * * *

(vi) [Reserved]. For further guidance, see § 1.6042–3T(b)(1)(vi).

* * * * *

(3) [Reserved]. For further guidance, see § 1.6042–3T(b)(3).

* * * * *

(5) *Effective/applicability date*—(i) The provisions of this paragraph (b) apply to payments made after December 31, 2000.

(ii) [Reserved]. For further guidance, see § 1.6042–3T(b)(5)(ii).

* * * * *

■ **Par. 27.** Section 1.6042–3T is added to read as follows:

**§ 1.6042–3T Dividends subject to reporting (temporary).**

(a) through (b)(1)(ii) [Reserved]. For further guidance, see § 1.6042–3(a) through (b)(1)(ii).

(iii) Distributions or payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance

with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049–5(d)(2), (3), (4), or (5). Returns of information are also not required for payments that a payor or middleman can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign intermediary in accordance with § 1.1441–1(b) if it obtains from the intermediary entity a withholding statement (described in § 1.6049–5(b)(14)) that allocates the payment to a chapter 4 withholding rate pool (as defined in § 1.6049–4(f)(5)) or to specific payees to which withholding under chapter 4 applies. Payments excepted from reporting under this paragraph (b)(1)(iii) may be reportable, for purposes of chapter 3 of the Internal Revenue Code (Code), under § 1.1461–1(b) and (c) or, for chapter 4 purposes, under § 1.1474–1(d)(2). The provisions in § 1.6049–5(c) regarding documentation of foreign status shall apply for purposes of this paragraph (b)(1)(iii). The provisions in § 1.6049–5(c) regarding the definitions of U.S. payor and non-U.S. payor shall also apply for purposes of this paragraph (b)(1)(iii). The provisions of § 1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Code.

(iv) Distributions or payments from sources outside the United States (as determined under the provisions of part I, subchapter N, chapter 1 of the Code and the regulations under those provisions) that are paid by a non-U.S. payor or non-U.S. middleman and that are paid and received outside the United States. For a definition of non-U.S. payor and non-U.S. middleman, see § 1.6049–5(c)(5). For circumstances in which an amount is considered to be paid and received outside the United States, see § 1.6049–4(f)(16).

(v) [Reserved]. For further guidance, see § 1.6042–3(b)(1)(v).

(vi) If a foreign intermediary, as described in § 1.1441–1(c)(13), or a U.S. branch that is not treated as a U.S. person receives a payment from a payor, which payment the payor can reliably associate with a valid withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii), or § 1.1441–1(e)(3)(v), respectively, furnished by such intermediary or branch, then the intermediary or branch is not required to report such payment when it, in turn, pays the amount, unless, and to the extent, the intermediary or branch knows that the payment is required to be reported under this section and was not so reported. For example, if a U.S. branch described in § 1.1441–1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under § 1.6049–4(c)(1)(ii) to the person from whom the U.S. branch receives the payment, the amount paid by the U.S. branch to such person is a dividend. See, however, § 1.6042–2(a)(1)(i)(A) for when reporting under section 6042 is coordinated with reporting under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049–4(f)(7)). The exception of this paragraph (b)(1)(vi) for amounts paid by a foreign intermediary shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Code with respect to amounts reportable under the agreement described in § 1.1441–1(e)(5)(iii).

(vii) through (b)(2) [Reserved]. For further guidance, see § 1.6042–3(b)(1)(vii) through (b)(2).

(3) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under this paragraph (b) are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor or middleman cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (b)(1)(iii) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. However in the case of a withholdable payment (as defined in § 1.6049–4(f)(15)) made to joint payees, if any such joint payee does not appear to be an individual, the payment is presumed made to a foreign payee that is a nonparticipating FFI (as defined in § 1.1471–1(b)(82)). See § 1.1471–3(f)(7). For purposes of applying this paragraph (b)(3), the grace period described in § 1.6049–5(d)(2)(ii) shall apply only if each payee qualifies for such grace period.

(4) through (5)(i) [Reserved]. For further guidance, see § 1.6042–3(b)(4) through (b)(5)(i).

(ii) The provisions of paragraphs (b)(1)(iii), (b)(1)(iv), (b)(1)(vi), and (b)(3) of this section apply to payments made after June 30, 2014.

(c) [Reserved]. For further guidance, see § 1.6042–3(c).

(d) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 28.** Section 1.6045–1 is amended by:

■ 1. Revising paragraph (c)(3)(ii) and adding paragraphs (c)(3)(xiv) and (xv).

■ 2. Revising paragraphs (g)(1)(i), (g)(3)(iv), and (g)(4) and (5).

The revisions and additions read as follows:

**§ 1.6045–1 Returns of information of brokers and barter exchanges.**

* * * * *

(c) * * *

(3) * * *

(ii) [Reserved]. For further guidance, see § 1.6045–1T(c)(3)(ii) through (c)(3)(ii)(B).

* * * * *

(xiv) through (xv) [Reserved]. For further guidance, see § 1.6045–1T(c)(3)(xiv) through (xv).

* * * * *

(g) * * *

(1) * * *

(i) [Reserved]. For further guidance, see § 1.6045–1T(g)(1)(i).

* * * * *

(3) * * *

(iv) [Reserved]. For further guidance, see § 1.6045–1T(g)(3)(iv).

(4) [Reserved]. For further guidance, see § 1.6045–1T(g)(4).

(5) *Effective/applicability date.* (i) The provisions of this paragraph (g) apply to payments made after December 31, 2000.

(ii) [Reserved]. For further guidance, see § 1.6045–1T(g)(5)(ii).

* * * * *

■ **Par. 29.** Section 1.6045–1T is amended by revising paragraphs (a) through (k) and adding paragraphs (p) and (q) to read as follows:

**§ 1.6045–1T Returns of information of brokers and barter exchanges (temporary).**

(a) through (c)(3)(i) [Reserved]. For further guidance, see § 1.6045–1(a) through (c)(3)(i)(C)(*2*)(*iv*).

(ii) *Excepted sales.* No return of information is required with respect to a sale effected by a broker for a customer if the sale is an excepted sale. For this purpose, a sale is an excepted sale if it is—

(A) So designated by the Internal Revenue Service in a revenue ruling or revenue procedure (see § 601.601(d)(2) of this chapter); or

(B) A sale with respect to which a return is not required by applying the rules of § 1.6049–4(c)(4) (by substituting the term *a sale subject to reporting under section 6045* for the term *an interest payment*).

(iii) through (xiii) [Reserved]. For further guidance, see § 1.6045–1(c)(3)(iii) through (xiii).

(xiv) *Certain redemptions.* No return of information is required under this section for payments made by a stock transfer agent (as described in § 1.6045–1(b)(iv)) with respect to a redemption of stock of a corporation described in section 1297(a) with respect to a shareholder in the corporation if—

(A) The stock transfer agent obtains from the corporation a written certification signed by an officer of the corporation, that states that the corporation is described in section 1297(a) for each calendar year during which the stock transfer agent relies on the provisions of paragraph (c)(3)(xiv) of this section, and the stock transfer agent has no reason to know that the written certification is unreliable or incorrect;

(B) The stock transfer agent identifies, prior to payment, the corporation as a participating FFI (including a reporting Model 2 FFI) (as defined in § 1.6049–4(f)(10) or (f)(14), respectively), or reporting Model 1 FFI (as defined in § 1.6049–4(f)(13)), in accordance with the requirements of § 1.1471–3(d)(4) (substituting the terms *stock transfer agent* and *corporation* for the terms *withholding agent* and *payee*);

(C) The stock transfer agent obtains, before each year the payment would otherwise be reported, a written certification representing that the corporation shall report the payment as part of its account holder reporting obligations under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049–4(f)(7)) and provided the stock transfer agent does not know that the corporation is not reporting the payment as required. A stock transfer agent that knows that the corporation is not reporting the payment as required under chapter 4 of the Code or an applicable IGA must report all payments reportable under this section that it makes during the year in which it obtains such knowledge; and

(D) The stock transfer agent is not also acting in its capacity as a custodian, nominee, or other agent of the payee with respect to the payment.

(xv) *Effective/applicability date.* Paragraphs (c)(3)(ii) and (xiv) of this section apply to sales effected on or after July 1, 2014. (For sales effected before July 1, 2014, see paragraph (c)(3)(ii) of this section as in effect and contained in 26 CFR Part 1 revised April 1, 2013.)

(c)(4) through (g)(1) [Reserved]. For further guidance, see § 1.6045–1(c)(4) through (g)(1).

(i) With respect to a sale effected at an office of a broker either inside or outside the United States, the broker may treat the customer as an exempt foreign person if the broker can, prior to the payment, reliably associate the payment with documentation upon which it can rely in order to treat the customer as a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii), as made to a foreign payee in accordance with § 1.6049–5(d)(1), or presumed to be made to a foreign payee under § 1.6049–5(d)(2) or (3). For purposes of this paragraph (g)(1)(i), the provisions in § 1.6049–5(c) regarding rules applicable to documentation of foreign status shall apply with respect to a sale when the broker completes the acts necessary to effect the sale at an office outside the United States, as described in paragraph (g)(3)(iii)(A) of this section, and no office of the same broker within the United States negotiated the sale with the customer or received instructions with respect to the sale from the customer. The provisions in § 1.6049–5(c) regarding the definitions of U.S. payor, U.S. middleman, non-U.S. payor, and non-U.S. middleman shall also apply for purposes of this paragraph (g)(1)(i). The provisions of § 1.1441–1 shall apply by substituting the terms *broker* and *customer* for the terms *withholding agent* and *payee* and without regard for the fact that the provisions apply to amounts subject to withholding under chapter 3 of the Internal Revenue Code (Code). The provisions of § 1.6049–5(d) shall apply by substituting the terms *broker* and *customer* for the terms *payor* and *payee.* For purposes of this paragraph (g)(1)(i), a broker that is required to obtain, or chooses to obtain, a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) from an individual may rely on the withholding certificate only to the extent the certificate includes a certification that the beneficial owner has not been, and at the time the certificate is furnished, reasonably expects not to be present in the United States for a period aggregating 183 days or more during each calendar year to which the certificate pertains. The certification is not required if a broker receives documentary evidence under § 1.6049–5(c)(1) or (4).

(ii) through (3)(iii) [Reserved]. For further guidance, see § 1.6045–1(g)(1)(ii) through (g)(3)(iii).

(iv) *Special rules where the customer is a foreign intermediary or certain U.S. branches.* A foreign intermediary, as defined in § 1.1441–1(c)(13), is an exempt foreign person, except when the broker has actual knowledge (within the meaning of § 1.6049–5(c)(3)) that the person for whom the intermediary acts is a U.S. person that is not exempt from reporting under paragraph (c)(3) of this section or the broker is required to presume under § 1.6049–5(d)(3) that the payee is a U.S. person that is not an exempt recipient. If a foreign intermediary, as described in § 1.1441–1(c)(13), or a U.S. branch that is not treated as a U.S. person receives a payment from a payor or middleman, which payment the payor or middleman can reliably associate with a valid withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii) or § 1.1441–1(e)(3)(v), respectively, furnished by such intermediary or branch, then the intermediary or branch is not required to report such payment when it, in turn, pays the amount, unless, and to the extent, the intermediary or branch knows that the payment is required to be reported under this section and was not so reported. For example, if a U.S. branch described in § 1.1441–1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under paragraph (c)(3) of this section to the person from whom the U.S. branch receives the payment, the U.S. branch must report the payment on an information return. See, however, paragraph (c)(3)(ii) of this section for when reporting under section 6045 is coordinated with reporting under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049–4(f)(7)). The exception of this paragraph (g)(3)(iv) for amounts paid by a foreign intermediary shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Code except as provided under the agreement described in § 1.1441–1(e)(5)(iii).

(4) *Examples.* The application of the provisions of this paragraph (g) may be illustrated by the following examples:

*Example 1.* FC is a foreign corporation that is not a U.S. payor or U.S. middleman described in § 1.6049–5(c)(5) that regularly issues and retires its own debt obligations. A is an individual whose residence address is inside the United States, who holds a bond issued by FC that is in registered form (within the meaning of section 163(f) and the regulations under that section). The bond is retired by FP, a foreign corporation that is a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of FC. FP mails the proceeds to A at A's U.S. address. The sale would be considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section except that the proceeds of the sale are mailed to a U.S. address. For that reason, the sale is considered to be effected at an office of the broker inside the United States under paragraph (g)(3)(iii)(B) of this section. Therefore, FC is a broker under paragraph (a)(1) of this section with respect to this transaction because, although it is not a U.S. payor or U.S. middleman, as described in § 1.6049–5(c)(5), it is deemed to effect the

sale in the United States. FP is a broker for the same reasons. However, under the multiple broker exception under paragraph (c)(3)(iii) of this section, FP, rather than FC, is required to report the payment because FP is responsible for paying the holder the proceeds from the retired obligations. Under paragraph (g)(1)(i) of this section, FP may not treat A as an exempt foreign person and must make an information return under section 6045 with respect to the retirement of the FC bond, unless FP obtains the certificate or documentation described in paragraph (g)(1)(i) of this section.

*Example 2.* The facts are the same as in *Example 1* except that FP mails the proceeds to A at an address outside the United States. Under paragraph (g)(3)(iii)(A) of this section, the sale is considered to be effected at an office of the broker outside the United States. Therefore, under paragraph (a)(1) of this section, neither FC nor FP is a broker with respect to the retirement of the FC bond. Accordingly, neither is required to make an information return under section 6045.

*Example 3.* The facts are the same as in *Example 2* except that FP is also the agent of A. The result is the same as in *Example 2.* Neither FP nor FC are brokers under paragraph (a)(1) of this section with respect to the sale since the sale is effected outside the United States and neither of them are U.S. payors (within the meaning of § 1.6049–5(c)(5)).

*Example 4.* The facts are the same as in *Example 1* except that the registered bond held by A was issued by DC, a domestic corporation that regularly issues and retires its own debt obligations. Also, FP mails the proceeds to A at an address outside the United States. Interest on the bond is not described in paragraph (g)(1)(ii) of this section. The sale is considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section. DC is a broker under paragraph (a)(1)(i)(B) of this section. DC is not required to report the payment under the multiple broker exception under paragraph (c)(3)(iii) of this section. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in § 1.6049–5(c)(5) and the sale is effected outside the United States. Accordingly, FP is not a broker under paragraph (a)(1) of this section.

*Example 5.* The facts are the same as in *Example 4* except that FP is also the agent of A. DC is a broker under paragraph (a)(1) of this section. DC is not required to report under the multiple broker exception under paragraph (c)(3)(iii) of this section. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in § 1.6049–5(c)(5) and the sale is effected outside the United States and therefore FP is not a broker under paragraph (a)(1) of this section.

*Example 6.* The facts are the same as in *Example 4* except that the bond is retired by DP, a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of DC DP is a U.S. payor under § 1.6049–5(c)(5). DC is not required to report under the multiple broker exception under paragraph (c)(3)(iii) of this section. DP is required to make an information return under section 6045 because it is the person responsible for paying the proceeds from the retired obligations unless DP obtains the certificate or documentary evidence described in paragraph (g)(1)(i) of this section.

*Example 7.* Customer A owns U.S. corporate bonds issued in registered form after July 18, 1984, and carrying a stated rate of interest. The bonds are held through an account with foreign bank, X, and are held in street name. X is a wholly-owned subsidiary of a U.S. company and is not a qualified intermediary within the meaning of § 1.1441–1(e)(5)(ii). X has no documentation regarding A. A instructs X to sell the bonds. In order to effect the sale, X acts through its agent in the United States, Y. Y sells the bonds and remits the sales proceeds to X. X credits A's account in the foreign country. X does not provide documentation to Y and has no actual knowledge that A is a foreign person but it does appear that A is an entity (rather than an individual).

(i) *Y's obligations to withhold and report.* Y treats X as the customer, and not A, because Y cannot treat X as an intermediary because it has received no documentation from X. Y is not required to report the sales proceeds under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is an exempt recipient. Further, Y is not required to report the amount of accrued interest paid to X on Form 1042–S under § 1.1461–1(c)(2)(ii) because accrued interest is not an amount subject to reporting under chapter 3 unless the withholding agent knows that the obligation is being sold with a primary purpose of avoiding tax.

(ii) *X's obligations to withhold and report.* Although X has effected, within the meaning of paragraph (a)(1) of this section, the sale of a security at an office outside the United States under paragraph (g)(3)(iii) of this section, X is treated as a broker, under paragraph (a)(1) of this section, because as a wholly-owned subsidiary of a U.S. corporation, X is a controlled foreign corporation and therefore is a U.S. payor. See § 1.6049–5(c)(5). Under the presumptions described in § 1.6049–5(d)(2) (as applied to amounts not subject to withholding under chapter 3), X must apply the presumption rules of § 1.1441–1(b)(3)(i) through (iii), with respect to the sales proceeds, to treat A as a partnership that is a U.S. non-exempt recipient because the presumption of foreign status for offshore obligations under § 1.1441–1(b)(3)(iii)(D) does not apply. See paragraph (g)(1)(i) of this section. Therefore, unless X is an FFI (as defined in § 1.1471–1(b)(47)) that is excepted from reporting the sales proceeds under paragraph (c)(3)(ii) of this section, the payment of proceeds to A by X is reportable on a Form 1099 under paragraph (c)(2) of this section. X has no obligation to backup withhold on the payment based on the exemption under § 31.3406(g)–1(e) of this chapter, unless X has actual knowledge that A is a U.S. person that is not an exempt recipient. X is also required to separately report the accrued interest (see paragraph (d)(3) of this section) on Form 1099 under section 6049 because A is also presumed to be a U.S. person who is not an exempt recipient with respect to the payment because accrued interest is not an amount subject to withholding under chapter 3 and, therefore, the presumption of foreign status for offshore obligations under § 1.1441–1(b)(3)(iii)(D) does not apply. See § 1.6049–5(d)(2)(i).

*Example 8.* The facts are the same as in *Example 7,* except that X is a foreign corporation that is not a U.S. payor under § 1.6049–5(c).

(i) *Y's obligations to withhold and report.* Y is not required to report the sales proceeds under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is the person responsible for paying the proceeds from the sale to A.

(ii) *X's obligations to withhold and report.* Although A is presumed to be a U.S. payee under the presumptions of § 1.6049–5(d)(2), X is not considered to be a broker under paragraph (a)(1) of this section because it is a not a U.S. payor under § 1.6049–5(c)(5). Therefore X is not required to report the sale under paragraph (c)(2) of this section.

(5) introductory text and (5)(i) [Reserved]. For further guidance, see § 1.6045–1(g)(5) introductory text and (g)(5)(i).

(ii) The provisions of paragraphs (g)(1)(i), (g)(3)(iv), and (g)(4) of this section apply to payments made on or after July 1, 2014.

(h) through (k) [Reserved]. For further guidance, see § 1.6045–1(h) through (k).

* * * * *

(p) [Reserved]. For further guidance, see § 1.6045–1(p).

(q) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 30.** Section 1.6049–4 is amended by:

■ 1. Revising paragraph (b)(1).

■ 2. Adding paragraph (c)(4).

■ 3. Revising paragraphs (f)(3) and (f)(4)(ii).

■ 4. Adding paragraphs (f)(5) through (16) and (h).

The revisions and additions read as follows:

**§ 1.6049–4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.**

* * * * *

(b) * * *

(1) [Reserved]. For further guidance, see § 1.6049–4T(b)(1).

* * * * *

(c) * * *

(4) [Reserved]. For further guidance, see § 1.6049–4T(c)(4).

* * * * *

(f) * * *

(3) [Reserved]. For further guidance, see § 1.6049–4T(f)(3).

(4) * * *

(ii) [Reserved]. For further guidance, see § 1.6049–4T(f)(4)(ii).

(5) through (16) [Reserved]. For further guidance, see § 1.6049–4T(f)(5) through (16)(iv).

* * * * *

(h) [Reserved]. For further guidance, see § 1.6049–4T(h).

■ **Par. 31.** Section 1.6049–4T is added to read as follows:

**§ 1.6049–4T Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982 (temporary).**

(a) [Reserved]. For further guidance, see § 1.6049–4(a).

(b) *Information to be reported*—(1) *Interest payments.* Except as provided in paragraphs (b)(3) and (5) of this section, in the case of interest other than original issue discount treated as interest under § 1.6049–5(f), an information return on Form 1099 shall be made for the calendar year showing the aggregate amount of the payments, the name, address, and taxpayer identification number of the person to whom paid, the amount of tax deducted and withheld under section 3406 from the payments, if any, and such other information as required by the forms. An information return is generally not required if the amount of interest paid to a person aggregates less than $10 or if the payment is made to a person who is an exempt recipient described in paragraph (c)(1)(ii) of this section, unless the payor backup withholds under section 3406 on such payment (because, for example, the payee (that is, exempt recipient) has failed to furnish a Form W–9 on request), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to § 31.6413(a)–3 (Employment Tax Regulations). For reporting interest paid to certain nonresident alien individuals, see § 1.6049–8.

(2) through (c)(3) [Reserved]. For further guidance, see § 1.6049–4(b)(2) through (c)(3).

(4) *Coordination of reporting with chapter 4 reporting or an applicable IGA*—(i) *U.S. accounts reported by FFIs that are non-U.S. payors.* An information return shall not be required with respect to an interest payment made by a participating FFI (including a reporting Model 2 FFI), or registered deemed-compliant FFI (including a reporting Model 1 FFI), that is a non-U.S. payor (as defined in § 1.6049–5(c)(5)) to an account holder of an account maintained by the FFI, when the payment is not subject to withholding under chapters 3 or 4 or to backup withholding under section 3406, and the conditions of paragraphs (c)(4)(i)(A) through (C) are met. See paragraph (c)(4)(iii) of this section for circumstances in which an FFI may allocate a payment described in this paragraph (c)(4)(i) to a chapter 4 withholding rate pool of U.S. payees.

(A) The FFI is a participating FFI (including a reporting Model 2 FFI) reporting the account holder of the U.S. account (as defined in § 1.1471–1(b)(133)) pursuant to either § 1.1471–4(d)(3) or (5) for the year in which the payment is made (including reporting of the account holder's TIN).

(B) The FFI is a registered deemed-compliant FFI (other than a reporting Model 1 FFI) reporting the account holder of the U.S. account pursuant to the conditions of its applicable deemed-compliant status under § 1.1471–5(f)(1) for the year in which the payment is made (including reporting of the account holder's TIN).

(C) The FFI is a reporting Model 1 FFI reporting the account holder of the reportable U.S. account pursuant to an applicable Model 1 IGA for the year in which the payment is made (including reporting of the account holder's TIN).

(ii) *Other accounts reported by FFIs under chapter 4.* An information return shall not be required under this section with respect to a payment that is not subject to withholding under chapter 3 (as defined in § 1.1441–2(a)) or backup withholding under § 31.3406(g)–1(e) and that is made to a recalcitrant account holder of a participating FFI (or non-consenting U.S. account of a reporting Model 2 FFI), provided that the FFI reports such account holder in accordance with the classes of account holders described in § 1.1471–4(d)(6) for the year in which the payment is made. See paragraph (c)(4)(iii) of this section for circumstances in which an FFI may allocate a payment described in this paragraph (c)(4)(ii) to a chapter 4 withholding rate pool of U.S. payees. In the case of a payment made by an FFI that is a reporting Model 1 FFI, an information return shall not be required with respect to a payment that is not subject to withholding under chapter 3 or backup withholding under § 31.3406(g)–1(e) and that is made to an account holder of the FFI if the account—

(A) Has U.S. indicia for which appropriate documentation sufficient to treat the account as held by other than a specified U.S. person has not been provided pursuant to the due diligence requirements described in an applicable Model 1 IGA and,

(B) Is therefore treated as a U.S. reportable account that the FFI is required to report pursuant to the applicable Model 1 IGA.

(iii) *Coordination of reporting exceptions with reporting of chapter 4 withholding rate pools.* For purposes of paragraphs (c)(4)(i) and (ii) of this section, a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) receiving a payment from another payor may provide a withholding statement to the payor allocating the payment to a chapter 4 withholding rate of pool of U.S. payees only if the payment is excepted from reporting under paragraph (c)(4)(i) of this section or if the payment is both excepted from reporting under paragraph (c)(4)(ii) of this section and not subject to withholding under chapter 4. See § 1.6049–5(b)(14) (providing an exception from reporting under section 6049 to a payor that has been furnished a withholding statement from an participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) and that allocates the payment to a chapter 4 withholding rate pool). Thus, for example, a U.S. payor that is a participating FFI may not allocate a payment to a chapter 4 withholding rate pool of U.S. payees on a withholding statement described in § 1.6049–5(b)(14) when the payment is made to a U.S. account maintained by the FFI, regardless of whether the FFI reports the account in accordance with § 1.1471–4(d)(3) because the U.S. payor is not excepted from reporting under this section pursuant to paragraph (c)(4)(i) of this section.

(iv) *Example.* The application of the provisions of paragraphs (c)(4)(ii) and (iii) of this section may be illustrated by the following example:

*Example.* USP is a payor that makes an interest payment that is not a withholdable payment (as defined in paragraph (f)(15) of this section) to RM2, a U.S. payor and reporting Model 2 FFI. The payment is paid and received outside of the United States and is not an amount subject to withholding under chapter 3. RM2 receives the payment as an intermediary on behalf of its account holder, A. RM2 has account information with respect to A which includes U.S. indicia as described in § 1.1441–7(b)(5) or (8). Additionally, A does not provide consent for RM2 to report A's account. Under the presumption rules described in § 1.6049–5(d)(2)(i), RM2 is required to treat A as a U.S. non-exempt recipient. Despite this presumption rule, and because backup withholding does not apply under § 31.3406(g)–1(e), no information return shall be required with respect to the payment under paragraph (c)(4)(ii) of this section if A is reported by RM2 consistent with § 1.1471–4(d)(6) as a non-consenting account holder. Additionally, RM2 may include A in the chapter 4 withholding rate pool of U.S.

payees on the withholding statement provided to USP consistent with the requirements of paragraph (c)(4)(iii) of this section.

(d) through (f)(2) [Reserved]. For further guidance, see § 1.6049–4(d) through (f)(2).

(3) *Obligation.* The term *obligation* includes bonds, debentures, notes, certificates, and other evidences of indebtedness regardless of how denominated. For the definition of the term *offshore obligation,* see paragraph (f)(9) of this section.

(4) and (4)(i) [Reserved]. For further guidance, see § 1.6049–4(f)(4) introductory text and (f)(4)(i).

(ii) *Example.* The application of the provisions of paragraph (f)(4) of this section may be illustrated by the following example:

*Example.* In January, 1984, Broker B, a U.S. payor, purchases on behalf of its customer, Individual A, an obligation issued by partnership RR in a public offering on that date. Broker B holds the obligation for A throughout 1984. Broker B is required to make an information return showing the amount of original issue discount treated as paid to A under § 1.6049–5(f).

(5) *Chapter 4 withholding rate pool.* The term *chapter 4 withholding rate pool* has the meaning set forth in § 1.1471–1(b)(20). However, for determining the U.S. payees included in a chapter 4 withholding rate pool for purposes of section 6049, see paragraph (c)(4)(iii).

(6) *Foreign financial institution (or FFI).* The term *foreign financial institution* or *FFI* means an entity described in § 1.1471–1(b)(47),

(7) *Intergovernmental agreement (or IGA).* The term *intergovernmental agreement* or *IGA* has the meaning set forth in § 1.1471–1(b)(67) (*i.e.,* either a *Model 1 IGA* described in § 1.1471–1(b)(78) or a *Model 2 IGA* described in § 1.1471–1(b)(79)).

(8) *Non-consenting U.S. accounts.* The term *non-consenting U.S. accounts* has the meaning set forth in an applicable Model 2 IGA.

(9) *Offshore obligation.* The term offshore obligation means an offshore obligation defined in § 1.6049–5(c)(1). For the definition of the term *obligation,* see paragraph (f)(3) of this section.

(10) *Participating FFI.* The term *participating FFI* means an FFI that is described in § 1.1471–1(b)(91).

(11) *Recalcitrant account holder.* The term *recalcitrant account holder* has the same meaning set forth in § 1.1471–1(b)(110).

(12) *Registered deemed-compliant FFI.* The term *registered deemed-compliant FFI* means an FFI that is described in § 1.1471–1(b)(111).

(13) *Reporting Model 1 FFI.* The term *reporting Model 1 FFI* means an FFI that is described in § 1.1471–1(b)(114).

(14) *Reporting Model 2 FFI.* The term *reporting Model 2 FFI* means a participating FFI that is described in § 1.1471–1(b)(91).

(15) *Withholdable payment.* The term *withholdable payment* means a payment described in § 1.1471–1(b)(145).

(16) *Paid and received outside the United States*—(i) *In general.* Except as otherwise provided in paragraphs (f)(16)(ii) and (iii) of this section, the term *paid and received outside the United States* means an amount that is paid by a payor or middleman outside the United States as described in § 1.6049–5(e).

(ii) *Transfers to the United States.* Without regard to the location of the account from which the amount is drawn, an amount that is described in paragraph (f)(16)(ii)(A) or (B) of this section and paid by transfer to an account maintained by the payee in the United States or by mail to a United States address (including an amount paid with respect to a bond or a discount obligation described in § 1.6049–5(e)(4)) is not considered to be paid and received outside the United States.

(A) An amount is described in this paragraph (f)(16)(ii)(A) if it is paid by an issuer or the paying agent of the issuer with respect to an obligation that is—

(*1*) Issued by a U.S. payor, as defined in § 1.6049–5(c)(5);

(*2*) Registered under the Securities Act of 1933 (15 U.S.C. 77a); or

(*3*) Listed on an exchange that is registered as a national securities exchange in the United States or included in an interdealer quotation system in the United States.

(B) An amount is described in this paragraph (f)(16)(ii)(B) if it is paid by a U.S. middleman (as defined in § 1.6049–5(c)(5)) that, as a custodian, nominee, or other agent of a payee, collects the amount for or on behalf of the payee.

(iii) *Deposits or accounts with banks and other financial institutions.* In the case of an amount paid by a bank or other financial institution with respect to a deposit or an account that is considered paid at a branch or office outside the United States as described in § 1.6049–5(e)(2), the amount is not considered paid and received outside the United States if the institution has knowledge that the customer has transmitted instructions to an agent, branch, or office of the institution from inside the United States by mail, telephone, electronic transmission, or otherwise concerning the deposit or account (unless the transmission from the United States has taken place in isolated and infrequent circumstances).

(iv) *Examples.* The application of the provisions of paragraph (f)(16) of this section may be illustrated by the following examples:

*Example 1.* FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in § 1.6049–5(c)(5). A holds FC coupon bonds that are not in registered form under section 163(f) and the regulations . FB, a foreign branch of DC, a domestic corporation, is the designated paying agent with respect to the bonds issued by FC. A does not have an account with FB. A presents a coupon to FB at its office outside the United States with instructions to transfer funds to a bank account maintained by A in the United States. FB transfers the funds in accordance with A's instructions. Even though the amount is credited to an account in the United States, the interest on the FC bonds is paid and received outside the United States under paragraph (f)(16)(ii) of this section and § 1.6049–5(e)(3) because the coupon is presented for payment outside the United States; because FC is a foreign person that is not a U.S. payor or U.S. middleman, as defined in § 1.6049–5(d)(1); because FB is not acting as A's agent; and because the obligation is not registered under the Securities Act of 1933 (15 U.S.C. 77a), listed on a securities exchange that is registered as a national securities exchange in the United States, or included in an interdealer quotation system.

*Example 2.* FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in § 1.6049–5(d)(1). B, a United States citizen, holds a bond issued by FC in registered form under section 163(f) and the regulations thereunder and registered under the Securities Act of 1933 (15 U.S.C. 77a). The bond is not a foreign-targeted registered obligation as defined in § 1.871–14(e)(2). DB, a United States branch of a foreign corporation engaged in the commercial banking business, is the registrar of the bonds issued by FC. DB supplies FC with a list of the holders of the FC bonds. Interest on the FC bonds is paid to B and other bondholders by checks prepared by FC at its principal office outside the United States, and B's check is mailed from there to his designated address in the United States. The bond is described in paragraph (f)(16)(ii)(A)(*2*) of this section. The interest on the FC bonds paid to B by FC is not paid and received outside the United States under paragraph (f)(16) of this section.

*Example 3.* The facts are the same as in *Example 2* except that the checks are prepared and mailed in the United States by DC, a U.S. corporation engaged in the commercial banking business that is the designated paying agent with respect to the bonds issued by FC, and B's check is mailed to his designated address outside the United States. For purposes of section 6049, the interest on the FC bonds paid by DC is not paid and received outside the United States under paragraph (f)(16)(i) of this section.

(g) [Reserved]. For further guidance, see § 1.6049–4(g).

(h) *Effective/applicability dates.* The provisions of paragraphs (c)(4), (f)(5) through (f)(16) of this section apply to payments made after June 30, 2014.

(i) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 32.** Section 1.6049–5 is amended by:

■ 1. Revising paragraphs (b)(6) through (b)(8), (b)(10)(i) through (b)(11)(ii)(A), and (b)(12).

■ 2. Redesignating paragraphs (b)(14) and (15) as (b)(15) and (16), adding new paragraph (b)(14), and revising newly redesignated paragraph (b)(15).

■ 3. Revising (c)(1) through (c)(4), (c)(5)(i)(F), (c)(6), (d)(1) and (2), (d)(3)(i) through (d)(3)(iii)(A), (d)(4), (e), and (g).

The revisions and additions read as follows:

**§ 1.6049–5 Interest and original issue discount subject to reporting after December 31, 1982 (temporary).**

* * * * *

(b) * * *

(6) through (8) [Reserved]. For further guidance, see § 1.6049–5T(b)(6) through (8).

* * * * *

(10)(i) through (11)(ii)(A) [Reserved]. For further guidance, see § 1.6049–5T(b)(10)(i) through (b)(11)(ii)(A).

* * * * *

(12) [Reserved]. For further guidance, see § 1.6049–5T(b)(12).

* * * * *

(14) and (15) [Reserved]. For further guidance, see § 1.6049–5T(b)(14) and (15).

* * * * *

(c) * * *

(1) through (4) [Reserved]. For further guidance, see § 1.6049–5T(c)(1) through (4).

(5) * * *

(i) * * *

(F) [Reserved]. For further guidance, see § 1.6049–5T(c)(5)(i)(F).

* * * * *

(6) [Reserved]. For further guidance, see § 1.6049–5T(c)(6).

(d) * * *

(1) [Reserved]. For further guidance, see § 1.6049–5T(d)(1).

(2) * * *

(i) through (iii) [Reserved]. For further guidance, see § 1.6049–5T(d)(2)(i).

(3) * * *

(i) through (iii)(A) [Reserved]. For further guidance, see § 1.6049–5T(d)(3)(i) through (d)(3)(iii)(A).

* * * * *

(4) [Reserved]. For further guidance, see § 1.6049–5T(d)(4).

(e) * * *

(1) through (5) [Reserved]. For further guidance, see § 1.6049–5T(e)

(g) *Effective/applicability date*—(1) The provisions of paragraphs (b)(6) through (15), (c), (d), and (e) of this section apply to payments made after December 31, 2000.

(2) [Reserved]. For further guidance, see § 1.6049–5T(g)(2).

**§ 1.6049–5T [Redesignated as § 1.6049(d)–5T]**

■ **Par. 33.** Section 1.6049–5T is redesignated as section 1.6049(d)–5T.

■ **Par. 34.** Section 1.6049–5T is added to read as follows:

**§ 1.6049–5T Interest and original issue discount subject to reporting after December 31, 1982 (temporary).**

(a) through (b)(5) [Reserved]. For further guidance, see § 1.6049–5(a) through (b)(5).

(6) Amounts from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Internal Revenue Code (Code) and the regulations under those provisions) paid by a non-U.S. payor or a non-U.S. middleman (as defined in paragraph (c)(5) of this section) and paid and received outside the United States. See § 1.6049–4(f)(16) for circumstances in which a payment is considered to be paid and received outside the United States.

(7) Portfolio interest, as defined in § 1.871–14(b)(1), paid with respect to obligations in bearer form described in section 871(h)(2)(A), as in effect prior to the amendment by section 502 of the Hiring Incentives to Restore Employment Act of 2010 (HIRE Act), Public Law 111–147, or section 881(c)(2)(A), as in effect prior to the amendment by section 502 of the HIRE Act, that were issued prior to March 19, 2012, or with respect to a foreign-targeted registered obligation described in § 1.871–14(e)(2) that was issued prior to January 1, 2016, and for which the documentation requirements described in § 1.871–14(e)(3) and (4) have been satisfied (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian or nominee of the payee, collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor).

(8) Portfolio interest described in § 1.871–14(c)(1)(ii), paid with respect to obligations in registered form described in section 871(h)(2) or 881(c)(2) that is not described in paragraph (b)(7) of this section.

(9) [Reserved]. For further guidance, see § 1.6049–5(b)(9).

(10)(i) Amounts paid and received outside the United States under § 1.6049–4(f)(16) (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that are paid by a custodian or nominee or other agent of the payee, of amounts that that it receives for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor) with respect to an obligation that: Has a face amount or principal amount of not less than $500,000 (as determined based on the spot rate on the date of issuance if in foreign currency); has a maturity (at issue) of 183 days or less; satisfies the requirements of sections 163(f)(2)(B)(i) and (ii)(I), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations thereunder (as if the obligation would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A)) (however, an original issue discount obligation with a maturity of 183 days or less from the date of issuance is not required to satisfy the certification requirement of § 1.163–5(c)(2)(i)(D)(*3*)) and is issued in accordance with the procedures of § 1.163–5(c)(2)(i)(D); and has on its face the following statement (or a similar statement having the same effect):

> By accepting this obligation, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and regulations thereunder) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and the regulations thereunder).

(ii) If the obligation is in registered form, it must be registered in the name of an exempt recipient described in § 1.6049–4(c)(1)(ii). For purposes of this paragraph (b)(10), a middleman may treat an obligation as described in section 163(f)(2)(B)(i) and (f)(2)(B)(ii)(I), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations under that section if the obligation, or coupons detached therefrom, whichever is presented for payment, contains the statement described in this paragraph (b)(10). The exemption from reporting described in this paragraph (b)(10) shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(11) Amounts paid with respect to an account or deposit with a U.S. or foreign branch of a domestic or foreign corporation or partnership that is paid with respect to an obligation described in either paragraph (b)(11)(i) or (ii) of this section, if the branch is engaged in the commercial banking business; and the interest or OID is paid and received outside the United States as defined in

§ 1.6049–4(f)(16) (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that acts as a custodian, nominee, or other agent of the payee, and collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor). The exemption from reporting described in this paragraph (b)(11) shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(i) An obligation is described in this paragraph (b)(11)(i) if it is not in registered form (within the meaning of section 163(f) and the regulations under that section), is described in section 163(f)(2)(B), as in effect prior to the amendment by section 502 of the HIRE Act, and issued in accordance with the procedures of § 1.163–5(c)(2)(i)(C) or (D), and, in the case of a U.S. branch, is part of a larger single public offering of securities. For purposes of this paragraph (b)(11)(i), a middleman may treat an obligation as described in section 163(f)(2)(B), as in effect prior to the amendment by section 502 of the HIRE Act, if the obligation, and any detachable coupons, contains the statement described in section 163(f)(2)(B)(ii)(II), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations under that section.

(ii)(A) An obligation is described in this paragraph (b)(11)(ii) if it produces income described in section 871(i)(2)(A); has a face amount or principal amount of not less than $500,000 (as determined based on the spot rate on the date of issuance if in foreign currency); satisfies the requirements of sections 163(f)(2)(B)(i) and (ii)(I), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations thereunder (as if the obligation would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A)) and is issued in accordance with the procedures of § 1.163–5(c)(2)(i)(C) or (D) (however, an original issue discount obligation with a maturity of 183 days or less from the date of issuance is not required to satisfy the certification requirement of § 1.163–5(c)(2)(i)(D)(*3*)). For purposes of this paragraph (b)(11)(ii), a middleman may treat an obligation as described in sections 163(f)(2)(B)(i) and (ii), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations under that section if the obligation, or any detachable coupon, contains the statement described in paragraph (b)(11)(ii)(B) of this section.

(B) and (C) [Reserved]. For further guidance, see § 1.6049–5(b)(11)(ii)(B) and (C).

(12) Payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with paragraph (d)(1) of this section or presumed to be made to a foreign payee under paragraph (d)(2) or (3) of this section. However, such payments may be reportable under § 1.1461–1(b) and (c) or under § 1.1474–1(d)(2) (for a chapter 4 reportable amount (as described in § 1.1471–1(b)(18)). The provisions of § 1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Code. In the event of a conflict between the provisions of § 1.1441–1 and paragraph (d) of this section in determining the foreign status of the payee, the provisions of § 1.1441–1 shall govern for payments of amounts subject to withholding under chapter 3 of the Code and the provisions of paragraph (d) of this section shall govern in other cases. This paragraph (b)(12) does not apply to interest paid on or after January 1, 2013, to a nonresident alien individual to the extent provided in § 1.6049–8.

(13) [Reserved]. For further guidance, see § 1.6049–5(b)(13).

(14) Payments that a payor or middleman can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign intermediary or flow-through entity in accordance with § 1.1441–1(b) if it obtains from the foreign intermediary or flow-through entity a withholding statement under § 1.1471–3(c)(3)(iii)(B)(*2*) (describing an FFI withholding statement), § 1.1471–3(c)(3)(iii)(B)(*3*) (describing a chapter 4 withholding statement), § 1.1441–1(e)(3)(iv) (describing a withholding statement provided by a non-qualified intermediary), § 1.1441–1(e)(5)(v) (describing a withholding statement provided by a qualified intermediary), or under § 1.1441–5 (describing a withholding statement provided by a foreign partnership, foreign simple trust, or foreign grantor trust), that allocates the payment (or portion of a payment) to a chapter 4 withholding rate pool or specific payees to which withholding applies under chapter 4. The provisions of each of the foregoing sections shall apply by substituting the term *payor* for the term *withholding agent.* A payor or middleman may rely on a withholding statement provided by a foreign intermediary or flow-through entity that identifies a chapter 4 withholding rate pool of U.S. payees (as described in § 1.6049–4(c)(4)(iii)) or recalcitrant account holders (as described in § 1.1471–4(d)(6)) if it identifies the foreign intermediary or flow-through entity that maintains the accounts (as described in § 1.1471–5(b)(5)) included in the chapter 4 withholding rate pool as a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) by applying the rules in § 1.1471–3(d)(4) for identifying the payee of a payment (by substituting the term *payor* with the term *withholding agent*). A payor or middleman-may also rely on a withholding statement provided by a foreign intermediary that identifies a chapter 4 withholding rate pool of U.S. payees or recalcitrant account holders if it identifies the intermediary as a qualified intermediary (as defined in § 1.1441–1(c)(15) by applying the rules described in § 1.1441–1(b)(2)(vii)). See also § 1.6049–4(c)(4)(iii) for when an FFI may provide a chapter 4 withholding rate pool of U.S. payees on a withholding statement furnished to a payor or middleman.

(15) If a foreign intermediary, as described in § 1.1441–1(c)(13), or a U.S. branch that is not treated as a U.S. person receives a payment from a payor, which payment the payor can reliably associate with a valid withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii), or § 1.1441–1(e)(3)(v), respectively, furnished by such intermediary or branch, then the intermediary or branch is not required to report such payment when it, in turn, pays the amount, unless, and to the extent, the intermediary or branch knows that the payment is required to be reported under this section and was not so reported. For example, if a U.S. branch described in § 1.1441–1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under § 1.6049–4(c)(1)(ii) to the person from whom the U.S. branch receives the payment, the amount paid by the U.S. branch to such person is interest or original issue discount. See, however, § 1.6049–4(c)(4) for when reporting under section 6049 is coordinated with reporting under chapter 4 or an applicable IGA (as defined in § 1.6049–4(f)(7)). The exception for payments described in this paragraph (b)(15) shall not apply to a qualified intermediary that assumes reporting responsibility under chapter

61 of the Code for the payment under the agreement described in § 1.1441–1(e)(5)(iii).

(16) [Reserved]. For further guidance, see § 1.6049–5(b)(16).

(c) *Applicable rules*—(1) *Documentary evidence for offshore obligations and certain other obligations*—(i) A payor may rely on documentary evidence described in § 1.1471–3(c)(5)(i) instead of a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) in the case of an amount paid outside the United States (as described in paragraph (e) of this section) with respect to an offshore obligation, or, in the case of broker proceeds described in § 1.6045–1(c)(2), to the extent provided in § 1.6045–1(g)(1)(i). For purposes of this section, the term *offshore obligation* means—

(A) An account maintained at an office or branch of a bank or other financial institution located outside the United States; or

(B) An obligation as defined in § 1.6049–4(f)(3) (other than an account described in paragraph (c)(1)(i)(A) of this section), contract, or other instrument with respect to which the payor is either engaged in business as a broker or dealer in securities or a financial institution (as defined in § 1.1471–5(e)) that engages in significant activities at an office or branch located outside the United States. For purposes of the preceding sentence, an office or branch of such payor shall be considered to engage in significant activities with respect to an obligation when it participates materially and actively in negotiating the obligation under the principles described in § 1.864–4(c)(5)(iii) (substituting the term *obligation* for the term *stock or security*).

(ii) A payor may rely on documentary evidence if the payor has established procedures to obtain, review, and maintain documentary evidence sufficient to establish the identity of the payee and the status of that person as a foreign person; and the payor obtains, reviews, and maintains such documentary evidence in accordance with those procedures. A payor maintains the documents reviewed for purposes of this paragraph (c)(1) by retaining an original, certified copy, or photocopy (including a microfiche, electronic scan, or similar means of electronic storage) of the documents reviewed for as long as it may be relevant to the determination of the payor's obligation to report under § 1.6049–4 and this section and noting in its records the date on which the document was received and reviewed. Documentary evidence furnished for a payment of an amount subject to withholding under chapter 3 of the Code or that is a chapter 4 reportable amount under § 1.1474–1(d)(2) must contain all of the information that is necessary to complete a Form 1042–S for that payment. See §§ 1.1471–3(c) and 1.1471–4(c) for additional documentation requirements to identify a payee or account holder for chapter 4 purposes that may apply in addition to the requirements under paragraph (c) of this section.

(iii) Even if an account or obligation (as defined in § 1.6049–4(f)(3)) is not maintained outside the United States (maintained in the United States), a payor may rely on documentary evidence associated with a withholding certificate described in § 1.1441–1(e)(3)(iii) with respect to the persons for whom an entity acting as an intermediary collects the payment. A payor may also rely on documentary evidence associated with a flow-through withholding certificate for payments treated as made to foreign partners of a nonwithholding foreign partnership, as defined in § 1.1441–1(c)(28), the foreign beneficiaries of a foreign simple trust, as defined in § 1.1441–1(c)(24), or foreign owners of a foreign grantor trust, as defined in § 1.1441–1(c)(26), even though the partnership or trust account is an obligation maintained in the United States.

(2) *Other applicable rules.* The provisions of § 1.1441–1(e)(4)(i) through (xii) (regarding who may sign a certificate, validity period of certificates and documentary evidence, retention of certificates, reliance rules, etc.) shall apply (by substituting the term *payor* for the term *withholding agent* and disregarding the fact that the provisions under § 1.1441–1(e)(4) only apply to amounts subject to withholding under chapter 3 of the Code) to withholding certificates and documentary evidence furnished for purposes of this section. See § 1.1441–1(b)(2)(vii) for provisions dealing with reliable association of a payment with documentation.

(3) *Standards of knowledge.* A payor may not rely on a withholding certificate or documentary evidence described in paragraph (c)(1) or (4) of this section if it has actual knowledge or reason to know that any information or certification stated in the certificate or documentary evidence is unreliable. A payor has reason to know that information or certifications are unreliable only if the payor would have reason to know under the provisions of § 1.1441–7(b)(2) and (3) that the information and certifications provided on the certificate or in the documentary evidence are unreliable or, in the case of a Form W–9 (or an acceptable substitute), it cannot reasonably rely on the documentation as set forth in § 31.3406(h)–3(e) of this chapter (see the information and certification described in § 31.3406(h)–3(e)(2)(i) through (iv) of this chapter that are required in order for a payor reasonably to rely on a Form W–9). The provisions of § 1.1441–7(b)(2) and (3) shall apply for purposes of this paragraph (c)(3) irrespective of the type of income to which § 1.1441–7(b)(2) is otherwise limited. The exemptions from reporting described in paragraphs (b)(10) and (11) of this section shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(4) *Special documentation rules for certain payments.* This paragraph (c)(4) modifies the provisions of paragraph (c)(1) of this section for payments of amounts that are not subject to withholding under chapter 3 of the Code, other than amounts described in paragraph (d)(3)(iii) of this section (dealing with U.S. short-term OID and U.S. source deposit interest described in section 871(i)(2)(A) or 881(d)(3)). Amounts are not subject to withholding under chapter 3 of the Code if they are not included in the definition of amounts subject to withholding under § 1.1441–2(a) (*e.g.,* deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds). A payor may rely upon documentation in lieu of documentary evidence (as described in paragraph (c)(1) of this section) or a written statement (as defined in § 1.1471–1(b)(150)) to the extent permitted in paragraphs (c)(4)(i) through (iii) of this section, until the payor knows or has reason to know of a change in circumstance that makes the documentation unreliable or incorrect (as defined in § 1.1441–1(e)) when the payor does not have customer information for the payee that includes any of the U.S. indicia described in § 1.1471–3(c)(6)(ii)(*C*)(*i*). Further, a payor may maintain such documentation or documentary evidence as required in paragraph (c)(4)(iv) of this section.

(i) *Statement in lieu of documentary evidence with respect to accounts.* If under the local laws, regulations, or practices of a country in which an account is maintained, it is not customary to obtain documentary evidence described in paragraph (c)(1) of this section with respect to the type of account, the payor may, instead of obtaining a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) or documentary evidence described in paragraph (c)(1) of this section, establish a payee's foreign status based on the statement

described in this paragraph (c)(4)(i)(A) (or such substitute statement as the Internal Revenue Service may prescribe) made on an account opening form. However, see, also § 1.1471–4(c) or an applicable IGA for additional documentation requirements that may apply to a participating FFI (including a reporting Model 2 FFI) for determining the status of its account holders for chapter 4 purposes. The statement referred to in this paragraph (c)(4)(i)(A) must appear near the signature line and must state, ''By opening this account and signing below, the account owner represents and warrants that he/she/it is not a U.S. person for purposes of U.S. Federal income tax and that he/she/it is not acting for, or on behalf of, a U.S. person. A false statement or misrepresentation of tax status by a U.S. person could lead to penalties under U.S. law. If your tax status changes and you become a U.S. citizen or a resident, you must notify us within 30 days.'' Additionally, a payor may, instead of obtaining a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) or § 1.1471–3(c)(3)(ii) or documentary evidence described in paragraph (c)(1) of this section, establish a payee's foreign status based on a written statement described in paragraph § 1.1471–1(b)(150) to the extent a payor uses such written statement to establish a payee's chapter 4 status and is permitted to use the written statement under § 1.1471–3(d) (by substituting the term *payor* for the term *withholding agent*) without any other documentary evidence.

(ii) *Third-party identification.* A payor that is a participating FFI (including a reporting Model 2 FFI) or a registered deemed-compliant FFI may establish a payee's status based on information provided by a third party credit agency under this paragraph (c)(4) if the conditions described in § 1.1471–4(c)(4)(ii) are satisfied (without regard to whether the payor is a participating FFI).

(iii) *Documentation under IGA.* A payor that is a reporting Model 1 FFI or reporting Model 2 FFI may rely upon documentation or a certification establishing a payee's status that is permitted under an applicable IGA for determining whether the account of the payee is other than a U.S. account and regardless of whether such documentation or certification is described in paragraph (c)(1) of this section or § 1.1441–1(e)(2).

(iv) *Maintenance of documentation and written statement.* A payor maintains documentation if it either maintains the documentary evidence as described in paragraph (c)(1) of this section or retains a record of the documentary evidence reviewed if the payor is not required to retain copies of the documentation pursuant to the payor's AML due diligence (as defined in § 1.1471–1(b)(4)). A payor retains a record of documentary evidence reviewed by noting in its records the type of documentation reviewed, the date the document was reviewed, the document's identification number (if any), and whether such documentation contained any U.S. indicia described in § 1.1441–7(b)(8). Any statement described in paragraph (c)(4)(i)(A) of this section, must be retained in accordance with § 1.1471–3(c)(6)(iii).

(5) through (c)(5)(i)(E) [Reserved]. For further guidance, see § 1.6049–5(c)(5) introductory text through (c)(5)(i)(E).

(F) A U.S. branch or territory financial institution described in § 1.1441–1(b)(2)(iv) that is treated as a U.S. person.

(ii) [Reserved]. For further guidance, see § 1.6049–5(c)(5)(ii).

(6) *Examples.* The following examples illustrate the provisions of paragraphs (b) and (c) of this section:

*Example 1.* FC is a foreign corporation that is not engaged in a trade or business in the United States during the current calendar year. D, an individual who is a resident and citizen of the United States, holds a registered obligation issued by FC in a public offering. Interest is paid on the obligation within the United States by DC, a U.S. corporation that is the designated paying agent of FC. D does not have an account with DC. Although interest paid on the obligation issued by FC is foreign source, the interest paid by DC to D is considered to be interest under paragraph (b)(6) of this section for purposes of information reporting under section 6049 because it is not paid and received outside the United States within the meaning of § 1.6049–4(f)(16).

*Example 2.* The facts are the same as in *Example 1* except that D is a nonresident alien individual who has furnished DC with a Form W–8 in accordance with the provisions of § 1.1441–1(e)(1)(ii). By reason of paragraph (b)(12) of this section, the payment of interest by DC to D is not considered to be a payment of interest for purposes of information reporting under section 6049. Therefore, DC is not required to make an information return under section 6049.

*Example 3.* The facts are the same as in *Example 2* except that the obligation of FC is held in a custodial account for D by FB, a foreign branch of a U.S. financial institution. By reason of paragraph (c)(5) of this section, FB is considered to be a U.S. middleman. Therefore, FB is required to make an information return unless FB may treat D as a beneficial owner that is a foreign person in accordance with the provisions of § 1.1441–1(e)(1)(ii).

*Example 4.* The facts are the same as in *Example 3* except that the FC obligation is held for D by NC, in a custodial account at NC's foreign branch. NC is a foreign corporation that is a non-U.S. middleman described in paragraph (c)(5) of this section. The payment by NC to D is paid and received outside of the United States under § 1.6049–4(f)(16) and therefore is not considered to be a payment of interest for purposes of section 6049 pursuant to paragraph (b)(6) of this section. Therefore, NC is not required to make an information return under section 6049 with respect to the payment.

(d) *Determination of status as U.S. or foreign payee and applicable presumptions in the absence of documentation*—(1) *Identifying the payee.* The provisions of §§ 1.1441–1(b)(2), 1.1441–5(c)(1) and (e)(2) and (3) shall apply (by applying the term *payor* instead of the term *withholding agent*) to identify the payee (other than a payee included in a chapter 4 withholding rate pool described in paragraph (b)(14) of this section) for purposes of this section (and other sections of the regulations under this chapter to which this paragraph (d)(1) applies), except to the extent provided in this paragraph (d)(1) in the case of a payment of an amount that is not subject to withholding under chapter 3 of the Code and that is not a withholdable payment (as defined in § 1.6049–4(f)(15)). Amounts are not subject to withholding under chapter 3 of the Code if they are not included in the definition of amounts subject to withholding under § 1.1441–2(a) (*e.g.,* deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds). The exceptions to the application of § 1.1441–1(b)(2) to amounts that are not subject to withholding under chapter 3 of the Code and that are not withholdable payments are as follows:

(i) The provisions of § 1.1441–1(b)(2)(ii), dealing with payments to a U.S. agent or intermediary of a foreign person, shall not apply. Thus, a payment to a U.S. agent or intermediary of a foreign person is treated as a payment to a U.S. payee.

(ii) Payments to U.S. branches or territory financial institution described in § 1.1441–1(b)(2)(iv) shall be treated as payments to a foreign payee, irrespective of the fact that the U.S. branch or territory financial institution is otherwise treated as a U.S. person for payments of amounts subject to withholding under chapter 3 and withholdable payments, and irrespective of the fact that the branch or territory financial institution is treated as a U.S. payor for purposes of paragraph (c)(5) of this section.

(2) *Presumptions of U.S. or foreign status in the absence of documentation*—(i) *In general.* Except as otherwise provided in this paragraph

(d)(2)(i), for purposes of this section (and other sections of regulations under this chapter 61 to which this paragraph (d)(2) applies), the provisions of § 1.1441–1(b)(3)(i) through (ix) and § 1.1441–5(d) and (e)(6) shall apply (by applying the term *payor* instead of the term *withholding agent*) to determine the classification (*e.g.,* individual, corporation, partnership, trust), status (*i.e.,* a U.S. or a foreign person), and other relevant characteristics (*e.g.,* beneficial owner or intermediary) of a payee if a payment cannot be reliably associated with valid documentation under § 1.1441–1(b)(2)(vii) irrespective of whether the payments are subject to withholding under chapter 3 of the Code or are withholdable payments. The provisions of § 1.1441–1(b)(3)(iii)(D) and (vii)(B) (referencing presumption rules for payments with respect to offshore obligations) shall not apply to a payment of an amount not subject to withholding under chapter 3, unless it is an amount that is a withholdable payment made to a payee that is an entity. Thus, in the case of a withholdable payment made to an entity, the presumption rules of § 1.1441–1(b)(3)(iii)(D) and (vii)(B) shall apply regardless of whether the payment is an amount subject to withholding under chapter 3. Additionally, in the case of an amount paid outside the United States with respect to an offshore obligation described in § 1.1441–1(b)(3)(iii)(D) or (vii)(B) of an amount not subject to withholding under chapter 3 and that is treated as made to a payee that is an individual, the presumption rules of § 1.1441–1(b)(3)(iii) shall not apply, and the payee shall be presumed a U.S. person only when the payee has any of the indicia of U.S. status that are described in § 1.1441–7(b)(5) or (8). In a case in which a withholding agent makes a withholdable payment that cannot reliably be associated with documentation, see § 1.1471–3(f)(4) and (5) for determining the status of the payee for chapter 4 purposes when the payment is treated as made to a foreign entity (by applying the term *payor* instead of the term *withholding agent*). The rules of § 1.1441–1(b)(2)(vii) shall apply for purposes of determining when a payment can reliably be associated with documentation, by applying the term *payor* instead of the term *withholding agent.* For this purpose, the information, documentary evidence, statement, or other documentation described in paragraph (c)(4) of this section can be treated as documentation with which a payment can be associated.

(ii) *Grace period in the case of indicia of a foreign payee.* When the conditions of this paragraph (d)(2)(ii) are satisfied, the 30-day grace period provisions under section 3406(e) shall not apply and the provisions of this paragraph (d)(2)(ii) shall apply instead. A payor that, at any time during the grace period described in this paragraph (d)(2)(ii), credits an account with payments described in § 1.1441–6(c)(2) (or credits an account with broker proceeds from securities described in § 1.1441–6(c)(2)), that are reportable under sections 6042, 6045, 6049, or 6050N may, instead of treating the account as owned by a U.S. person and applying backup withholding under section 3406, if applicable, choose to treat the account as owned by a foreign person (and apply the grace period described in § 1.1441–1(b)(3)(iv)) if, at the beginning of the grace period, the address that the payor has in its records for the account holder is in a foreign country, the payor has been furnished the information contained in a withholding certificate described in § 1.1441–1(e)(2), or the payor holds a withholding certificate that is no longer reliable other than because the validity period as described in § 1.1441–1(e)(4)(ii)(A) has expired. In the case of a newly opened account, the grace period begins on the date that the payor first credits the account. In the case of an existing account for which the payor holds a Form W–8 or documentary evidence of foreign status, the payor may apply the provisions of the grace period described in § 1.1441–1(b)(3)(iv), beginning on the date that the payor first credits the account after the existing documentation held with regard to the account can no longer be relied upon (other than because the validity period described in § 1.1441–1(e)(4)(ii)(A) has expired). A new account shall be treated as an existing account for purposes of this paragraph (d)(2)(ii) if the account holder already holds an account at the branch location at which the new account is opened, or if the account is treated as a consolidated obligation as defined in § 1.1471–(1)(b)(23) for purpose of chapter 4 to the extent the account does not receive any amounts subject to withholding under chapter 3. A new account shall also be treated as an existing account for purposes of this paragraph (d)(2)(ii) if an account is held at another branch location if the institution maintains an account information system described in § 1.1441–1(e)(4)(ix). The grace period terminates on the earlier of the close of the 90th day from the date on which the grace period begins or the date that valid documentation is provided. The grace period also terminates when the remaining balance in the account (due to withdrawals or otherwise) is equal to or less than 28 percent (or other statutory tax rate that is applicable to backup withholding) of the total amounts credited since the beginning of the grace period that would be subject to backup withholding if the provisions of this paragraph (d)(2)(ii) did not apply. At the end of the grace period, the payor shall treat the amounts credited to the account, or paid with respect to an account, during the grace period as paid to a U.S. or foreign payee depending upon whether documentation has been furnished and the nature of any such documentation furnished upon which the payor may rely to treat the account as owned by a U.S. or foreign payee. If the documentation has not been received on or before the date of expiration of the grace period, the payor may also apply the presumptions described in this paragraph (d) to amounts credited to the account after the date on which the grace period expires (until such time as the payor can reliably associate the documentation with amounts credited). See § 31.6413(a)–3(a)(1)(iv) of this chapter for treating backup withheld amounts under section 3406 as erroneously withheld when the documentation establishing foreign status is furnished prior to the end of the calendar year in which backup withholding occurs. If the provisions of this paragraph (d)(2)(ii) apply, the provisions of § 31.3406(d)–3 of this chapter shall not apply. For purposes of this paragraph (d)(2)(ii), an account holder's reinvestment of gross proceeds of a sale into other instruments constitutes a withdrawal and a non-qualified electronic transmission of information on a withholding certificate is a transmission that is not in accordance with the provisions of § 1.1441–1(e)(4)(iv). See § 1.1092(d)–1 for a definition of the term *actively traded* for purposes of this paragraph (d)(2)(ii).

(iii) *Joint owners.* Amounts paid to accounts held jointly for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (b) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (b)(12) of this section furnished by each joint owner

upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. In the case of an amount that is a withholdable payment made to a joint account, however, see § 1.1471–3(f)(7) for when the payment is treated as made to a foreign payee that is a nonparticipating FFI (as defined in § 1.1471–1(b)(82)). For purposes of applying this paragraph (d)(2)(iii), the grace period described in paragraph (d)(2)(ii) of this section shall apply only if each payee qualifies for such grace period.

(3) *Payments to foreign intermediaries or flow-through entities*—(i) *Payments of amounts subject to withholding under chapter 3 of the Code or withholdable payments.* In the case of payments of amounts that the payor may treat as made to a foreign intermediary or flow-through entity in accordance with §§ 1.1441–1(b)(3)(ii)(C) and (b)(3)(v)(A) and 1.1441–5(c) or (e) and that are subject to withholding under § 1.1441–2(a), the provisions of §§ 1.1441–1(b)(2)(v) and 1.1441–5(c)(1), (e)(2), and (3) shall apply (by applying the term *payor* instead of the term *withholding agent*) to identify the payee. If a payment of an amount subject to withholding cannot be reliably associated with valid documentation from a payee in accordance with § 1.1441–1(b)(2)(vii), the presumption rules of §§ 1.1441–1(b)(3)(v) and 1.1441–5(d) and (e)(6) shall apply to determine the payee's status for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(3) applies). In the case of an amount that is a withholdable payment, see § 1.1471–3(c)(3) for rules to identify the payee and see § 1.1471–3(f)(5) for the presumption rule that shall apply to amounts treated as made to a foreign intermediary or flow-through entity (by applying the term *payor* instead of the term *withholding agent*). For example, where a withholdable payment is made to an intermediary under § 1.1471–3 that is treated as a nonparticipating FFI under § 1.1471–3(f)(5), the nonparticipating FFI shall be treated as the payee under § 1.1471–3(c)(3) and for purposes of this paragraph (d)(3)(i), therefore, no information return shall be required under this section.

(ii) *Payments of amounts not subject to withholding under chapter 3 of the Code and that are not withholdable payments.* Except as provided in paragraph (d)(3)(iii) of this section, amounts that are not subject to withholding under chapter 3 of the Code and that are not withholdable payments that the payor may treat as paid to a foreign intermediary or flow-through entity shall be treated as made to an exempt recipient described in § 1.6049–4(c) except to the extent that the payor has actual knowledge that any person for whom the intermediary or flow-through entity is collecting the payment is a U.S. person who is not an exempt recipient. In the case of such actual knowledge, the payor shall treat the payment that it knows is allocable to such U.S. person as a payment to a U.S. payee who is not an exempt recipient and has actual knowledge of the amount allocable to such a person.

(iii) *Special rule for payments of certain short-term original issue discount*—(A) *General rule.* A payment of U.S. source interest or original issue discount on the redemption of an obligation with a maturity from the date of issue of 183 days or less (short-term OID) described in section 871(g)(1)(B) or 881(e) that the payor may treat as paid to a foreign intermediary or flow-through entity in accordance with the provisions of § 1.1441–1(b)(3)(ii)(C), (b)(3)(v)(A), § 1.1441–5(d) or (e) (by substituting the term *payor* for the term *withholding agent*), shall be treated as paid to an undocumented U.S. payee that is not an exempt recipient under paragraph § 1.6049–4(c) unless the payor has documentation from the payees of the payment and the payment is allocated to foreign payees, as a group, and to each U.S. non-exempt recipient payee. See § 1.1441–1(e)(3)(iv)(C)(*2*). However, a payor may rely on a withholding statement provided by an intermediary described in § 1.1441–1(e)(3)(iv) (or similar withholding statement for a flow-through entity) that identifies a chapter 4 withholding rate pool of U.S. payees (as described in § 1.6049–4(c)(4)(iii)) only if it identifies the foreign intermediary or flow-through entity as a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) under § 1.1471–3(d)(4) (by substituting the term *payor* with the term *withholding agent*). See also § 1.6049–4(c)(4)(iii) for when an FFI may provide a chapter 4 withholding rate pool of U.S. payees on a withholding statement.

(B) [Reserved]. For further guidance, see § 1.6049–5(d)(3)(iii)(B).

(iv) [Reserved]. For further guidance, see § 1.6049–5(d)(3)(iv).

(4) *Examples.* The rules of paragraphs (d)(1) through (3) of this section are illustrated by the examples in this paragraph (d)(4). Unless otherwise specified in an example, the following facts apply: all FFIs, such as a nonqualified intermediary that is an FFI, are treated as participating FFIs; all payees have been identified with chapter 4 statuses that do not require withholding under chapter 4; and none of the payments are withholdable payments.

*Example 1.* (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP pays interest from sources within the United States that is a withholdable payment to an account maintained in the United States by X. The interest is not deposit interest described in sections 871(i)(2)(A) or 881(d). USP does not have a Form W–9, or withholding certificate from X as defined in § 1.1441–1(c)(16). Moreover, USP cannot treat X as an exempt recipient, as defined in § 1.6049–4(c)(1)(ii), without documentation and there is no indication that X is an individual, trust, or estate.

(ii) *Analysis.* The U.S. source interest is an amount subject to withholding as defined in § 1.1441–2(a). Under paragraph (d)(1) of this section, USP must apply the provisions of §§ 1.1441–1(b)(2) and 1.1441–5(c) and (e) to determine the payee of the interest. Under § 1.1441–1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441–5 apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of § 1.1441–1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. Under § 1.1441–1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d) to determine whether X is presumed to be a U.S. or foreign partnership. Under §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d)(2), X is presumed to be a U.S. partnership in absence of any indicia of foreign partnership status. The presumption of U.S. status applies even though the payment is a withholdable payment (see paragraph (d)(2) of this section and § 1.1471–3(f)(2) cross referencing the presumption rules of § 1.1441–1(b)(3)). The U.S. source interest paid to X is reportable under section 6049 on Form 1099 and the interest is subject to backup withholding under section 3406 because X has not provided its TIN on a valid Form W–9. No withholding or reporting applies to the payment under chapter 3 or 4 of the Code.

*Example 2.* (i) *Facts.* The facts are the same as in *Example 1,* except that the interest paid by USP is from sources outside the United States.

(ii) *Analysis.* Interest from sources outside the United States is not an amount subject to withholding, as defined in § 1.1441–2(a) or a withholdable payment. Under paragraph (d)(1) of this section, USP must apply the provisions of §§ 1.1441–1(b)(2) and 1.1441–5(c) and (e) to determine the payee. Under § 1.1441–1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441–5(c) or (e) apply to determine the

payee. Under paragraph (d)(2)(i) of this section, the rules of § 1.1441–1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. These rules apply irrespective of whether the payment is an amount subject to withholding. Under § 1.1441–1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Under §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d)(2), X is presumed to be a U.S. partnership in absence of any indicia of foreign partnership status. The foreign source interest is a payment subject to reporting on Form 1099 under § 1.6049–5(a). Further, because X is a non-exempt recipient that has failed to provide its TIN on a valid Form W–9, the foreign source interest is subject to backup withholding under section 3406.

*Example 3.* (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP makes a payment of U.S. source interest outside the United States to an offshore account of X. See paragraphs (c)(1) for a definition of offshore account and (e) for a payment outside the United States. USP does not have a withholding certificate from X as defined in § 1.1441–1(c)(16) nor does it have documentary evidence as described in § 1.1441–1(e)(1)(ii)(A)(*2*) and § 1.6049–5(c)(1).

(ii) *Analysis.* The interest is an amount subject to withholding as defined in § 1.1441–2(a). Under paragraph (d)(1) of this section, USP must apply the provisions of § 1.1441–1(b)(2) and § 1.1441–5(c) and (e) to determine the payee. Under § 1.1441–1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441–5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of § 1.1441–1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. Under § 1.1441–1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Under §§ 1.1441–1(b)(3)(iii)(D) and 1.1441–5(d)(2), X is presumed to be a foreign partnership. Therefore, under paragraph (d)(1) of this section and § 1.1441–5(c)(1)(i)(E), the payees of the interest are presumed to be the partners of X. Under § 1.1441–5(d)(3), the partners are presumed to be undocumented foreign persons. Therefore, USP must withhold 30% of the interest payment under § 1.1441–1(b)(1) and report the payment on Form 1042–S in accordance with § 1.1461–1(c).

*Example 4.* (i) *Facts.* The facts are the same as in *Example 3,* except that the interest is paid by F, a non-U.S. payor.

(ii) *Analysis.* The analysis and result are the same as in *Example 3.* F is a withholding agent under § 1.1441–7 and its status as a non-U.S. payor under paragraph (c)(5) of this section is irrelevant.

*Example 5.* (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section that is not an FFI. USP makes a payment outside the United States of interest from sources outside the United States with respect to an offshore obligation held by X. USP does not have a withholding certificate from X as defined in § 1.1441–1(c)(16) nor does it have documentary evidence as described in §§ 1.1471–3(c)(5)(i) and 1.6049–5(c)(1). USP does not have actual knowledge of an employer identification number for X. X does not appear to be an individual, trust, or estate and cannot be treated as an exempt recipient, as defined in § 1.6049–4(c)(1)(ii) in the absence of documentation.

(ii) *Analysis.* The interest is not an amount subject to withholding as defined in § 1.1441–2(a) and is not a withholdable payment. Under paragraph (d)(1) of this section, USP must apply the rules of §§ 1.1441–1(b)(2) and 1.1441–5(c) and (e) to determine the payee of the interest. Under § 1.1441–1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441–5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, § 1.1441–1(b)(3)(ii) applies to determine X's classification as an individual, trust, estate, corporation or partnership. Under § 1.1441–1(b)(3)(ii)(B), X is treated as a partnership, since it does not appear to be an individual, trust, or estate and cannot be treated as an exempt recipient without documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Paragraph (d)(2)(i) also states that the presumptions of foreign status for payments made with respect to offshore obligations contained in §§ 1.1441–1(b)(3)(iii)(D) and 1.1441–5(d)(2) do not apply to amounts that are not subject to withholding and that are not withholdable payments described in paragraph (d)(2)(i). Therefore, under §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d)(2), X is presumed to be a U.S. partnership because it does not have actual knowledge that X's employer identification number begins with the digits ''98.'' Therefore, USP must treat X as a U.S. person that is not an exempt recipient and report the payment on Form 1099 under section 6049. Under § 31.3406(g)–1(e) of this chapter, however, USP is not required to backup withhold on the payment unless it has actual knowledge that X is a U.S. person that is not an exempt recipient.

*Example 6.* (i) *Facts.* The facts are the same as in *Example 5,* except that the interest is paid by F, a non-U.S. payor, as defined under paragraph (c)(5) of this section.

(ii) *Analysis.* The analysis is the same as under *Example 5.* However, F is a non-U.S. payor paying foreign source interest outside the United States, and there is no indication that the amount is received in the United States under § 1.6049–4(f)(16). Thus, paragraph (b)(6) of this section exempts the payment from reporting under section 6049.

*Example 7.* (i) *Facts.* USP, a U.S. payor as defined in paragraph (c)(5) of this section that is not an FFI, makes a payment of U.S. source interest that is a withholdable payment to NQI, a nonqualified intermediary as defined in § 1.1441–1(c)(14), that is a certified deemed-compliant FFI under § 1.1471–5(f)(2). The interest is paid inside the United States to an account of a bank or other financial institution maintained in the United States. NQI has provided USP with a nonqualified intermediary withholding certificate, as described in § 1.1441–1(e)(3)(iii) that includes its chapter 4 status, but has not attached any documentation from the persons on whose behalf it acts or a withholding statement as described in § 1.1441–1(e)(3)(iv).

(ii) *Analysis.* U.S. source interest is an amount subject to withholding under § 1.1441–2(a). USP may treat the payment as made to a foreign intermediary under § 1.1441–1(b)(3)(v)(A) because USP has received a nonqualified intermediary withholding certificate from NQI and may except NQI from withholding under chapter 4 of the Code given NQI's status for chapter 4 purposes as a deemed-compliant FFI. Under paragraph (d)(3)(i) of this section, USP must then apply § 1.1471–3(c)(3) to treat the persons on whose behalf NQI is acting as the payees. Paragraph (d)(3)(i) of this section also requires USP to apply the presumption rules of § 1.1441–1(b)(3)(v) if it cannot reliably associate the payment with valid documentation from a payee. See § 1.1441–1(b)(2)(vii). As the payment is a withholdable payment, the interest is treated as paid to a nonparticipating FFI under § 1.1471–3(f)(4). Therefore, the payment is not subject to reporting on Form 1099 under paragraph (b)(12) of this section . See § 1.1471–2(a) for the withholding requirement with respect to the payment and § 1.1474–1(d)(2) for the requirement to report the payment on Form 1042–S.

*Example 8.* (i) *Facts.* The facts are the same as in *Example 7,* except that the interest is paid outside the United States, as defined in paragraph (e) of this section to an offshore account, as defined in paragraph (c)(1) of this section and is not a withholdable payment.

(ii) *Analysis.* Under § 1.1441–1(b)(3)(v)(B), the interest is treated as paid to an unknown foreign payee because it cannot be reliably associated with documentation under § 1.1441–1(b)(2)(vii). Therefore, the payment is not subject to reporting on Form 1099 under paragraph (b)(12) of this section because the payment is presumed made to a foreign person. The payment is subject to withholding, however, under § 1.1441–1(b) at a rate of 30% and is subject to reporting on Form 1042–S under § 1.1461–1(c).

*Example 9.* (i) *Facts.* The facts are the same as in *Example 8,* except that the interest is paid by F, a non-U.S. payor, as defined in paragraph (c)(5) of this section.

(ii) *Analysis.* The analysis and results are the same as in *Example 8.*

*Example 10.* (i) *Facts.* USP, a U.S. payor as defined in paragraph (c)(5) of this section,

makes a payment of foreign source interest (other than deposit interest) to NQI, a foreign corporation and a nonqualified intermediary as defined in § 1.1441–1(c)(14). NQI has provided USP with a nonqualified intermediary withholding certificate, as described in § 1.1441–1(e)(3)(iii), but has not attached any documentation from the persons on whose behalf it acts or a withholding statement as described in § 1.1441–1(e)(3)(iv).

(ii) *Analysis.* Foreign source interest is not an amount subject to withholding under chapter 3 of the Code and is not a withholdable payment. See §§ 1.1441–2(a) and 1.1473–1(a). Under paragraph (d)(3)(ii) of this section, amounts that are not subject to withholding under chapter 3 of the Code and that are not withholdable payments described in paragraph (d)(2)(i) of this section that a payor may treat as paid to a foreign intermediary are treated as made to an exempt recipient described in § 1.6049–4(c) absent actual knowledge that the payee is a U.S. person who is not an exempt recipient. Therefore, the foreign source interest is not subject to reporting on Form 1099.

*Example 11.* (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section that is a bank. USP pays U.S. source original issue discount from the redemption of an obligation described in section 871(g)(1)(B) to NQI, a foreign corporation that is a nonqualified intermediary as defined in § 1.1441–1(c)(14. The redemption proceeds are not paid outside of the United States as they are paid with respect to an account NQI has with a branch of a bank in the United States. See § 1.6049–5(c)(2). NQI provides a nonqualified intermediary withholding certificate as described in § 1.1441–1(e)(3)(iii) that includes a certification of its status as a registered deemed-compliant FFI but does not attach any payee documentation or a withholding statement described in § 1.1441–1(e)(3)(iv).

(ii) *Analysis.* Under paragraph (d)(3)(ii)(A) of this section, USP must treat the payment as made to an undocumented U.S. payee that is not an exempt recipient and report the payment on Form 1099. Further, because the payment is made inside the United States, the exception to backup withholding with respect to offshore obligations contained in § 31.3406(g)–1(e) of this chapter does not apply, and the payment is subject to backup withholding.

*Example 12.* (i) *Facts.* P, a payor, makes a payment to NQI of U.S. source interest on debt obligations issued prior to July 18, 1984 that mature 30 years from their issuance dates. Therefore, the interest does not qualify as portfolio interest under section 871(h) or 881(d). Additionally, the interest is not a withholdable payment under § 1.1471–2(b) as the interest is a payment with respect to a grandfathered obligation for purposes of chapter 4 of the Code. NQI, a U.S. payor, is a nonqualified foreign intermediary, as defined in § 1.1441–1(c)(14), and has furnished P a valid nonqualified intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) to which it has attached a valid Form W–9 for A, and two valid beneficial owner Forms W–8, one for B and one for C. A is not an exempt recipient under § 1.6049–4(c). NQI furnishes a withholding statement, described in § 1.1441–1(e)(3)(iv), in which it allocates 20% of the U.S. source interest to A, but does not allocate the remaining 80% of the interest between B and C. B's withholding certificate indicates that B is a foreign pension fund, exempt from U.S. tax under the U.S. income tax treaty with Country T. C's withholding certificate indicates that C is a foreign corporation not entitled to a reduced rate of withholding.

(ii) *Analysis.* As the interest is not a withholdable payment under paragraph (d)(3)(i) of this section, P applies the rules of § 1.1441–1(b)(2)(v) to determine the payees of the interest even though NQI has not certified its status for purposes of chapter 4 of the Code. Under that section, the payees are the persons on whose behalf NQI acts—A, B and C. Because P can reliably associate 20% of the payment with valid documentation provided by A, P must treat 20% of the interest as paid to A, a U.S. person not exempt from reporting, and report the payment on Form 1099. P cannot reliably associate the remaining 80% of the payment with valid documentation under § 1.1441–1(b)(2)(vii) and, therefore, under paragraph (d)(3)(i) of this section must apply the presumption rules of § 1.1441–1(b)(3)(v). Under that section, the interest is presumed paid to an unknown foreign payee. Under paragraph (b)(12) of this section, P is not required to report the interest presumed paid to a foreign person on Form 1099. Under § 1.1441–1(b), 80% of the interest is subject to 30% withholding, however, and the interest is reportable on Form 1042–S under § 1.1461–1(c).

*Example 13.* (i) *Facts.* The facts are the same as in *Example 12,* except that P can reliably associate 30% of the payment of interest to B, but cannot reliably associate the remaining 70 percent with A or C.

(ii) *Analysis.* Under paragraph (d)(3)(i) of this section, P applies the rules of § 1.1441–1(b)(2)(v) to determine the payees of the interest. Under that section, the payees are the persons on whose behalf NQI acts—A, B and C. Because P can reliably associate 30% of the payment with B, a foreign pensions fund exempt from withholding under an income tax treaty, P may treat that payment as paid to B and not subject to reporting on Form 1099 under paragraph (b)(12) of this section. P cannot reliably associate the remaining 70% of the payment with valid documentation under § 1.1441–1(b)(2)(vii) and, therefore, under paragraph (d)(3)(i) of this section must apply the presumption rules of § 1.1441–1(b)(3)(v). Under that section, the interest is presumed paid to an unknown foreign payee. Under paragraph (b)(12) of this section, P is not required to report the interest presumed paid to a foreign person on Form 1099. Under § 1.1441–1(b), 80% of the interest is subject to 30% withholding, however, and the interest is reportable on Form 1042–S under § 1.1461–1(c).

*Example 14.* (i) *Facts.* The facts are the same as in *Example 12,* except that P also makes a payment of foreign source interest to NQI.

(ii) *Analysis.* Under paragraph (d)(3)(ii), P may treat the foreign source interest as paid to an exempt recipient as defined in § 1.6049–4(c) and not subject to reporting on Form 1099 even though some or all of the foreign source interest may in fact be owned by A, the U.S. person that is not exempt from reporting.

*Example 15.* (i) *Facts.* The facts are the same as in *Example 12,* except that NQI is a non-U.S. payor.

(ii) *Analysis.* The analysis is the same as under *Example 12* with respect to B and C. However, because NQI is a non-U.S. payor, it may under § 1.6049–4(c)(4)(iii) allocate the portion of the payment to A to a chapter 4 withholding rate pool of U.S. payees on a withholding statement provided to P in lieu of furnishing the Form W–9 to P when NQI reports the payments in accordance with § 1.6049–4(c)(4)(i). In such a case, provided that P obtains a certification form confirming NQI's status as a participating FFI, P is excepted from reporting the payment under paragraph (b)(14) of this section because P can reliably associate the payment with the documentation provided by NQI.

(e) *Determination of whether amounts are considered paid outside the United States*—(1) *In general.* For purposes of section 6049 and this section, an amount is considered to be paid by a payor or middleman outside the United States if the payor or middleman completes the acts necessary to effect payment outside the United States. See paragraphs (e)(2) through (5) of this section for further clarification of where amounts are considered paid. A payment shall not be considered to be made within the United States for purposes of section 6049 merely by reason of the fact that it is made on a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account.

(2) *Amounts paid with respect to deposits or accounts with banks and other financial institutions.* Notwithstanding paragraph (e)(1) of this section, an amount paid by a bank or other financial institution with respect to a deposit or with respect to an account with the institution is considered paid at the branch or office at which the amount is credited unless the amount is collected by the financial institution as the agent of the payee. However, an amount will not be considered to be paid at the branch or office where the amount is considered to be credited unless the branch or office is a permanent place of business that is regularly maintained, occupied, and used to carry on a banking or similar financial business; the business is conducted by at least one employee of the branch or office who is regularly in attendance at such place of business during normal business hours; and the branch or office receives deposits and

engages in one or more of the other activities described in § 1.864–4(c)(5)(i).

(3) *Coupon bonds and discount obligations in bearer form.* Notwithstanding paragraph (e)(1) of this section, an amount paid with respect to a bond with coupons attached (including a certificate of deposit with detachable interest coupons) or a discount obligation that is not in registered form (within the meaning of section 163(f) and the regulations thereunder) is considered to be paid where the coupon or the discount obligation is presented to the payor or its paying agent for payment.

(4) *Foreign-targeted registered obligations.* Notwithstanding paragraph (e)(1) of this section, where the payor is the issuer or the issuer's agent, an amount is considered paid outside the United States with respect to a foreign-targeted registered obligation issued before January 1, 2016, as described in § 1.871–14(e)(2), if either the amount is paid by transfer to an account maintained by the registered owner outside the United States, or by mail to an address of the registered owner outside the United States, or by credit to an international account. For purposes of this paragraph (e)(4), the term *international account* means the book-entry account of a financial institution (within the meaning of section 871(h)(4)(B)) or of an international financial organization with the Federal Reserve Bank of New York for which the Federal Reserve Bank of New York maintains records that specifically identify an international financial organization or a financial institution (within the meaning of section 871(h)(4)(B)) as either a non-United States person or a foreign branch of a United States person as registered owner. An international financial organization is a central bank or monetary authority of a foreign government or a public international organization of which the United States is a member to the extent that such central bank, authority, or organization holds obligations solely for its own account and is exempt from tax under section 892 or 895.

(5) *Examples.* The application of the provisions of this paragraph (e) are illustrated by the following examples:

*Example 1.* FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in paragraph (c)(5) of this section. A holds FC coupon bonds that are not in registered form under section 163(f) and the regulations thereunder. FB, a foreign branch of DC, is the designated paying agent with respect to the bonds issued by FC. A does not have an account with FB. A presents a coupon from a FC bond for payment to FB at its office outside the United States. FB pays A with a check drawn against a bank account maintained in the United States. For purposes of section 6049, the place of payment of interest on the FC bond by FB to A is considered to be outside the United States under paragraph (e)(3) of this section.

*Example 2.* Individual C deposits funds in an account with FB, a foreign country X branch of DB, a U.S. corporation engaged in the commercial banking business. FB maintains an office and employees in foreign country X, accepts deposits, and conducts one or more of the other activities listed in § 1.864–4(c)(5)(i). The terms of C's deposit provide that it will be payable with accrued interest. Under paragraph (e)(2) of this section, FB is considered to pay the interest on C's deposit outside the United States.

*Example 3.* DC, a U.S. corporation engaged in the commercial banking business, maintains FB, a branch in foreign country X. FB has an office and employees in foreign country X, accepts deposits, and engages in one or more of the other activities listed in § 1.864–4(c)(5)(i). D, a United States citizen, purchases a certificate of deposit issued in 1980 by FB. The certificate of deposit has a maturity of 20 years and has detachable interest coupons payable at six-month intervals. D presents some of the coupons at the U.S. office of DC and receives payment in cash. Because the coupon is presented to DC for payment within the United States, DC is considered to have made the payment within the United States under paragraph (e)(3) of this section.

*Example 4.* FB is recognized by both foreign country X and by the Federal Reserve Bank as a foreign country X branch of DC, a U.S. corporation engaged in the commercial banking business. A local foreign country X bank serves as FB's resident agent in Country X. FB maintains no physical office or employees in foreign country X. All the records, accounts, and transactions of FB are handled at the United States office of DC. E deposits funds in an amount maintained with FB. Interest earned on the deposit is periodically credited to E's account with FB by employees of DC. For purposes of section 6049, the place of payment of the interest on E's deposit with FB is considered to be within the United States by reason of paragraphs (e)(1) and (e)(2) of this section.

*Example 5.* DC is a U.S. corporation. A holds bonds that were issued by DC in registered form under section 163(f), as in effect prior to the amendment by section 502 of the HIRE Act of 2010, and the regulations thereunder and that are foreign-targeted registered obligations as defined in § 1.871–14(e)(2). DB, a commercial banking business, is the registrar of bonds issued by DC. Interest on the DC bonds is paid to A and other bondholders by check prepared by DB at its principal office inside the United States and mailed from there to A's address outside the United States. The check is drawn on a United States account maintained by DC with DB within the United States. The place of payment to A by DB of the interest on the DC bonds is considered to be outside the United States under paragraph (e)(4) of this section.

(f) through (g)(1) [Reserved]. For further guidance, see § 1.6049–5(f) through (g)(1).

(2) The provisions of paragraphs (b)(6) through (8), (b)(10)(i) through (b)(11)(ii)(A), (b)(12), (b)(14) (b)(15), (c)(1) through (c)(4), (c)(5)(i)(F), (c)(6), (d)(1) through (d)(1)(ii), (d)(2)(i) through (iii), (d)(3)(i) through (d)(3)(iii)(A), (d)(4), and (e)(1) through (5) of this section apply to payments made after June 30, 2014.

(h) *Expiration date.* The applicability of this section expires on February 28, 2017.

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

■ **Par. 35.** The authority citation for part 31 continues to read in part as follows:

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

■ **Par. 36.** In § 31.3406(g)–1, paragraph (e) is revised to read as follows:

### § 31.3406(g)–1 Exception for payments to certain payees and certain other payments.

* * * * *

(e) [Reserved]. For further guidance, see § 31.3406(g)–1T(e).

* * * * *

■ **Par. 37.** Section 31.3406(g)–1T is added to read as follows:

### § 31.3406(g)–1T Exception for payments to certain payees and certain other payments (temporary).

(a) through (d) [Reserved]. For further guidance, see § 31.3406(g)–1(a) through (d).

(e) *Certain reportable payments made outside the United States by foreign persons, foreign offices of United States banks and brokers, and others.* For reportable payments made after June 30, 2014, a payor is not required to backup withhold under section 3406 on a reportable payment that is paid and received outside the United States (as defined in § 1.6049–4(f)(16)) with respect to an offshore obligation (as defined in § 1.6049–5(c)(1)) or on gross proceeds from a sale effected outside the United States (as defined in § 1.6045–1(g)(3)(iii)), unless the payor has actual knowledge that the payee is a United States person. Further, no backup withholding is required for reportable a payment of an amount already withheld upon by a participating FFI (as defined in § 1.1471–1(b)(91)) or another payor in accordance with the withholding provisions under chapters 3 or 4 of the Code and the regulations under those chapters even if the payee is a known U.S. person. For example, a participating FFI is not required to backup withhold on a reportable

payment allocable to its chapter 4 withholding rate pool (as defined in § 1.6049–4(f)(5)) of recalcitrant account holders (as described in § 1.6049–4(f)(11)), if withholding was applied to the payment (either by the participating FFI or another payor) pursuant to § 1.1471–4(b) or § 1.1471–2(a). For rules applicable to notional principal contracts, see § 1.6041–1(d)(5) of this chapter. For rules applicable to reportable payments made before July 1, 2014, see this paragraph (e) as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

(f) [Reserved]. For further guidance, see § 31.3406(g)–1(f) introductory text through (f)(5).

(g) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 38.** In § 31.3406(h)–2, paragraph (a)(3)(i) is revised to read as follows:

**§ 31.3406(h)–2 Special rules.**

(a) * * *

(3) * * *

(i) [Reserved]. For further guidance, see § 31.3406(h)–2T(a)(3)(i).

* * * * *

■ **Par. 39.** Section 31.3406(h)–2T is added to read as follows:

**§ 31.3406(h)–2T Special rules (temporary).**

(a) through (a)(2) [Reserved]. For further guidance, see § 31.3406(h)–2(a) introductory text through (a)(2).

(3) *Joint foreign payees*—(i) *In general.* If the relevant payee listed on a jointly owned account or instrument provides a Form W–8 or documentary evidence described in § 1.1441–1(e)(1)(ii) regarding its foreign status, withholding under section 3406 applies unless every joint payee provides the statement regarding foreign status (under the provisions of chapters 3 or 61 of the Internal Revenue Code and the regulations under those provisions); any one of the joint owners who has not established foreign status provides a taxpayer identification number to the payor in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5; or, in the case of a withholdable payment (as defined in § 1.6049–4(f)(15)), any joint payee does not appear to be an individual as described in § 1.1471–3(f)(7). See § 1.6049–5(d)(2)(iii) of this chapter for corresponding joint payees provisions.

(a)(3)(ii) through (h) [Reserved]. For further guidance, see § 31.3406(h)–2(a)(3)(ii) through (h).

(i) *Expiration date.* The applicability of this section expires on February 28, 2017.

## PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 40.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 41.** In § 301.6402–3, paragraphs (e) and (f) are revised to read as follows:

**§ 301.6402–3 Special rules applicable to income tax.**

* * * * *

(e) [Reserved]. For further guidance, see § 301.6402–3T(e).

(f) *Effective/applicability date.* (1) References in paragraph (e) of this section to Form 8805 or other statements required under § 1.1446–3(d)(2) shall apply to partnership taxable years beginning after April 29, 2008.

(2) [Reserved]. For further guidance, see § 301.6402–3T(f)(ii).

**Par. 42.** Section 301.6402–3T is added to read as follows:

**§ 301.6402–3T Special rules applicable to income tax (temporary).**

(a) through (d) [Reserved]. For further guidance, see § 301.6402–3(a) through (d).

(e) In the case of a nonresident alien individual or foreign corporation, the appropriate income tax return on which the claim for refund or credit is made must contain the tax identification number of the taxpayer required pursuant to section 6109 and the entire amount of income of the taxpayer subject to tax, even if the tax liability for that income was fully satisfied at source through withholding under chapters 3 or 4 of the Internal Revenue Code (Code). Also, if the overpayment of tax resulted from the withholding of tax at source under chapters 3 or 4 of the Code, a copy of the Form 1042–S, ''Foreign Person's U.S. Source Income subject to Withholding,'' Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' or other statement (required under § 1.1446–3(d)(2) of this chapter) required to be provided to the beneficial owner or partner pursuant to § 1.1461–1(c)(1)(i), § 1.1474–1(d)(1)(i), or § 1.1446–3(d) of this chapter must be attached to the return. For purposes of claiming a refund, the Form 8805 or other statement must include the taxpayer identification number of the beneficial owner or partner even if not otherwise required. No claim for refund or credit under chapter 65 of the Code may be made by the taxpayer for any amount that the payor has repaid to the taxpayer pursuant to reimbursement or set-off procedures (described in § 1.1461–2(a)(2),(3) or § 1.1474–2(a)(3), (4) of this chapter). In addition, no claim for refund or credit may be made by a taxpayer for any amount that has been repaid to a qualified intermediary (as described in § 1.1441–1(e)(5)(ii)) or a participating FFI (as described in § 1.1471–1(b)(91)) pursuant to a collective refund filed by such entity on behalf of the taxpayer. See § 1.1441–1(e)(5)(iii) (describing a qualified intermediary agreement) and § 1.1471–4(h) (describing a collective refund). Upon request, a taxpayer must also submit such documentation as the IRS, may require establishing that the taxpayer is the beneficial owner of the income for which a claim for refund or credit is being made and verifying the grounds and facts set forth in taxpayer's claim as required by § 301.6402–2(b)(1). See § 1.1474–5 for additional requirements that may apply in the case of a refund of tax withheld under chapter 4.

(f) and (f)(1) [Reserved]. For further guidance, see § 301.6402–3(f) introductory text and (f)(1).

(2) References in paragraph (e) of this section to amounts withheld under chapter 4 of the Code and claims made with respect to amounts withheld under chapter 4 of the Code shall apply to withholdable payments made after June 30, 2014.

(g) *Expiration date.* The applicability of this section expires on February 28, 2017.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: February 14, 2014.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

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Part III

## Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities; Final Rule

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[TD 9657]**

**RIN 1545–BL73**

# Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities

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

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations under chapter 4 of Subtitle A (sections 1471 through 1474) of the Internal Revenue Code of 1986 (Code) regarding information reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities. These regulations affect persons making certain U.S.-related payments to FFIs and other foreign entities and payments by FFIs to other persons. The text of the temporary regulations also serves as the text of the proposed regulations set forth in a cross-reference notice of proposed rulemaking (REG–130967–13) published in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective date.* These regulations are effective on March 6, 2014.

**FOR FURTHER INFORMATION CONTACT:** Tara Ferris, Nancy Lee, Michael Kaercher, or Kamela Nelan at (202) 317–6942 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Background

### I. In General

This document contains amendments to the Income Tax Regulations (CFR part 1) under sections 1471 through 1474 of the Code (commonly known as the Foreign Account Tax Compliance Act, or FATCA). On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Public Law 111–147 (the HIRE Act), added chapter 4 of Subtitle A (chapter 4), comprised of sections 1471 through 1474, to the Code. Chapter 4 generally requires U.S. withholding agents to withhold tax on certain payments to foreign financial institutions (FFIs) that do not agree to report certain information to the Internal Revenue Service (IRS) regarding their U.S. accounts, and on certain payments to certain nonfinancial foreign entities (NFFEs) that do not provide information on their substantial United States owners (substantial U.S. owners) to withholding agents. On January 28, 2013, final regulations (TD 9610) under chapter 4 were published in the **Federal Register** (78 FR 5874) and, on September 10, 2013, a correction to the final regulations was published in the **Federal Register** (78 FR 55202) (final regulations). The Treasury Department and the IRS received numerous comments in response to the final regulations.

Following publication of the final regulations, the Treasury Department and the IRS also issued additional guidance under chapter 4. Notice 2013–43 (2013–31 I.R.B. 113) previews the revised timelines for implementation of the FATCA requirements (which are adopted by these temporary regulations) and provides additional guidance concerning the treatment of FFIs located in jurisdictions that have signed intergovernmental agreements for the implementation of FATCA (IGAs) but have not yet brought those IGAs into force. In particular, Notice 2013–43 clarifies that a jurisdiction is treated as having in effect an IGA if the jurisdiction is listed on the Treasury Web site as a jurisdiction that is treated as having an IGA in effect. In general, the Treasury Department and the IRS intend to include on this list jurisdictions that have signed but have not yet brought into force an IGA. The list of jurisdictions that are treated as having an IGA in effect is available at the following address: *http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx*. Notice 2013–69 (2013–46 I.R.B. 503) further previews some of the changes that the Treasury Department and IRS intend to make to the final regulations and publishes a draft of the agreement that an FFI may enter into with the IRS in order to satisfy its obligations under section 1471(b) of the Code and be treated as a participating FFI (FFI agreement). Revenue Procedure 2014–13 (2014–3 I.R.B. 419) provides the final FFI agreement.

### II. Regulatory Approach to Implementing Chapter 4

Chapter 4 grants the Secretary of the Treasury broad regulatory authority to prescribe rules and procedures relating to the diligence, reporting and withholding obligations under FATCA. The Treasury Department and the IRS exercised this authority by publishing final regulations that provide specific operational guidelines for implementing FATCA in a manner consistent with its policy objectives. As described in the preamble to the final regulations, the final regulations implement the statute based on a risk-based approach that is intended to address policy considerations, eliminate unnecessary burdens, and to the extent possible, build on existing practices and obligations.

Following publication of the final regulations, the Treasury Department and the IRS received unsolicited comments suggesting changes to or requesting clarification of certain rules in the final regulations. As a result of these comments, the Treasury Department and the IRS have continued to work with affected parties to develop rules that achieve an appropriate balance between fulfilling the important policy objectives of chapter 4 and minimizing the burdens imposed on stakeholders. As part of this process, the Treasury Department and the IRS have carefully considered comments received in response to the final regulations and have met with stakeholders. While many of these comments reiterate comments that were received and considered prior to the publication of the final regulations or suggest changes to the final regulations that are outside the scope of these temporary regulations, a number of comments proposed changes to the final regulations that the Treasury Department and the IRS believe warrant inclusion in these temporary regulations. The Treasury Department and the IRS will accept comments and engage with interested stakeholders in connection with finalizing these temporary regulations.

## Explanation of Provisions

### I. In General

In response to comments and after further consideration, these temporary regulations revise and further clarify the final regulations. To this end, these temporary regulations take into account helpful comments received and provide additional detail and certainty regarding the scope of obligations imposed under chapter 4. In addition, these temporary regulations reflect changes made to the final regulations to coordinate the chapter 4 regulations with the temporary regulations published under chapters 3 and 61 and section 3406 of the Code. Additionally, these temporary regulations contain modifications to the final regulations to further harmonize them with the IGAs. Several of the changes made by these temporary regulations were previewed in Notice 2013–69, the draft FFI agreement, and

certain of the draft IRS forms released throughout 2013.

The following sections provide a discussion of the additions and modifications made by the temporary regulations to the final regulations. To facilitate this discussion, the defined terms set forth in the temporary regulations are used throughout.

**II. Comments and Changes to § 1.1471–1—Scope of Chapter 4 and Definitions**

To address comments received and to provide further clarification, these temporary regulations modify certain definitions contained in the final regulations.

*A. Direct Reporting NFFE, Sponsored Direct Reporting NFFE, and Sponsoring Entity*

Comments requested an election providing NFFEs with the ability to report information about their substantial U.S. owners directly to the IRS rather than to withholding agents. In response to these comments and as previewed in Notice 2013–69, these temporary regulations provide certain NFFEs with elections to be treated as direct reporting NFFEs or sponsored direct reporting NFFEs. A NFFE that is treated as a direct reporting NFFE or sponsored direct reporting NFFE shall be treated as an excepted NFFE. Accordingly, definitions have been added for a direct reporting NFFE and a sponsored direct reporting NFFE, and the definition of a sponsoring entity has been modified. Conforming changes have also been made throughout these temporary regulations to implement these changes.

*B. Excepted NFFE*

These temporary regulations modify the definition of excepted NFFE such that excepted NFFEs include, among other things, a direct reporting NFFE and a sponsored direct reporting NFFE. In addition, to correct an oversight, the definition of excepted NFFE under these temporary regulations is further expanded to include a NFFE that is a qualified intermediary (QI), withholding foreign partnership (WP) or withholding foreign trust (WT).

*C. Offshore Obligation and Offshore Account*

In response to comments stating that the definition of offshore obligation in the final regulations is unclear, and in order to harmonize chapters 4 and 61, these temporary regulations define offshore obligation by cross-reference to § 1.6049–5(c)(1) (which now uses the term *offshore obligation* instead of *offshore account*). These temporary regulations also remove the definition of offshore account because it is included in the definition of offshore obligation under § 1.6049–5(c)(1).

*D. Pre-FATCA Form W–8*

These temporary regulations make a clarifying change to the definition of pre-FATCA Form W–8. The final regulations define pre-FATCA Form W–8 as certain Forms W–8 that do not contain chapter 4 statuses. However, the chapter 4 status of a non-U.S. individual filing a Form W–8 is the same as his or her chapter 3 status. Therefore, the definition in the final regulations could be interpreted to mean that any Form W–8 previously submitted by a non-U.S. individual could not be treated as a pre-FATCA Form W–8. These temporary regulations modify the definition of pre-FATCA Form W–8 to avoid this result.

*E. Standardized Industry Coding System*

The final regulations define the term *standardized industry code* to mean a code that is part of a coding system that is used to classify account holders by business type for purposes other than tax purposes and that is implemented by the withholding agent by the later of January 1, 2012, or six months after the date the withholding agent is formed or organized. In response to comments, these temporary regulations remove the term *standardized industry code* and replace it with the term *standardized industry coding system.* The term *standardized industry coding system* in these temporary regulations is substantially similar to the term standardized industry code in the final regulations, except that it focuses on a coding system used by the withholding agent to classify account holders, rather than a specific code that is part of such a coding system. Additionally, and in response to comments, with respect to a preexisting obligation of an entity, the preexisting obligation documentary evidence rules have been liberalized by eliminating the requirement that the classification of the payee's status be recorded by the withholding agent by the later of January 1, 2012, or six months after the date the withholding agent is formed or organized.

*F. Certain Foreign Insurance Companies Treated as U.S. Persons*

The final regulations treat a foreign insurance company that is not licensed to do business in any State and makes an election under section 953(d) as a foreign person. Comments requested that a foreign insurance company that has made an election under section 953(d) be treated as a U.S. person. A foreign insurance company that has made an election under section 953(d) is required to report on its U.S. income tax return the U.S. persons that own a direct or indirect interest in it. As previewed in Notice 2013–69, and in light of the existing reporting requirements applicable to these entities, the temporary regulations modify the definition of U.S. person to include a foreign insurance company that has made an election under section 953(d) and that either is not a specified insurance company or is a specified insurance company that is licensed to do business in any State. In such cases, the foreign insurance company will be required to continue to report on its owners in accordance with its election under section 953(d). A foreign insurance company that has made an election under section 953(d) and that is a specified insurance company that is not licensed to do business in any State will continue to be treated as a foreign person for purposes of chapter 4.

*G. Coordination of Definitions*

In response to comments requesting clarification and in order to coordinate the definitions in the final regulations with the definitions in chapters 3 and 61 and the FFI agreement, these temporary regulations add definitions of backup withholding, branch, chapter 4 withholding rate pool, exempt recipient, IGA, non-exempt recipient, reportable payment, and reporting Model 2 FFI and modify the definition of a U.S. branch treated as a U.S. person. In addition, the definitions of financial institution, limited branch, limited FFI, and substantial U.S. owner are modified to ensure coordination between the FFI agreement and these temporary regulations.

*H. Harmonization With IGAs*

These temporary regulations modify the definition of nonreporting IGA FFI to include (in addition to an FFI that is identified or treated as a nonreporting financial institution pursuant to a Model 1 or Model 2 IGA that is not a registered deemed-compliant FFI) an FFI that is a resident of, located in, or established in a Model 1 or Model 2 IGA jurisdiction, as the context requires, and that meets the requirements for certified deemed-compliant FFI status under the temporary regulations. Certain definitions (including the definition of retirement plan under § 1.1471–6(f)) are also modified to further harmonize these temporary regulations and the IGAs.

## III. Comments and Changes to § 1.1471–2—Requirement To Deduct and Withhold Tax on Withholdable Payments to Certain FFIs

*A. Grandfathered Obligations—Definitions—Material Modification*

Comments indicated that outstanding life insurance contracts often contain a provision permitting the substitution of an insured and, as a result, cannot be a grandfathered obligation under the final regulations. Because such provisions are prevalent in existing life insurance contracts, the Treasury Department and the IRS have determined that life insurance contracts that have such a provision should be eligible for grandfathered status until the provision is invoked, but that any change or substitution of the insured under the contract should be treated as a material modification such that grandfathered status would no longer apply. These temporary regulations modify the final regulations accordingly.

*B. Grandfathered Obligations—Determination by Withholding Agent of Grandfathered Treatment*

The final regulations provide that a withholding agent is required to treat a modification of an obligation as material if the withholding agent knows or has reason to know that a material modification has occurred. The Treasury Department and the IRS received comments stating that it is difficult for a withholding agent to determine whether there has been a material modification of a grandfathered obligation absent a disclosure from the issuer of the obligation, and therefore that the receipt of such a disclosure should be the only instance in which a withholding agent is required to treat a modification of an obligation as material. In response to these comments, the temporary regulations modify the final regulations to provide that a withholding agent, other than the issuer of the obligation (or an agent of the issuer), is required to treat a modification of an obligation as material only if the withholding agent has actual knowledge that a material modification has occurred. One example of an event that will cause a withholding agent to have actual knowledge of a material modification is if the withholding agent receives a disclosure indicating that there has been or will be a material modification to the obligation.

## IV. Comments and Changes to § 1.1471–3—Identification of Payee

*A. Payee Defined*

1. Exceptions—U.S. Intermediary or Agent of a Foreign Person

Comments requested that, in cases in which a withholding agent makes a withholdable payment to a U.S. insurance broker that is acting as an intermediary for or agent of a foreign insurer, the withholding agent be allowed to treat the U.S. insurance broker as the payee unless the withholding agent has reason to know that the U.S. insurance broker will not satisfy its withholding obligations. These temporary regulations modify the final regulations to adopt this comment.

2. Exceptions—U.S. Branch of Certain Foreign Banks or Foreign Insurance Companies

A payment made to a U.S. branch of a participating FFI or a registered deemed-compliant FFI may be treated as a payment made to a U.S. person if the branch is treated as a U.S. person for purposes of withholding under chapter 4. The final regulations inadvertently omit a cross-reference to the regulations containing the requirements of U.S. branches to report information regarding certain U.S. owners of owner-documented FFIs and passive NFFEs. These temporary regulations add a cross-reference to § 1.1474–1(i)(1) and (2).

*B. Determination of Payee's Status—Determination of Whether the Payment Is Made to a QI, WP, or WT*

In order to harmonize the rules in chapter 4 with those in chapters 3 and 61, these temporary regulations clarify that, with respect to a withholding agent's determination of whether a payment is made to a QI, WP, or WT, a Form W–8IMY, ''Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding,'' provided by such entity must contain the entity's QI–EIN, WP–EIN, or WT–EIN (as applicable). In addition, QIs, WPs, and WTs that have a GIIN must provide both a QI–EIN, QP–EIN, or WT–EIN and the GIIN to a withholding agent on the Form W–8IMY.

*C. Rules for Reliably Associating a Payment With a Withholding Certificate or Other Appropriate Documentation*

1. Requirements for Validity of Certificates—Withholding Certificate of an Intermediary, Flow-Through Entity, or U.S. Branch (Form W–8IMY)—In General

These temporary regulations clarify that, when a participating FFI or a registered deemed-compliant FFI has a branch (including a disregarded entity of the FFI) that both acts as an intermediary and is located outside of the FFI's country of residence, the GIIN of the branch (or disregarded entity) must be disclosed on the withholding certificate. This change provides more detail on the use of GIINs issued to branches or disregarded entities of an FFI and that are used, in part, to identify an FFI to withholding agents.

2. Requirements for Validity of Certificates—Withholding Certificate of an Intermediary, Flow-Through Entity, or U.S. Branch (Form W–8IMY)—Withholding Statement—Special Requirements for an FFI Withholding Statement

Comments requested additional clarification to the final regulations concerning the requirements of an FFI withholding statement, specifically with regard to the use of a chapter 4 withholding rate pool identified on an FFI withholding statement to allocate a withholdable payment (or portion of a withholdable payment) to persons included within the chapter 4 withholding rate pool. Some of these clarifications have already been previewed in the draft FFI agreement, published in Notice 2013–69, and the final FFI agreement, published in Rev. Proc. 2014–13. These temporary regulations provide further clarification of FFI withholding statement requirements, including rules on when a chapter 4 withholding rate pool may be used by an FFI to allocate withholdable payments to a class of persons within a particular type of chapter 4 withholding rate pool. For example, if a participating FFI (including a reporting Model 2 FFI) that is a non-U.S. payor receives a withholdable payment on behalf of an account holder of a U.S. account, the participating FFI may include the account holder in a chapter 4 withholding rate pool of U.S. payees provided on an FFI withholding statement to the withholding agent to allocate the payment (or portion thereof) to the U.S. payee pool when the participating FFI reports the account holder under § 1.1471–4(d)(3) (Form

8966, ''FATCA Report,'' reporting) or § 1.1471–4(d)(5) (election to report on Form 1099). As a result, the participating FFI need not provide payee specific information to the withholding agent with respect to the account holder, even if such information would typically be required under chapter 61, because it will be reported to the IRS under chapter 4.

Additionally, reporting Model 1 FFIs and reporting Model 2 FFIs (without regard to whether such FFIs are U.S. or non-U.S. payors) may include certain recalcitrant account holders in a chapter 4 withholding rate pool of U.S. payees when such payments are not subject to withholding under chapters 3 or 4 or to backup withholding under section 3406 (for example, presumed U.S. non-exempt recipients). This rule was added to provide coordination between the various reporting regimes. For example, a reporting Model 2 FFI may include an account holder of a non-consenting U.S. account in a chapter 4 withholding rate pool of U.S. payees with respect to a withholdable payment that is not subject to withholding under chapters 3 or 4 or to backup withholding under section 3406 when the FFI reports the account holder as described in § 1.1471–4(d)(6) for the year in which the payment is made.

Finally, in order to clarify potential ambiguities, and as previewed in the draft and final FFI agreement, these temporary regulations provide that an FFI withholding statement should indicate the portion of the payment allocated to a pool of recalcitrant account holders that hold dormant accounts for which the FFI (and not the withholding agent) will withhold in escrow under the procedures described in § 1.1471–4(b)(6). Additionally, a participating FFI that elects to apply backup withholding under § 1.1471–4(b)(3)(iii) to a withholdable payment that is also a reportable payment (as described under chapter 61) must also indicate the portion of the payment allocated to each recalcitrant account holder subject to backup withholding under section 3406 and report such payment to the IRS on Form 1099. A participating FFI will not be able to make the election to backup withhold under § 1.1471–4(b)(3)(iii) unless it is able to report on the payment and tax withheld consistent with the rules under chapter 61 and section 3406.

3. Requirements for Validity of Certificates—Withholding Certificate of an Intermediary, Flow-Through Entity, or U.S. Branch (Form W–8IMY)—Withholding Statement—Special Requirements for a Chapter 4 Withholding Statement and Exempt Beneficial Owner Withholding Statement

An intermediary providing a withholding certificate for a withholdable payment under chapter 4 may also need to provide information under chapter 3 or chapter 61 if those chapters also apply to the payment the intermediary receives. These temporary regulations modify the final regulations to coordinate with chapters 3 and 61 by providing cross-references to the regulations under those chapters to clarify the information required to be included on a withholding statement when a withholdable payment is also reportable under chapters 3 or 61.

4. Applicable Rules for Withholding Certificates, Written Statements, and Documentary Evidence—Period of Validity

Under chapter 4, withholding certificates are valid for three years, unless an exception permits indefinite validity (until a change in circumstances occurs). Beneficial owner withholding certificates provided by certain entities qualify for indefinite validity if the certificate is furnished with documentary evidence establishing the entity's foreign status. Comments requested that section 501(c) entities be excluded from the requirement to furnish documentary evidence of foreign status as it is an undue burden on such entities. The Treasury Department and the IRS agree that it is appropriate to exclude these entities from the requirement to furnish documentary evidence of foreign status. In response to these comments and to coordinate with the rules under chapter 3, these temporary regulations cross-reference the rules for indefinite validity of withholding certificates for section 501(c) entities in § 1.1441–1(e)(4)(ii)(B).

5. Applicable Rules for Withholding Certificates, Written Statements, and Documentary Evidence—Electronic Transmission of Withholding Certificate, Written Statement, and Documentary Evidence

The final regulations provide that a withholding agent may accept withholding certificates, written statements, and documentary evidence supporting a payee's claim of chapter 4 status electronically if the agent is able to verify the identity of the sender as the person named on the form. Comments requested that the verification rules be modified or eliminated to reduce the burden on the withholding agent. The Treasury Department and the IRS agree with the comments, but have determined that the electronic transmission requirements under chapter 4 should match those to be revised under chapter 3 in consideration of these comments. Therefore, these temporary regulations modify the final regulations by cross-referencing the electronic submission rules in § 1.1441–1(e)(4)(iv)(C) which have been modified to adopt the change in a separate regulations package. These temporary regulations also make similar conforming changes to the final regulations with respect to requirements for an intermediary to electronically submit a withholding statement with a withholding certificate to a withholding agent.

6. Applicable Rules for Withholding Certificates, Written Statements, and Documentary Evidence—Acceptable Substitute Withholding Certificate—Non-IRS Form for Individuals

In general, a withholding agent may substitute its own form for an official Form W–8 if the substitute form contains provisions that are substantially similar to the official form. The final regulations provide that if a substitute form is used in place of a W–8BEN for individuals, the form must contain, among other things, the individual's city and country of birth. The Treasury Department and the IRS received comments indicating that the inclusion of city of birth on this form would impose an undue burden on withholding agents. In response to comments, these temporary regulations remove the city of birth requirement. After further consideration, however, the temporary regulations require that the substitute form must contain the individual's date of birth, without regard to whether a foreign tax identification number is provided.

7. Documentation Furnished on Account-by-Account Basis Unless Exception Provided for Sharing Documentation Within Expanded Affiliated Group—Preexisting Account

The Treasury Department and the IRS received comments requesting that, for preexisting accounts, a withholding agent be allowed to rely on documentation held at a branch of the withholding agent or a branch of another expanded affiliated group member even if the withholding agent does not treat the accounts as consolidated obligations. The comments

indicated that, in certain cases, the requirement to treat the accounts as consolidated obligations in order to share documentation is too burdensome. These temporary regulations modify the final regulations to allow a withholding agent, with respect to a preexisting account that it maintains, to rely on documentation furnished by a payee for a preexisting account held at another branch of the withholding agent or a branch of another expanded affiliated group member solely to determine the chapter 4 status of the account holder if: (i) The withholding agent obtains and reviews copies of such documentation supporting the chapter 4 status of the payee and (ii) the withholding agent has no reason to know that, when the documentation is obtained by the withholding agent, the documentation is unreliable or incorrect.

*D. Documentation Requirements To Establish Payee's Chapter 4 Status*

1. Reliance on Pre-FATCA Form W–8

The final regulations generally allow the withholding agent to rely on a pre-FATCA Form W–8 for international organizations. In order to clarify a potential ambiguity and to conform with chapter 3, these temporary regulations provide that reliance on a pre-FATCA Form W–8 is limited to international organizations as defined under chapter 3 and under section 7701(a)(18).

2. Identification of U.S. Persons—In General

Under chapter 4, a withholding agent must treat certain payees as U.S. persons. In order to clarify a potential ambiguity, these temporary regulations provide that foreign branches of U.S. persons and FFIs that have elected to be treated as U.S. persons under section 953(d) (despite the fact that such FFIs may not be U.S. persons for other purposes of chapter 4) should be treated as U.S. persons by a withholding agent if the withholding agent has a valid Form W–9, ''*Request for Taxpayer Identification Number and Certification,*'' from the payee or is required to presume that the payee is a U.S. person. This reduces burden because FFIs that have elected to be treated as U.S. persons under section 953(d) are generally treated as U.S. persons under chapter 3 and would need to provide a Form W–9 in connection with payments subject to chapter 3 withholding and reporting.

3. Identification of U.S. Persons—Preexisting Obligations

The final regulations provide that a withholding agent (other than a participating FFI or registered deemed-compliant FFI) that makes a payment with respect to a preexisting obligation may treat a payee as a U.S. person if it previously reviewed a Form W–9 or other documentation that established that the payee is a U.S. person and established that the payee is an exempt recipient for purposes of chapter 61. Comments from U.S. withholding agents indicated that the burden of documenting such payees that have previously been classified as U.S. persons is both significant and disproportionate to the benefits of obtaining documentation of U.S. status. In response to these comments, these temporary regulations modify the final regulations to allow withholding agents (other than a participating FFI or registered deemed-compliant FFI) to treat the payee of a payment with respect to a preexisting obligation as a U.S. person if the withholding agent has previously classified the payee as a U.S. person for purposes of chapters 3 or 61 and established (through documentation or the application of the rules in § 1.6049–4(c)(1)(ii)) that the payee is an exempt recipient for purposes of chapter 61.

4. Identification of Participating FFIs and Registered Deemed-Compliant FFIs

The final regulations generally provide that a withholding agent may only treat a payee as a participating FFI or registered deemed-compliant FFI if the withholding agent receives an appropriate withholding certificate and a GIIN. The final regulations also provide a transitional rule for when withholding agents may treat payments made prior to January 1, 2017, with respect to a preexisting obligation, as made to a payee that is a participating FFI or registered deemed-compliant FFI. Under this rule the payee only needs to provide the withholding agent with its GIIN (which the withholding agent must verify) and indicate whether the FFI is a participating FFI or a registered deemed-compliant FFI. After further consideration and to coordinate with the rules under chapters 3 and 61, these temporary regulations modify the final regulations to provide that in such cases the payee must also have provided the withholding agent with a pre-FATCA Form W–8, as payees that receive U.S. source FDAP income would have already been required to provide a withholding certificate to a withholding agent. These temporary regulations further clarify the final regulations such that, when a participating FFI or a registered deemed-compliant FFI has a branch (including a disregarded entity of the FFI) that is located outside of the FFI's country of residence and receives the payment, the GIIN of the branch (or disregarded entity) must be disclosed on the withholding certificate.

5. Identification of Excepted NFFEs—Identifying a Direct Reporting NFFE, Identifying a Sponsored Direct Reporting NFFE, and Identification of an Excepted Inter-Affiliate FFI

These temporary regulations provide that direct reporting NFFEs and sponsored direct reporting NFFEs qualify as excepted NFFEs. Consistent with this change, these temporary regulations add to the final regulations identification rules with respect to direct reporting NFFEs and sponsored direct reporting NFFEs. Additionally, under the final regulations, a financial institution does not include certain foreign entities that are considered excepted inter-affiliate FFIs. One of the requirements for such an entity is that it does not receive payments from, or hold an account with, a withholding agent other than a member of its expanded affiliated group. Comments requested that such entities be permitted to hold bank accounts with certain non-U.S. persons outside of the expanded affiliated group. The temporary regulations modify the final regulations with respect to an excepted inter-affiliate FFI to allow such FFIs to hold depository accounts to pay for expenses in the country in which the FFI is operating and that are maintained within the same country. Accordingly, conforming changes have also been made by these temporary regulations to add identification rules with respect to an excepted inter-affiliate FFI. An identification rule was not necessary under the final regulations because an excepted inter-affiliate FFI was not allowed to hold an account with a withholding agent other than a member of its expanded affiliated group.

*E. Standards of Knowledge*

1. GIIN Verification

The final regulations provide that, under certain circumstances, a withholding agent has reason to know that a payee is not a financial institution. To clarify a potential ambiguity, these temporary regulations provide that a withholding agent has reason to know that a withholdable payment is being made to a limited branch of a participating or registered deemed-compliant FFI when it is directed to make payment to an address of the FFI in a jurisdiction other than the address of the participating FFI or registered deemed-compliant FFI (or branch of such FFI) that is identified as

the FFI (or branch of such FFI) that is supposed to receive the payment. These temporary regulations further provide special rules regarding a direct reporting NFFE and a sponsored direct reporting NFFE's claim of chapter 4 status.

2. Reason to Know

Under chapter 4, a withholding agent may not rely on an FFI's claim of chapter 4 status if the withholding agent has reason to know that such claim is unreliable or incorrect. Under the final regulations, the withholding agent is required to review information used to satisfy AML due diligence requirements in determining whether a claim of chapter 4 status was unreliable or incorrect. In response to comments, these temporary regulations modify the final regulations such that when a withholding agent has classified a person by business type for AML due diligence or another regulatory purpose (other than for a tax purpose) that requires the withholding agent to periodically monitor or update the classification, the withholding agent will have reason to know that information contained in its account files conflicts with the person's claim of chapter 4 status only if the classification recorded by the withholding agent is inconsistent with the chapter 4 status claimed. Comments also requested additional time to review the information collected for AML due diligence because it is typically gathered and stored by a different department or division of the withholding agent and is not linked to the customers' account files. These temporary regulations adopt this comment and allow 30 days to review information collected for AML due diligence for new accounts.

The final regulations also provide due diligence requirements with respect to U.S. indicia of account holders for payments made with respect to preexisting obligations. After further consideration, the temporary regulations modify these provisions such that the U.S. indicia-based due diligence requirements generally do not apply to a withholding agent that has previously documented an account for purposes of chapter 3 or chapter 61. However, under the temporary regulations, a withholding agent that applies the limits on reason to know described in chapter 3 or chapter 61 must review for U.S. indicia any additional documentation upon which the withholding agent is relying to determine the chapter 4 status of the person. A cross-reference in § 1.1471–3(e)(4)(viii)(A)(*4*) has also been corrected.

*F. Presumptions Regarding Chapter 4 Status of the Person Receiving the Payment in the Absence of Documentation*

The Treasury Department and the IRS intend for the chapter 4 presumption rules for determining the status of a person as an individual or an entity and as U.S. or foreign to be identical to the presumption rules in chapters 3 and 61. To ensure coordination of these rules, these temporary regulations modify the final regulations by cross-referencing the presumption rules under chapter 3, rather than restating the rules in detail. This change ensures coordination between the presumption rules in chapter 3 and chapter 4 in the event that the chapter 3 presumption rules are modified.

**V. Comments and Changes to § 1.1471–4—FFI Agreement**

*A. Withholding Requirements*

1. Satisfaction of Withholding Requirements—Election To Withhold Under Section 3406

As announced in Notice 2013–69, these temporary regulations modify the final regulations to coordinate withholding under chapter 4 and backup withholding under section 3406. Under § 1.1474–6(f), a participating FFI that makes a withholdable payment that is also a reportable payment to a recalcitrant account holder is not required to apply backup withholding under section 3406 if it withholds on the payment under chapter 4. A reportable payment that is not subject to withholding under chapter 4 remains subject to backup withholding under section 3406. Additionally, these temporary regulations provide under § 1.1471–4(b)(3)(iii) that a participating FFI may satisfy its chapter 4 withholding obligations for a withholdable payment that is a reportable payment made to a recalcitrant account holder that is a U.S. non-exempt recipient subject to backup withholding if the participating FFI elects for backup withholding under section 3406 to apply (rather than withholding under chapter 4 with regard to such payees). A participating FFI will not be able to make the election to backup withhold under § 1.1471–4(b)(3)(iii) unless it is able to report on the payment and tax withheld consistent with the rules under chapter 61 and section 3406.

2. Special Rule for Dormant Accounts

With respect to dormant accounts of recalcitrant account holders, the final regulations permit a participating FFI to escrow amounts withheld under chapter 4 rather than deposit such amounts with the IRS. To coordinate with the chapter 3 and 61 regulations which would have required such amounts to be withheld upon, the temporary regulations limit this allowance to amounts not otherwise subject to withholding under chapter 3 or backup withholding under section 3406. In addition, a participating FFI may not delegate its responsibility to escrow the withheld tax to the withholding agent from which it receives the payment. These modifications are intended to harmonize the treatment of such escrowed amounts under chapters 3 and 4 and are consistent with the provisions of the FFI agreement.

*B. Due Diligence for the Identification and Documentation of Account Holders and Payees*

1. Identification and Documentation Procedure for Preexisting Individual Accounts—Specific Identification and Documentation Procedures for Preexisting Individual Accounts—U.S. Indicia and Relevant Documentation Rules—Documentation to be Retained Upon Identifying U.S. Indicia—Standing Instructions to Pay Amounts

The final regulations provide a cure for standing instructions to pay amounts to an account maintained in the United States for an account holder that differs from the cure provided under chapter 3. These temporary regulations modify the final regulations to provide an option to follow the chapter 3 rules by adding a cross-reference to § 1.1441–7(b)(12).

2. Identification and Documentation Procedure for Preexisting Individual Accounts—Specific Identification and Documentation Procedures for Preexisting Individual Accounts—Exception for Preexisting Individual Accounts Previously Documented as Held by Foreign Individuals

The final regulations provide that a participating FFI that has previously established an account holder's status as foreign in order to fulfill its reporting obligations as a U.S. payor under chapter 61 is not required to perform an electronic search or enhanced review. Comments requested that this exception be extended to the identification and documentation performed by an agent of a participating FFI that is a U.S. payor. To address these comments and to further coordinate between the IGAs and the regulations, these temporary regulations modify the final regulations to adopt this comment.

*C. Account Reporting*

1. Reporting Requirements In General—Financial Institution Required to Report an Account—Special Reporting of Account Holders of Territory Financial Institutions

Section 1.1471–4(d)(2)(ii)(B) provides a special reporting rule for participating FFIs that maintain an account held by a territory financial institution acting as an intermediary. If such territory financial institution agrees to be treated as a U.S. person, the participating FFI is not required to report under § 1.1471–4 with respect to the account holders of the territory financial institution because such entities will report directly to the IRS. However, if the territory financial institution does not agree to be treated as a U.S. person, the final regulations require the participating FFI to report under § 1.1471–4 with respect to each account holder of the territory financial institution that receives a withholdable payment (or portion thereof) and that is a specified U.S. person or substantial U.S. owner of a foreign entity (indirect account holders). The final regulations are ambiguous about how a participating FFI could report on these indirect account holders. To provide more clarity with respect to the reporting requirements and to provide additional flexibility, the temporary regulations give participating FFIs the option of reporting on these indirect account holders on either Form 8966 or Form 1099. Additionally, these temporary regulations clarify the scope of information that must be reported by a participating FFI on Form 8966 or Form 1099 with respect to account holders of a territory financial institution that has not elected to be treated as a U.S. person.

2. Reporting Requirements In General—Financial Institution Required to Report an Account—Requirement To Identify the GIIN of a Branch That Maintains an Account

The final regulations provide that a participating FFI may elect to comply with its obligation to report under § 1.1471–4(d)(3) or § 1.1471–4(d)(5) on a branch-by-branch basis. After further consideration, the temporary regulations provide that a participating FFI may report under § 1.1471–4(d)(3) or § 1.1471–4(d)(5) with respect to all of the participating FFI's U.S. accounts and recalcitrant accounts, or separately with respect to any clearly identified group of accounts (such as by line of business or the location of where the account is maintained). Consistent with the final regulations, a participating FFI must include the GIIN assigned to the participating FFI or its branch (including a disregarded entity of the FFI), as applicable, to identify the jurisdiction of the FFI or branch (or disregarded entity) that maintains the accounts subject to reporting.

3. Reporting Requirements In General—Financial Institution Required To Report an Account—Reporting by Participating FFIs and Registered Deemed-Compliant FFIs (Including QIs, WPs, WTs, and Certain U.S. Branches Not Treated as U.S. Persons) for Accounts of Nonparticipating FFIs (Transitional)

The final regulations provide transitional reporting requirements for a participating FFI or registered deemed-compliant FFI making a payment of a foreign reportable amount to a nonparticipating FFI. Under § 1.1474–1(d)(4)(iii)(C) of the final regulations, a participating FFI is required to report the aggregate amount of foreign reportable amounts paid to each payee that is a nonparticipating FFI, even when such payments are not associated with a financial account. The final regulations define foreign reportable amount as a payment of FDAP income that would be a withholdable payment if paid by a U.S. person. Comments requested changes and clarification with respect to the transitional rule because it was unclear regarding the scope of payments subject to reporting and because of the cost of modifying systems to comply with this reporting rule. These temporary regulations continue to provide transitional reporting rules, but, consistent with Notice 2013–69, modify it to address these comments. First, the temporary regulations clarify that reporting will be required only with respect to nonparticipating FFIs that maintain an account with the participating FFI. Second, these temporary regulations modify the definition of foreign reportable amount to mean foreign source payments as described in § 1.1471–4(d)(4)(iv) paid to or with respect to each such account. Third, the temporary regulations provide that instead of reporting only foreign reportable amounts paid to such nonparticipating FFIs, a participating FFI may report all payments made with respect to the account (not only foreign reportable amounts). Fourth, the temporary regulations provide that, when a participating FFI is prohibited under domestic law from reporting on a specific payee basis without consent from the nonparticipating FFI and the participating FFI has been unable to obtain such consent, it may report the aggregate number of accounts held by all such non-consenting nonparticipating FFIs and the aggregate amount of foreign reportable amounts paid with respect to such accounts. These temporary regulations also modify the final regulations to provide that the information required under the transitional reporting rule will be provided on Form 8966, not Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' and accordingly move the transitional rule to § 1.1471–4(d)(2)(ii)(F) and delete a residual paragraph in § 1.1474–1(d)(3)(iii) and renumber (d)(3)(iv) through (d)(3)(x). These changes were previously announced in Notice 2013–69 and are also included in the final FFI agreement. Finally, the temporary regulations require participating FFIs to retain account statements for accounts maintained for such nonparticipating FFIs.

4. Reporting Requirements In General—Special U.S. Account Reporting Rules for U.S. Payors—Special Reporting Rule for U.S. Payors Other Than U.S. Branches

The final regulations provide that a participating FFI that is a U.S. payor (other than a U.S. branch) is treated as satisfying its chapter 4 reporting obligations with respect to accounts that it is required to treat as U.S. accounts or accounts held by owner-documented FFIs if it reports the information required under chapter 61 and the information described under § 1.1471–4(d)(5)(ii) (requiring additional information on accounts held by specified U.S. persons, U.S. owned foreign entities that are NFFEs, and owner-documented FFIs). In response to comments, the temporary regulations modify the final regulations to allow a participating FFI that is a U.S. payor to satisfy its chapter 4 reporting obligations with respect to its U.S. accounts or accounts held by owner-documented FFIs either by reporting the information described in chapter 61 and § 1.1471–4(d)(5)(ii) or (iii) (the information reporting would be made on Form 1099 for U.S. accounts that are not U.S. owned NFFEs), as provided in the final regulations, or by reporting the information described in § 1.1471–4(d)(3)(ii), (d)(3)(iii) or (d)(3)(iv) (the information reporting would be made on Form 8966). A participating FFI that reports the information described in § 1.1471–4(d)(3)(ii), (d)(3)(iii) or (d)(3)(iv) and that is required to report payments under chapter 61 is not relieved of that obligation.

5. Reporting Requirements in General—Special U.S. Account Reporting Rules for U.S. Payors—Special Reporting Rules for U.S. Branches Not Treated as U.S. Persons

The final regulations do not include a rule for reporting by a U.S. branch of a registered deemed-compliant FFI or limited FFI that is not treated as a U.S. person. To correct this oversight, these temporary regulations add new § 1.1471–4(d)(2)(iii)(C) to provide that such a U.S. branch is treated as having satisfied its reporting requirements under chapter 4 if it reports the information required under chapter 61 with respect to account holders of accounts that the U.S. branch is required to treat as U.S. accounts or accounts held by owner-documented FFIs.

6. Reporting on Recalcitrant Account Holders—Extensions in Filing

In response to comments, the temporary regulations modify the final regulations to provide an automatic 90-day extension of time in which to file Form 8966 with respect to recalcitrant account holders. An additional 90-day hardship extension may be provided in certain circumstances. These revisions are consistent with the extensions of time already permitted for filing Form 8966 with respect to U.S. accounts.

7. Treatment of a Disregarded Entity

In response to comments and in order to address a potential ambiguity in the final regulations about whether a disregarded entity that is owned by an FFI is treated as a branch of an FFI, these temporary regulations clarify that the term branch with respect to an FFI includes an entity that is disregarded as an entity separate from the FFI. This clarification was previewed in the draft FFI agreement which was published in Notice 2013–69. These temporary regulations make additional changes throughout the final regulations to further clarify the treatment of a disregarded entity when such an entity is treated as a branch of an FFI. For example, the GIIN verification procedures that apply with respect to a branch of an FFI also apply with respect to a disregarded entity that is owned by an FFI. Additionally, a disregarded entity that is owned by an FFI may be treated as a limited branch if the disregarded entity is unable to comply with the terms of an FFI agreement with respect to accounts that it maintains, and the reason to know standards that apply to withholdable payments made to a branch of a participating or registered deemed-compliant FFI also apply to withholdable payments made to a disregarded entity that is owned by such an FFI.

*D. Expanded Affiliated Group Requirements*

The final regulations require that, in general, each FFI within an expanded affiliated group must be either a participating FFI or a registered deemed-compliant FFI. Comments noted that some FFIs within an expanded affiliated group will have the status of an exempt beneficial owner and requested that the regulations be modified to allow for such FFIs to be excluded from this requirement. The temporary regulations modify the final regulations to adopt this comment.

*E. Verification—IRS Review of Compliance*

The final regulations allow the IRS to request additional information in its review of Form 8966. The temporary regulations further allow the IRS to request additional information to determine an FFI's compliance with the applicable FFI agreement and to assist the IRS with its review of account holder compliance with tax reporting requirements.

*F. Event of Default*

The final regulations define events of default under an FFI agreement. This definition includes the failure to significantly reduce, over a period of time, the number of recalcitrant account holders and payees that are nonparticipating FFIs. Comments were made that this language was ambiguous and could imply an event of default, for example, even in circumstances in which an FFI consistently complies with the regulatory due diligence procedures. Accordingly, in response to the comments, these temporary regulations modify the final regulations to provide that this event of default consists of a failure to significantly reduce, over a period of time, the number of account holders or payees that the participating FFI is required to treat as recalcitrant account holders or nonparticipating FFIs as a result of the participating FFI failing to comply with the due diligence procedures for the identification and documentation of account holders and payees.

**VI. Comments and Changes to § 1.1471–5—Definitions Applicable to Section 1471**

*A. U.S. Accounts—Account Holder—in General; Grantor Trust*

The definition of account holder in the final regulations does not treat a grantor trust as an account holder to the extent that the grantor is treated as owning the trust or all the assets in the trust under sections 671 through 679, regardless of whether the grantor is a U.S. or foreign person. If such grantor is a foreign person and the beneficiary of the trust is a U.S. person, the grantor is treated as the account holder and consequently, the account is a non-U.S. account and no beneficiary that is a specified U.S. person is treated as having an interest in the portion of the trust owned by the grantor. Therefore, the specified U.S. person is not an account holder and would not be reported even though such U.S. person might be a substantial U.S. owner of the foreign grantor trust. Further, for purposes of determining whether a foreign grantor trust has a substantial U.S. owner (and is a U.S. account), the final regulations provide that a substantial U.S. owner is any specified U.S. person treated as owning any portion of the grantor trust under sections 671 through 679, and a trust owned only by U.S. grantors is not treated as having a beneficiary that is a specified U.S. person. Thus, in contrast to the account holder rule, the test for determining a substantial U.S. owner of a trust is made without regard to the treatment of the settlor of the trust as a foreign grantor under sections 671 through 679. In response to requests for further clarification, these temporary regulations remove the grantor trust rule in the definition of account holder in the final regulations so that the general rule for treating an entity as an account holder will apply to treat a grantor trust as the account holder. Accordingly, a grantor trust that holds an account must provide documentation of its chapter 4 status as a FFI or NFFE. This change harmonizes the treatment of a grantor trust as an account holder for purposes of the chapter 4 withholding provisions with the provisions in chapters 3 and 61, which treat a grantor trust, rather than the grantor, as the payee.

*B. Financial Accounts—Value of Interest Determined, Directly or Indirectly, Primarily by Reference to Assets That Give Rise (or Could Give Rise) to Withholdable Payments, and Return Earned on the Interest (Including Upon a Sale, Exchange, or Redemption) Determined, Directly or Indirectly, Primarily by Reference to one or More Investment Entities or Passive NFFEs*

While financial accounts generally include equity or debt interests (other than regularly traded interests) in investment entities, financial accounts include only certain enumerated categories of interests in holding companies, treasury centers, and other

financial institutions. Among the enumerated categories are certain equity and debt interests whose return or value is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments. The final regulations provide that a debt interest is considered to have a value determined primarily by reference to such assets if the debt interest is secured by the assets of a U.S. person. The final regulations provide that an equity interest is considered to have a value determined primarily by reference to such assets if the amount payable upon redemption of the equity interest is secured primarily by assets that give rise (or could give rise) to withholdable payments. A similar provision under another enumerated category treating certain interests in holding companies and treasury centers as financial accounts (see §§ 1.1471–5(b)(1)(iii)(B)(*2*) and (*3*)) also applies to a debt interest secured by the assets of one or more investment entities described in §§ 1.1471–5(e)(4)(i)(B) or (C) or one or more passive NFFEs that are members of the entity's expanded affiliated group (collectively, the secured equity and debt provisions).

Comments have suggested that these provisions are overbroad because it is questionable whether the value of, or return earned on, a debt or equity interest is determined primarily by reference to assets of a U.S. person solely because the debt or equity interest is secured by such assets. In response to these comments, these temporary regulations modify the final regulations by eliminating the secured equity or debt provisions. The facts and circumstances may nonetheless lead to a conclusion that the value of a secured equity or debt interest is determined, directly or indirectly, primarily by reference to assets giving rise to withholdable payments (for example, when the amount payable as interest on, or upon redemption or retirement of, a debt interest is determined primarily by reference to the assets securing the debt interest).

In addition, the final regulations provide that a debt interest is considered to have a value determined, directly or indirectly, primarily by reference to assets that give rise to withholdable payments if amounts payable as interest on, or upon redemption or retirement of, the debt are determined primarily by reference to the profits or assets of a U.S. person. This provision inadvertently did not address whether debt interests with amounts payable by reference to equity interests in a U.S. person are debt interests whose return or value is determined primarily by reference to assets that give rise (or could give rise) to withholdable payments. To correct this omission, the temporary regulations modify the final regulations to include a reference to equity interests in, as well as profits and assets of, a U.S. person.

*C. Definition of Financial Institution*

1. In General

The final regulations provide that the definition of financial institution includes a holding company or treasury center that is part of an expanded affiliated group that includes a depository institution, custodial institution, insurance company, or investment entity. Comments noted that the definition, with respect to an insurance company, should be limited to a specified insurance company which is itself a financial institution. These temporary regulations correct the final regulations to treat a holding company or treasury center as a financial institution if it is part of an expanded affiliated group that includes a specified insurance company.

2. Holding Financial Assets for Others as a Substantial Portion of Its Business—Income Attributable To Holding Financial Assets and Related Financial Services

The final regulations provide that an entity is a custodial institution if at least 20 percent of the entity's gross income is attributable to holding financial assets for others and related financial services. The final regulations define income attributable to holding financial assets to include, among other things, fees for providing financial advice. As a result, an entity could qualify as a custodial institution under the final regulations even if the entity's sole business is to provide financial advice to clients and it does not conduct any activities as a custodian or broker. Comments indicated that this definition is overly broad and could cause entities that do not hold financial assets and therefore have no financial accounts to be treated as custodial institutions. In response, these temporary regulations modify the final regulations to define income attributable to holding financial assets to include fees for providing financial advice with respect to financial assets held in (or to be held in) custody by the entity.

3. Investment Entity—Examples

The final regulations generally provide that an investment entity includes an entity whose gross income is primarily attributable to investing, reinvesting, or trading in financial assets and that is managed by another entity that primarily conducts as a business certain investment-related activities. Examples 7 and 8 in § 1.1471–5(e)(4)(v) are clarified such that a foreign introducing broker does not manage an entity if it does not have discretionary authority to manage its clients' assets. However, even though these facts have been added to Examples 7 and 8, the results in Examples 7 and 8 remain the same. In Example 7, even when the introducing broker has discretionary authority to act unilaterally on its client's behalf with respect to its client's investments, because the introducing broker is an individual, the entity that she manages would not be treated as an investment entity under § 1.1471–5(e)(4)(i)(B). By comparison, because the introducing broker in Example 8 is an entity that primarily conducts as a business certain investment related activities, the entity managed by the introducing broker would be treated as an investment entity under § 1.1471–5(e)(4)(i)(B).

4. Exclusions—Excepted Nonfinancial Group Entities—In General

The final regulations provide that a holding company, treasury center, or captive finance company will not qualify as an excepted nonfinancial group entity if, among other things, it is formed in connection with or availed of certain arrangements or investment vehicles. Comments requested additional guidance on what it means to be ''formed in connection with or availed of.'' The temporary regulations modify the final regulations such that any entity that existed at least six months prior to its acquisition by an arrangement or investment vehicle and which, prior to the acquisition, regularly conducted activities in the ordinary course of business will not be considered to be formed in connection with or availed of such an arrangement or investment vehicle, in the absence of other facts suggesting the existence of an investment strategy.

5. Exclusions—Excepted Nonfinancial Group Entities—Nonfinancial Group

For purposes of determining whether an expanded affiliated group is a nonfinancial group, the final regulations provide an income test for the three-year period preceding the year for which the determination is made. Comments requested: (i) That this exclusion also be applicable if the expanded affiliated group has been in existence for less than three years and (ii) that a group would qualify if it meets the income test over an average of three years (rather than having to meet the test in each of the

three preceding years). The Treasury Department and the IRS have determined that the exclusion should be available to expanded affiliated groups that have been in existence for less than three years, and these temporary regulations modify the final regulations accordingly. The Treasury Department and the IRS continue to believe, however, that only expanded affiliated groups that meet the income test in each year of the testing period should qualify for the exclusion.

In order to provide further clarification when determining the percentage of income or assets of the group that produce or are held for the production of passive income, these temporary regulations also modify the final regulations by excluding transactions between members of the expanded affiliated group. In addition, these temporary regulations provide guidance on measuring the value of such assets.

6. Exclusions—Excepted Nonfinancial Group Entities—Holding Company

Comments requested that, for purposes of determining if a holding company is part of an excepted nonfinancial group, a trust or partnership that owns all the stock of a common parent corporation of an expanded affiliated group be eligible for treatment as a holding company and member of an excepted nonfinancial group. Otherwise, such entities are not treated as part of the expanded affiliated group and cannot qualify for such exception. These temporary regulations modify the final regulations to allow a partnership or other non-corporate entity to be treated as a holding company (and therefore as a potential member of an excepted nonfinancial group) if substantially all the activities of such partnership (or other entity) consist of holding more than 50 percent of the voting power and value of the stock of one or more common parent corporation(s) of one or more expanded affiliated group(s). If a partnership or other non-corporate entity owns more than 50 percent of the voting power and value of the stock of two or more corporations and each such corporation has its own subsidiaries such that it is the common parent corporation of an expanded affiliated group, each common parent corporation's expanded affiliated group will be treated as a separate such group for purposes of applying the rules of this section unless the non-corporate entity is treated as the common parent entity of the entire expanded affiliated group in accordance with § 1.1471–5(i)(10).

7. Exclusions—Excepted Nonfinancial Group Entities—Treasury Center

Comments were received that the definition of a treasury center in the final regulations is too narrow in that an entity that manages working capital but does not otherwise invest or trade may not satisfy this definition. For example, a group's cash pooling entity may be in a net deficit position and therefore may not be considered to be investing or trading in financial assets. In addition, with respect to the financing activities of such a vehicle, the final regulations could be read to limit situations in which an entity that is itself equity funded can qualify as a treasury center. In response to these comments, the temporary regulations modify the final regulations to clarify that an entity that manages the working capital of an expanded affiliated group (or any member thereof) will not cease to qualify as a treasury center solely because it has no investments and does not trade in financial assets. Further, the temporary regulations clarify that equity-funded affiliates may qualify as treasury centers.

8. Exclusions—Excepted Inter-Affiliate FFI

Under the final regulations, a financial institution does not include certain foreign entities that are considered excepted inter-affiliate FFIs. One of the requirements for such an entity is that it does not receive payments from, or hold an account with, a withholding agent other than a member of its expanded affiliated group. Comments requested that such entities be permitted to hold bank accounts with certain non-U.S. persons outside of the expanded affiliated group. The temporary regulations modify the final regulations to allow such entities to hold depository accounts maintained in the country in which the entity is operating to pay for expenses in that same country.

*D. Deemed-Compliant FFIs*

1. Registered Deemed-Compliant FFIs—Restricted Funds

Under chapter 4, interests in a restricted fund that are not issued directly by the fund can only be sold through distributors that are participating FFIs, registered deemed-compliant FFIs, nonregistering local banks, or restricted distributors. In response to comments, even though these temporary regulations do not eliminate the requirement of the restricted fund to terminate its agreement with any distributor that has a change in status that causes it to no longer qualify to be a distributor and redeem or transfer all debt and equity interests of the FFI issued through that distributor, these temporary regulations do remove the requirement that the restricted fund certify to the IRS.

2. Registered Deemed-Compliant FFIs—Qualified Credit Card Issuers and Servicers

Comments were received that an FFI that issues credit cards may form a separate entity that services the credit cards. Under the final regulations, such an entity could be an FFI, but would not be treated as a registered deemed-compliant FFI because it is not an issuer of credit cards, even though such FFI would otherwise qualify for registered deemed-compliant FFI status. Pursuant to these comments, the temporary regulations expand the registered deemed-compliant FFI category to include qualified credit card servicers.

3. Registered Deemed-Compliant FFIs—Sponsored Investment Entities and Controlled Foreign Corporations

Under the final regulations, an FFI remains liable for its withholding and reporting obligations under chapter 4 even if a sponsoring entity performs these responsibilities on behalf of such FFI. In response to comments, these temporary regulations modify the final regulations to clarify that a sponsoring entity will not be jointly and severally liable for the sponsored FFI's obligations unless the sponsoring entity is also a withholding agent that is separately liable for such obligations.

4. Certified Deemed-Compliant FFIs—Nonregistering Local Bank

The final regulations provide that, in order to be treated as a nonregistering local bank, an FFI's business must consist primarily of receiving deposits from and making loans to unrelated retail customers. Comments noted that the final regulations do not provide a definition of unrelated for this and other purposes. In addition, it may be unclear how the final regulations would apply to a member-owner of a credit union or similar cooperative credit organization. In order to address these concerns, and consistent with the IGAs, these temporary regulations modify the final regulations such that a credit union or similar cooperative credit organization will be eligible for treatment as a nonregistering local bank if its business consists primarily of receiving deposits from and making loans to members, provided that no such member has a greater than five percent interest in such credit union or cooperative credit organization. For purposes of

determining what unrelated means for retail customers of a bank, as well as for purposes of aggregating the interests of related members of a credit union or cooperative credit organization under the five percent test, the temporary regulations provide that the rules of section 267(b) apply.

5. Certified Deemed-Compliant FFIs—Limited Life Debt Investment Entities (Transitional)

Comments were received stating that most securitization investment vehicles could not meet the requirements in the final regulations for a limited life debt investment entity (LLDIE) to be treated as certified deemed-compliant FFIs. To accommodate industry practices and expand the types of securitization vehicles that will qualify as a LLDIE, these temporary regulations make a number of significant changes to the definition of LLDIE in the final regulations. These changes include: (i) Removing the requirement that a LLDIE's organizational documents cannot be amended without the consent of all of its investors; (ii) clarifying that a LLDIE issues debt or equity interests under a trust indenture or similar agreement; (iii) extending the category so that it applies to a LLDIE that issued all of its interests on or before January 17, 2013 (for example, the date that the final regulations were filed); (iv) allowing a LLDIE to be treated as a certified deemed-compliant FFI until the LLDIE liquidates or terminates; (v) removing the requirement that investors be unrelated to each other; and (vi) expanding the types of assets that the entity can hold and still qualify as a LLDIE.

6. Certified Deemed-Compliant FFIs—Investment Advisors and Investment Managers

In response to comments, and to coordinate with the IGAs, these temporary regulations add certain investment advisors and investment managers that do not maintain financial accounts as entities eligible for treatment as certified deemed-compliant FFIs. Accordingly, these temporary regulations also add identification rules with respect to such investment advisors and investment managers.

7. Related Persons

Certain provisions in the final regulations (such as §§ 1.1471–3(c)(9)(ii)(B); 1.1471–5(f)(2)(i)(B); 1,1471–5(f)(4)(i); and 1.1471–5(i)(6)(i)) use the term *related* or *unrelated* to describe a relationship between parties. Comments noted that the final regulations do not define what is meant by *related*. These temporary regulations generally amend the relevant paragraphs of the final regulations to provide that parties are related for purposes of the relevant paragraph when such parties have a relationship described in section 267(b).

*E. Expanded Affiliated Group*

Comments requested that a LLDIE not be considered a member of an expanded affiliated group as a result of any member of such expanded affiliated group owning interests in such entity. These comments indicated that because interests in these entities are generally held through a clearing organization, these entities often would not be able to determine the identity of their investors. In addition, comments noted the burden of monitoring ownership changes for the purpose of determining when to include or exclude a LLDIE as a member of an expanded affiliated group, and the potential adverse consequences to the rest of the group in the event that any such entity is not properly included. Comments also stated that the definition of expanded affiliated group in the final regulations presents challenges with respect to non-corporate entities that are within a chain of commonly controlled corporations. For example, the final regulations do not clearly indicate whether constructive ownership rules apply to determine whether a non-corporate entity is controlled by a member of the group. In response to these comments, these temporary regulations modify the definition of expanded affiliated group to exclude from the group pre-existing LLDIEs (for example, a LLDIE that issued all of its interests, and was in existence, on or before January 17, 2013) and clarify the ownership rules applicable to corporate and non-corporate members of the group. These temporary regulations also permit (but do not require) a non-corporate entity to be treated as the common parent entity of the expanded affiliated group.

**VII. Comments and Changes to Section 1.1471–6—Payments Beneficially Owned by Exempt Beneficial Owners—Foreign Central Bank of Issue**

Comments were received stating that the functions of a foreign central bank of issue may be performed by an institution other than a bank. In response to these comments and in order to coordinate the regulations with the IGAs, these temporary regulations modify the final regulations to include an institution performing such functions within the definition of a foreign central bank of issue. In addition, comments stated that a foreign central bank of issue may earn income from cash as well as securities. Accordingly, the temporary regulations allow a foreign central bank of issue to be a beneficial owner with respect to income earned on cash.

Comments also stated that some foreign central banks maintain depository accounts solely for their employees. These comments requested that such employee-only accounts not be treated as accounts held in connection with commercial activities. The Treasury Department and the IRS believe there is a low risk of tax evasion with respect to such employee accounts, and that the burden on central banks to register as an FFI for these activities and provide documentation as intermediaries would be disproportionately high. Therefore, the temporary regulations modify the final regulations to exclude maintaining such accounts from the definition of commercial activities.

**VIII. Comments and Changes to Section 1.1472–1—Withholding on NFFEs**

*A. Exceptions—Payments to an Excepted NFFE—Active NFFEs*

Comments noted that fiscal year financial statements may not be used in determining whether an entity is an active NFFE. These comments noted that preparing calendar year financial statements for entities using non-calendar fiscal years would cause significant burdens without commensurate benefits. Therefore, these comments suggested that an entity be able to use either its calendar or fiscal year in analyzing whether the entity meets the active NFFE test. Comments further suggested that an entity be allowed to use financial statements based on foreign accounting principles. These comments have been adopted and these temporary regulations modify the final regulations accordingly.

*B. Exceptions—Payments Made to an Excepted NFFE*

After further consideration, these temporary regulations provide that QIs, WPs, and WTs are treated as excepted NFFEs.

*C. Exceptions—Payments to an Excepted NFFE—Direct Reporting NFFEs and Sponsored Direct Reporting NFFEs*

These temporary regulations provide that excepted NFFE includes a NFFE that is a direct reporting NFFE or sponsored direct reporting NFFE. A direct reporting NFFE is a NFFE that elects to report on Form 8966 directly to the IRS certain information about its

direct or indirect substantial U.S. owners (or it may be required to certify on Form 8966, or in such other manner as the IRS may prescribe, that it does not have any such substantial U.S. owners) in lieu of providing such information to withholding agents or participating FFIs with which the NFFE holds a financial account. A direct reporting NFFE is required to register with the IRS to obtain a GIIN and to agree to comply with the provisions in the regulations regarding reporting information about its substantial U.S. owners. In general, withholding agents and participating FFIs will identify and document a direct reporting NFFE in a manner similar to how withholding agents and participating FFIs will document a participating FFI, including by verifying that the GIIN of the direct reporting NFFE is listed on the IRS FFI List. Notwithstanding that a direct reporting NFFE will document itself to withholding agents and participating FFIs in a manner similar to a participating FFI, it will not be treated as a participating FFI and will not enter into an FFI agreement. Therefore, since the definition of excepted NFFE includes a direct reporting NFFE, an account held by a direct reporting NFFE will not be treated as a U.S. account and will not be reported to the IRS by a participating FFI with which the direct reporting NFFE has a financial account.

In addition, these temporary regulations modify the final regulations such that an entity may act as a sponsor for one or more direct reporting NFFEs. A sponsoring entity will report on Form 8966 directly to the IRS (on the sponsored direct reporting NFFE's behalf) information about each sponsored direct reporting NFFE's direct or indirect substantial U.S. owners. These changes were previously announced in Notice 2013–69 and were made in response to comments.

## IX. Changes and Comments to § 1.1473–1—Section 1473 Definitions

### *A. Definition of Withholdable Payment—U.S. Source FDAP Income Defined—Special Rule for Sales of Interest Bearing Debt Obligations; Gross Proceeds Defined—Payment of Gross Proceeds—Amount of Gross Proceeds*

Under the final regulations, income that is otherwise described as U.S. source FDAP income does not include interest accrued on the date of a sale or exchange of an interest bearing debt obligation if the sale occurs between two interest payment dates. In order to harmonize this rule with the rules in chapter 3, these temporary regulations provide that this type of interest is not excluded from U.S. source FDAP income or gross proceeds if the sale or exchange is part of a plan described in the anti-abuse rule under § 1.1441–3(b)(2)(ii).

### *B. Definition of Withholdable Payment—Payments Not Treated as Withholdable Payments—Offshore Payments of U.S. Source FDAP Income Prior to 2017 (Transitional)*

#### 1. In General

The final regulations provide an exclusion from the definition of withholdable payments for certain non-intermediated offshore payments of U.S. source FDAP income prior to 2017. The Treasury Department and the IRS intended to provide that the exclusion does not apply to debt or equity issued by a U.S. person in order to prevent U.S. persons from exploiting this exception by issuing debt or equity interests through a foreign branch. To clarify the issue, these temporary regulations modify the final regulations such that the exclusion does not apply to payments made with respect to debt or equity issued by a U.S. person (excluding a deposit account maintained by a foreign branch of a U.S. financial institution).

Comments indicated that because the defined term *payments with respect to an offshore obligation* is not used in the final regulations, it is unclear whether, in order for this exception to apply, all payments must be made outside the U.S. To clarify, these temporary regulations modify the final regulations to use the defined term.

#### 2. Insurance Brokers

Because the final regulations treat insurance brokers as intermediaries, the transitional rule for offshore payments of U.S. source FDAP income under the final regulations does not apply to insurance and reinsurance premiums paid to foreign insurance companies by non-U.S. insurance brokers. Comments were received stating that the transitional rule should apply to such premiums, because it applies to insurance premiums paid directly by the insured. These temporary regulations provide a transitional rule such that, for purposes of the exception for offshore payments, an intermediary does not include a person acting as an insurance broker with respect to premiums.

### *C. Definition of Withholdable Payment—Payments Not Treated as Withholdable Payments—Collateral Arrangements Prior to 2017 (Transitional)*

Comments requested relief from withholding on payments made by a secured party with respect to collateral securing one or more transactions under a collateral arrangement between the secured party and the counterparty. Comments indicated that general industry practice is to commingle collateral from all counterparties in a single account held by the secured party and that this practice does not permit the identification of collateral to a particular counterparty. As a result, a secured party is currently unable to determine whether it is acting as an intermediary or a principal with respect to some or all of the payments made to the counterparty based upon the secured party's right under a collateral arrangement to sell or loan the collateral to a third party. To allow the industry time to develop the systems necessary to make this determination, these temporary regulations add a transitional rule so that withholding on such payments will begin on January 1, 2017, provided that only a commercially reasonable amount of collateral is held by the secured party as part of the collateral arrangement.

### *D. Substantial U.S. Owner—Indirect Ownership of Foreign Entities—Interests Owned or Held by a Related Person*

The final regulations define a substantial U.S. owner to include a specified U.S. person that owns, directly or indirectly, more than 10 percent of a foreign corporation, partnership, or trust. Ownership is determined by aggregating interests held by related persons, applying certain provisions of the regulations under section 267 to determine whether such persons are related. These temporary regulations clarify that a person must have direct or indirect ownership in the entity before the aggregation rules apply, such that a substantial U.S. owner does not include an individual with no ownership interest other than an interest attributed to him from a related person.

## X. Changes and Comments to § 1.1474–1—Liability for Withheld Tax and Withholding Agent Reporting

### *A. Information Returns for Payment Reporting—Filing Requirement—in General*

The final regulations provide a general statement that a withholding agent needs to file a Form 1042–S to report a chapter 4 reportable amount,

even though there are exceptions to this rule, such as the exception applicable to a participating FFI that provides its withholding agent with sufficient information for it to do the reporting. The final regulations have been modified to qualify this language.

The final regulations also provide that a recipient copy of the Form 1042–S may include more than one type of income, which would thus display information differently than the copy filed with the IRS. For refund purposes, it is important for the IRS to match the recipient copy of the Form 1042–S to the copy filed with the IRS. As previewed in the draft Form 1042–S instructions released on November 1, 2013, and to coordinate with the regulations under chapter 3, these temporary regulations remove the allowance for withholding agents to include more than one type of income or other payment on the copy of the Form 1042–S furnished to the recipient.

However, to allow sufficient time for withholding agents to adapt to this change to the final regulations, a withholding agent will be permitted to include more than one type of income or other payment on the recipient copy of the Form 1042–S for calendar year 2014. Starting with calendar year 2015, the Form 1042–S and accompanying instructions will require a separate Form 1042–S for each type of income or other payment.

*B. Information Returns for Payment Reporting—Filing Requirement—Recipient—Defined; Persons That Are Not Recipients*

For Form 1042–S reporting, the final regulations provide that an excepted NFFE that is not acting as an agent or intermediary with respect to the payment is the recipient of the payment in question. However, if such entity is a flow-through entity, it is not treated as a recipient on the Form 1042–S for chapter 3 purposes. In order to have a consistent definition of recipient for chapters 3 and 4 reporting purposes (because reporting for both chapters is performed on a single Form 1042–S), these temporary regulations modify the final regulations by providing that an excepted or passive NFFE that is a flow-through entity is not treated as a recipient. Also, the final regulations have been modified to remove the provision indicating that a participating FFI or registered deemed-compliant FFI is not a recipient when it fails to provide information to the withholding agent regarding its reporting pools, which is reflected on Form 1042–S. These temporary regulations further remove the references to a participating FFI, registered deemed-compliant FFI, and U.S. branch that is not treated as a U.S. person from the definition of persons that are not recipients.

*C. Information Returns for Payment Reporting—Amounts Subject To Reporting—in General*

These temporary regulations make a correction to the definition of the term *chapter 4 reportable amount* in § 1.1474–1(d)(2) to add that this amount must also be a withholdable payment.

*D. Information Returns for Payment Reporting—Method of Reporting—Payments by U.S. Withholding Agents to Recipients—Payments To Participating FFIs, Deemed-Compliant FFIs, and Certain QIs*

Consistent with changes made by these temporary regulations to clarify the chapter 4 withholding rate pools, the final regulations are modified to clarify that a withholding agent that receives an FFI withholding statement from a participating FFI or registered deemed-compliant FFI [must report with respect to each such pool identified on the FFI withholding statement] on a separate Form 1042–S issued to the participating FFI, registered deemed-compliant FFI, or QI (as applicable) as the recipient with respect to each such pool identified on an FFI withholding statement.

**XI. Comments and Changes to § 1.1474–6—Coordination of Chapter 4 With Other Withholding Provisions**

These temporary regulations add a coordination rule for instances in which a participating FFI withholds under chapter 4 on a payment made to a recalcitrant account holder that is a U.S. non-exempt recipient, and such payment is also a reportable amount subject to backup withholding. The rule is applicable to cases in which the participating FFI does not elect to withhold on the payment under section 3406.

**XII. Future Guidance**

*A. Verification Requirements of Sponsoring Entities*

Regulations describing the verification requirements of sponsoring entities will be proposed and issued separately from these temporary regulations. Under the proposed regulations, a sponsoring entity will be required to make two separate compliance certifications: one on behalf of its sponsored FFI or sponsored direct reporting NFFE with respect to the sponsored FFI's compliance with the requirements of an FFI agreement or the sponsored direct reporting NFFE's election to be treated as a direct reporting NFFE (as applicable), and a second certification on the sponsoring entity's own behalf with respect to its compliance with the requirements of its status as a sponsoring entity. In addition, the verification requirements in the proposed regulations will allow the IRS to request additional information from a sponsoring entity, such as regarding the information reported on the forms filed with the IRS with respect to a sponsored FFI or sponsored direct reporting NFFE in order to review such entities' compliance with the requirements for maintaining their status as a sponsored FFI or sponsored direct reporting NFFE, and to assist the IRS with its review of account holder or substantial U.S. owner compliance with tax reporting requirements.

*B. FFI Agreement*

Several changes made by these temporary regulations are not reflected in and may be inconsistent with certain provisions in the FFI agreement. As a result, the Treasury Department and the IRS intend to publish a revenue procedure revising the FFI agreement to conform to these regulations. For instance, the rules regarding an optional escrow by a participating FFI of tax withheld on withholdable payments to dormant accounts held by recalcitrant account holders are modified in these temporary regulations. The FFI agreement will be revised to reflect that the tax withheld in escrow becomes due 90 days after the date that the account ceases to be a dormant account, rather than the date that is the earlier of 90 days or the end of the calendar year following the date that the account ceases to be a dormant account.

In addition, cross references to the temporary regulations under chapters 3, 4, and 61 will be updated to reflect changes to the numbering of various sections of those temporary regulations after the date of publication of the revenue procedure containing the FFI agreement. For example, cross references in the FFI agreement to terms defined in the chapter 4 temporary regulations will be modified to reflect the addition of the term reporting Model 2 FFI and the renumbering of subsequent sections in § 1.1471–1(b). In addition, an incorrect citation to § 1.6049–4(b)(6) will be removed.

The FFI agreement will also be revised to reflect a change to the reporting requirements by participating FFIs that elect to backup withhold under section 3406 rather than to withhold under chapter 4 on a withholdable payment that is a

reportable payment made to a recalcitrant account holder that is a U.S. non-exempt recipient subject to backup withholding. These temporary regulations clarify that a participating FFI may make the election to apply backup withholding under section 3406 with respect to an account holder only if it complies with the information reporting rules under chapter 61 and section 3406. Accordingly, various sections of the FFI agreement will be modified to reflect this change.

**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 13653. 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.

The collection of information in these temporary regulations is contained in a number of provisions including §§ 1.1471–3, 1.1471–4, 1.1472–1, 1.1474–1, and 1.1474–6. In addition, these temporary regulations amend a number of collections of information set out in TD 9610. The IRS intends that the information collection requirements of these temporary regulations will be satisfied by filing Forms 8957, 8966, the W–8 series of forms, W–9, 1042, 1042–S, the 1099 series of forms, as well as income tax returns (for example, Forms 1040 and 1120F) and Form 843 relating to refunds. As a result, for purposes of the Paperwork Reduction Act (44 U.S.C. 3507), the reporting burden associated with the collection of information in these temporary regulations will be reflected in the information collection burden and OMB control number of the appropriate IRS form.

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.

Books and 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.

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, requires that an agency prepare a costs and benefits analysis and a budgetary impact statement before promulgating a rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Reform Act requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The Treasury Department and the IRS have determined that there is no federal mandate imposed by this rulemaking that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Drafting Information**

The principal authors of these regulations are Tara Ferris, Nancy Lee, Michael Kaercher, and Kamela Nelan of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

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

Income taxes, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

Accordingly, 26 CFR part 1 is 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 * * *

Section 1.1471–1 is also issued under 26 U.S.C. 1471.

Section 1.1471–2 is also issued under 26 U.S.C. 1471.

Section 1.1471–3 is also issued under 26 U.S.C. 1471.

Section 1.1471–4 is also issued under 26 U.S.C. 1471.

Section 1.1471–5 is also issued under 26 U.S.C. 1471.

Section 1.1471–6 is also issued under 26 U.S.C. 1471.

Section 1.1472–1 is also issued under 26 U.S.C. 1472.

Section 1.1471–3 is also issued under 26 U.S.C. 1473.

Section 1.1474–1 is also issued under 26 U.S.C. 1474.

Section 1.1474–6 is also issued under 26 U.S.C. 1474.

■ **Par. 2.** Section 1.1471–1 is amended:

■ 1. By removing paragraph (b)(81).

■ 2. By redesignating paragraphs (b)(115) through (b)(142) as (b)(124) through (b)(151), paragraphs (b)(108) through (b)(114) as (b)(116) through (b)(122), paragraph (b)(107) as (b)(114), paragraphs (b)(82) through (b)(106) as (b)(88) through (b)(112), paragraphs (b)(75) through (b)(80) as (b)(82) through (b)(87), paragraphs (b)(62) through (b)(74) as (b)(68) through (b)(80), paragraphs (b)(39) through (b)(61) as (b)(44) through (b)(66), paragraphs (b)(28) through (b)(38) as (b)(32) through (b)(42), paragraphs (b)(18) through (b)(27) as (b)(21) through (b)(30), paragraphs (b)(9) through (b)(17) as (b)(11) through (b)(19), and paragraphs (b)(7) and (b)(8) as (b)(8) and (b)(9).

■ 3. By adding new paragraphs (b)(7), (b)(10), (b)(20), (b)(31), (b)(43), (b)(67), (b)(81), (b)(113), (b)(115), and (b)(123).

■ 4. By revising newly-designated paragraphs (b)(23), (b)(35), (b)(41), (b)(48), (b)(50), (b)(76), (b)(77), (b)(83), (b)(88), (b)(91), (b)(98), (b)(100), (b)(104)(i), (b)(104)(ii)(A) through (C), (b)(105), (b)(124), (b)(125), (b)(128), (b)(135), and (b)(141).

The revisions and additions read as follows:

**§ 1.1471–1 Scope of chapter 4 and definitions.**

* * * * *

(b) * * *

(7) [Reserved]. For further guidance, see § 1.1471–1T(b)(7).

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(10) [Reserved]. For further guidance, see § 1.1471–1T(b)(10).

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(20) [Reserved]. For further guidance, see § 1.1471–1T(b)(20).

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(23) [Reserved]. For further guidance, see § 1.1471–1T(b)(23).

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(31) [Reserved]. For further guidance, see § 1.1471–1T(b)(31).

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(35) [Reserved]. For further guidance, see § 1.1471–1T(b)(35).

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(41) [Reserved]. For further guidance, see § 1.1471–1T(b)(41).

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(43) [Reserved]. For further guidance, see § 1.1471–1T(b)(43).

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(48) [Reserved]. For further guidance, see § 1.1471–1T(b)(48).

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(50) [Reserved]. For further guidance, see § 1.1471–1T(b)(50).

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(67) [Reserved]. For further guidance, see § 1.1471–1T(b)(67).

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(76) [Reserved]. For further guidance, see § 1.1471–1T(b)(76).

(77) [Reserved]. For further guidance, see § 1.1471–1T(b)(77).

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(81) [Reserved]. For further guidance, see § 1.1471–1T(b)(81).

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(83) [Reserved]. For further guidance, see § 1.1471–1T(b)(83).

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(88) [Reserved]. For further guidance, see § 1.1471–1T(b)(88).

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(91) [Reserved]. For further guidance, see § 1.1471–1T(b)(91).

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(98) [Reserved]. For further guidance, see § 1.1471–1T(b)(98).

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(100) [Reserved]. For further guidance, see § 1.1471–1T(b)(100).

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(104) * * *

(i) [Reserved]. For further guidance, see § 1.1471–1T(b)(104)(i).

(ii) * * *

(A) [Reserved]. For further guidance, see § 1.1471–1T(b)(104)(ii)(A).

(B) [Reserved]. For further guidance, see § 1.1471–1T(b)(104)(ii)(B).

(C) [Reserved]. For further guidance, see § 1.1471–1T(b)(104)(ii)(C).

(105) [Reserved]. For further guidance, see § 1.1471–1T(b)(105).

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(113) [Reserved]. For further guidance, see § 1.1471–1T(b)(113).

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(115) [Reserved]. For further guidance, see § 1.1471–1T(b)(115).

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(123) [Reserved]. For further guidance, see § 1.1471–1T(b)(123).

(124) [Reserved]. For further guidance, see § 1.1471–1T(b)(124).

(125) [Reserved]. For further guidance, see § 1.1471–1T(b)(125).

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(128) [Reserved]. For further guidance, see § 1.1471–1T(b)(128).

* * * * *

(135) [Reserved]. For further guidance, see § 1.1471–1T(b)(135).

* * * * *

(141) [Reserved]. For further guidance, see § 1.1471–1T(b)(141).

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■ **Par. 3.** Section 1.1471–1T is added to read as follows:

**§ 1.1471–1T Scope of chapter 4 and definitions (temporary).**

(a) [Reserved]. For further guidance, see § 1.1471–1(a).

(b) [Reserved]. For further guidance, see § 1.1471–1(b).

(1) through (6) [Reserved]. For further guidance, see § 1.1471–1(b)(1) through (6).

(7) *Backup withholding.* The term *backup withholding* means the withholding required under section 3406.

(8) [Reserved]. For further guidance, see § 1.1471–1(b)(8).

(9) [Reserved]. For further guidance, see § 1.1471–1(b)(9).

(10) *Branch.* The term *branch* means a branch as defined in § 1.1471–4(e)(2)(ii).

(11) through (19) [Reserved]. For further guidance, see § 1.1471–1(b)(11) through (19).

(20) *Chapter 4 withholding rate pool.* The term *chapter 4 withholding rate pool* means a pool identified on a chapter 4 withholding statement (as described in § 1.1471–3(c)(3)) provided by an intermediary or flow-through entity with respect to a withholdable payment and that is allocated to payees that are nonparticipating FFIs. The term *chapter 4 withholding rate pool* also includes, with respect to a pool identified on an FFI withholding statement provided by a participating FFI or registered deemed-compliant FFI with respect to a withholdable payment that is allocated to a class of recalcitrant account holders subject to withholding under chapter 4 as described in § 1.1471–4(d)(6)(i) (including a pool of account holders to which the escrow procedures for dormant accounts apply and U.S. persons included in a U.S. payee pool to the extent allowed and as described in § 1.1471–3(c)(3)(iii)(B)(*2*)(*ii*) and (*iii*)).

(21) through (22) [Reserved]. For further guidance, see § 1.1471–1(b)(21) through (22).

(23) *Consolidated obligations.* The term *consolidated obligations* means multiple obligations that a withholding agent (including a withholding agent that is an FFI) has chosen to treat as a single obligation in order to treat the obligations as preexisting obligations pursuant to paragraph (b)(104)(ii) of this section or in order to share documentation between the obligations pursuant to § 1.1471–3(c)(8). A withholding agent that has opted to treat multiple obligations as consolidated obligations pursuant to the previous sentence must also treat the obligations as a single obligation for purposes of satisfying the standards of knowledge requirements set forth in §§ 1.1471–3(e) and 1.1471–4(c)(2)(ii), and for purposes of determining the balance or value of any of the obligations when applying any of the account thresholds applicable to due diligence or reporting as set forth in §§ 1.1471–3(c)(6)(ii), 1.1471–3(d), 1.1471–4(c), 1.1471–5(a)(4), and 1.1471–5(b)(3)(vii). For example, with respect to consolidated obligations, if a withholding agent has reason to know that the chapter 4 status assigned to the account holder or payee of one of the consolidated obligations is inaccurate, then it has reason to know that the chapter 4 status assigned for all other consolidated obligations of the account holder or payee is inaccurate. Similarly, to the extent that an account balance or value is relevant for purposes of applying any account threshold to one or more of the consolidated obligations, the withholding agent must aggregate the balance or value of all such consolidated obligations.

(24) through (30) [Reserved]. For further guidance, see § 1.1471–1(b)(24) through (30).

(31) *Direct reporting NFFE.* The term direct reporting NFFE has the meaning set forth in § 1.1472–1(c)(3).

(32) through (34) [Reserved]. For further guidance, see § 1.1471–1(b)(32) through (34).

(35) *Effective date of the FFI agreement.* The term *effective date of the FFI agreement* with respect to an FFI or a branch of an FFI that is a participating FFI means the date on which the IRS issues a GIIN to the FFI or branch. For participating FFIs that receive a GIIN prior to June 30, 2014, the effective date of the FFI agreement is June 30, 2014.

(36) through (40) [Reserved]. For further guidance, see § 1.1471–1(b)(36) through (40).

(41) *Excepted NFFE.* The term *excepted NFFE* means a NFFE that is described in § 1.1472–1(c)(1).

(42) [Reserved]. For further guidance, see § 1.1471–1(b)(42).

(43) *Exempt recipient.* The term *exempt recipient* means a person described in § 1.6049–4(c)(1)(ii) (for interest, dividends, and royalties), a person described in § 1.6045–2(b)(2)(i) (for broker proceeds), and a person described in § 1.6041–3(q) (for rents, amounts paid on notional principal contracts, and other fixed or determinable income).

(44) through (47) [Reserved]. For further guidance, see § 1.1471–1(b)(44) through (47).

(48) *FFI agreement.* The term *FFI agreement* means an agreement that is described in § 1.1471–4(a). An FFI agreement includes a QI agreement, a WP agreement, and a WT agreement that

is entered into by an FFI (other than an FFI that is a registered deemed-compliant FFI, including a reporting Model 1 FFI) and that has an effective date or renewal date on or after June 30, 2014. The term *FFI agreement* also includes a QI agreement that is entered into by a foreign branch of a U.S. financial institution (other than a branch that is a reporting Model 1 FFI) and that has an effective date or renewal date on or after June 30, 2014.

(49) [Reserved]. For further guidance, see § 1.1471–1(b)(49).

(50) *Financial institution.* The term *financial institution* has the meaning set forth in § 1.1471–5(e) and includes a financial institution as defined in an applicable Model 1 or Model 2 IGA.

(51) through (66) [Reserved]. For further guidance, see § 1.1471–1(b)(51) through (66).

(67) *Intergovernmental agreement* (*IGA*). The term *intergovernmental agreement* or *IGA* means any applicable Model 1 or Model 2 IGA.

(68) through (75) [Reserved]. For further guidance, see § 1.1471–1(b)(68) through (75).

(76) *Limited branch.* The term *limited branch* has the meaning set forth in § 1.1471–4(e)(2)(iii). With respect to a reporting Model 2 FFI, a limited branch is a branch of the reporting Model 2 FFI that operates in a jurisdiction that prevents such branch from fulfilling the requirements of a participating FFI or deemed-compliant FFI, or that cannot fulfill the requirements of a participating FFI or deemed-compliant FFI due to the expiration of the transitional rule for limited branches under § 1.1471–4(e)(2)(v), and for which the reporting Model 2 FFI meets the terms of the applicable Model 2 IGA with respect to the branch.

(77) *Limited FFI.* The term *limited FFI* has the meaning set forth in § 1.1471–4(e)(3)(ii). With respect to a reporting Model 2 FFI, a limited FFI is a related entity that operates in a jurisdiction that prevents the entity from fulfilling the requirements of a participating FFI or deemed-compliant FFI or that cannot fulfill the requirements of a participating FFI or deemed-compliant FFI due to the expiration of the transitional rule for limited FFIs under § 1.1471–4(e)(3)(iv), and for which the reporting Model 2 FFI meets the requirements of the applicable Model 2 IGA with respect to the entity.

(78) through (80) [Reserved]. For further guidance, see § 1.1471–1(b)(78) through (80).

(81) *Non-exempt recipient.* The term *non-exempt recipient* means a person that is not an exempt recipient.

(82) [Reserved]. For further guidance, see § 1.1471–1(b)(82).

(83) *Nonreporting IGA FFI.* The term *nonreporting IGA FFI* means an FFI that is identified as a nonreporting financial institution pursuant to a Model 1 IGA or Model 2 IGA that is not a registered deemed-compliant FFI, and an FFI that is a resident of, or located or established in, a Model 1 or Model 2 IGA jurisdiction, as the context requires, and that meets the requirements for certified deemed-compliant FFI status under § 1.1471–5(f)(2).

(84) through (87) [Reserved]. For further guidance, see § 1.1471–1(b)(84) through (87).

(88) *Offshore obligation.* The term *offshore obligation* means an offshore obligation defined in § 1.6049–5(c)(1) (by substituting the terms *withholding agent* or *financial institution* for the term *payor*).

(89) through (90) [Reserved]. For further guidance, see § 1.1471–1(b)(89) through (90).

(91) *Participating FFI.* The term *participating FFI* means an FFI that has agreed to comply with the requirements of an FFI agreement, including an FFI described in a Model 2 IGA that has agreed to comply with the requirements of an FFI agreement (a *reporting Model 2 FFI*). The term *participating FFI* also includes a QI branch of a U.S. financial institution, unless such branch is a reporting Model 1 FFI.

(92) through (97) [Reserved]. For further guidance, see § 1.1471–1(b)(92) through (97).

(98) *Payor.* The term *payor* has the meaning set forth in §§ 31.3406(a)–2 and 1.6049–1(a)(2) and generally includes a withholding agent.

(99) [Reserved]. For further guidance, see § 1.1471–1(b)(99).

(100) *Person.* The term *person* has the meaning set forth in section 7701(a)(1) and the regulations thereunder and includes an entity or arrangement that is an insurance company. The term *person* also includes, with respect to a withholdable payment, a QI branch of a U.S. financial institution.

(101) through (103) [Reserved]. For further guidance, see § 1.1471–1(b)(101) through (103).

(104) [Reserved]. For further guidance, see § 1.1471–1(b)(104).

(i) The term *preexisting obligation* means any account, instrument, contract, debt, or equity interest maintained, executed, or issued by the withholding agent that is outstanding on June 30, 2014. With respect to a withholding agent that is a participating FFI, the term *preexisting obligation* means any account, instrument, or contract (including any debt or equity interest) maintained, executed, or issued by the FFI that is outstanding on the effective date of the FFI agreement. With respect to a withholding agent that is a registered deemed-compliant FFI, a preexisting obligation means any account, instrument, or contract (including any debt or equity interest) that is maintained, executed, or issued by the FFI prior to the later of the date that the FFI registers as a deemed-compliant FFI pursuant to § 1.1471–5(f)(1) and receives a GIIN or the date the FFI is required to implement its account opening procedures under § 1.1471–5(f).

(ii) [Reserved]. For further guidance, see § 1.1471–1(b)(104)(ii).

(A) The account holder or payee also holds with the withholding agent (or a member of the withholding agent's expanded affiliated group or sponsored FFI group) an account, instrument, contract, or equity interest that is a preexisting obligation under paragraph (b)(104)(i) of this section;

(B) The withholding agent (and, as applicable, the member of the withholding agent's expanded affiliated group or sponsored FFI group) treats both of the aforementioned obligations, and any other obligations of the payee or account holder that are treated as preexisting obligations under this paragraph (b)(104)(ii), as consolidated obligations; and

(C) With respect to an obligation that is subject to AML due diligence, the withholding agent is permitted to satisfy such AML due diligence for the obligation by relying upon the AML due diligence performed for the preexisting obligation described in paragraph (b)(104)(i) of this section.

(105) *Pre-FATCA Form W–8.* The term *pre-FATCA Form W–8* means a version of a Form W–8 that was issued by the IRS prior to 2013 (including an acceptable substitute form based on such version) and that does not contain chapter 4 statuses but otherwise meets the requirements of § 1.1441–1(e)(1)(ii) applicable to such certificate (or substitute form) and has not expired, or a Form W–8 that was issued prior to 2013 and furnished by an individual to establish such individual's foreign status but otherwise meets the requirements of § 1.1441–1(e)(1)(ii) applicable to such certificate and has not expired.

(106) through (112) [Reserved]. For further guidance, see § 1.1471–1(b)(106) through (112).

(113) *Reportable payment.* The term *reportable payment* means a payment of interest or dividends (as defined in section 3406(b)(2)) and other reportable

payments (as defined in section 3406(b)(3)).

(114) [Reserved]. For further guidance, see § 1.1471–1(b)(114).

(115) *Reporting Model 2 FFI.* The term *reporting Model 2 FFI* means a participating FFI that is described in § 1.1471–1(b)(91).

(116) through (122) [Reserved]. For further guidance, see § 1.1471–1(b)(116) through (122).

(123) *Sponsored direct reporting NFFE.* The term *sponsored direct reporting NFFE* has the meaning set forth in § 1.1472–1(c)(5).

(124) *Sponsoring entity.* The term *sponsoring entity* means (i) an entity that registers with the IRS and agrees to perform the due diligence, withholding, and reporting obligations of one or more FFIs pursuant to § 1.1471–5(f)(1)(i)(F) or (f)(2)(iii); or (ii) an entity that registers with the IRS and agrees to perform the due diligence and reporting obligations of one or more direct reporting NFFEs pursuant to § 1.1472–1(c)(5).

(125) *Standardized industry coding system.* The term *standardized industry coding system* means a coding system used by the withholding agent or FFI to classify account holders by business type for purposes other than U.S. tax purposes and that was implemented by the withholding agent by the later of January 1, 2012, or six months after the date the withholding agent was formed or organized.

(126) through (127) [Reserved]. For further guidance, see § 1.1471–1(b)(126) through (127).

(128) *Substantial U.S. owner.* The term *substantial U.S. owner* or *substantial United States owner* has the meaning set forth in § 1.1473–1(b). In the case of a reporting Model 2 FFI, in applying this section with respect to a passive NFFE the term *substantial U.S. owner* means a *controlling person* as defined in the applicable Model 2 IGA.

(129) through (134) [Reserved]. For further guidance, see § 1.1471–1(b)(129) through (134).

(135) *U.S. branch treated as a U.S. person.* The term *U.S. branch treated as a U.S. person* means a U.S. branch of a participating FFI, registered deemed-compliant FFI, or NFFE that is treated as a U.S. person under § 1.1441–1(b)(2)(iv)(A).

(136) through (140) [Reserved]. For further guidance, see § 1.1471–1(b)(136) through (140).

(141) *U.S. person*—(i) The term *U.S. person* or *United States person* means a person described in section 7701(a)(30), the United States government (including an agency or instrumentality thereof), a State (including an agency or instrumentality thereof), or the District of Columbia (including an agency or instrumentality thereof). The term *U.S. person* or *United States person* also means a foreign insurance company that has made an election under section 953(d), provided that either the foreign insurance company is not a specified insurance company (as described in § 1.1471–5(e)(1)(iv)) and is not licensed to do business in any State, or the foreign insurance company is a specified insurance company and is licensed to do business in any State.

(ii) The term *U.S. person* or *United States person* does not include a foreign insurance company that has made an election under section 953(d) if it is a specified insurance company and is not licensed to do business in any State.

(142) through (151) [Reserved]. For further guidance, see § 1.1471–1(b)(142) through (151).

(c) [Reserved]. For further guidance, see § 1.1471–1(c).

(d) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 4.** In § 1.1471–2,

■ a. Revise paragraphs (a)(1), (a)(2)(i), (a)(2)(ii) introductory text, (a)(2)(iii)(A), and (a)(2)(v).

■ b. Remove the heading of paragraph (a)(4)(ii), and add introductory text to paragraph (a)(4)(ii).

■ c. Revise paragraphs (a)(4)(ii)(A), (a)(4)(ii)(B), (b)(2)(i)(A)(*1*), (b)(2)(ii)(A)(*4*), (b)(2)(ii)(B)(*2*), (b)(2)(iv), and (b)(4)(ii).

The revisions read as follows:

**§ 1.1471–2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.**

(a) * * *

(1) [Reserved]. For further guidance, see § 1.1471–2T(a)(1).

(2) * * *

(i) [Reserved]. For further guidance, see § 1.1471–2T(a)(2)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–2T(a)(2)(ii).

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1471–2T(a)(2)(iii)(A).

* * * * *

(v) [Reserved]. For further guidance, see § 1.1471–2T(a)(2)(v).

* * * * *

(4) * * *

(ii) [Reserved]. For further guidance, see § 1.1471–2T(a)(4)(ii).

(A) [Reserved]. For further guidance, see § 1.1471–2T(a)(4)(ii)(A).

(B) [Reserved]. For further guidance, see § 1.1471–2T(a)(4)(ii)(B).

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) * * *

(*1*) [Reserved]. For further guidance, see § 1.1471–2T(b)(2)(i)(A)(*1*).

* * * * *

(ii) * * *

(A) * * *

(*4*) [Reserved]. For further guidance, see § 1.1471–2T(b)(2)(ii)(A)(*4*).

* * * * *

(B) * * *

(*2*) [Reserved]. For further guidance, see § 1.1471–2T(b)(2)(ii)(B)(*2*).

* * * * *

(iv) [Reserved]. For further guidance, see § 1.1471–2T(b)(2)(iv).

* * * * *

(4) * * *

(ii) [Reserved]. For further guidance, see § 1.1471–2T(b)(4)(ii).

* * * * *

■ **Par. 5.** Section 1.1471–2T is added to read as follows:

**§ 1.1471–2T Requirement to deduct and withhold tax on withholdable payments to certain FFIs (temporary).**

(a) [Reserved]. For further guidance, see § 1.1471–2(a).

(1) *General rule of withholding.* Under section 1471(a), notwithstanding any exemption from withholding under any other provision of the Code or regulations, a withholding agent must withhold 30 percent of any withholdable payment made after June 30, 2014, to a payee that is an FFI unless either the withholding agent can reliably associate the payment with documentation upon which it is permitted to rely to treat the payment as exempt from withholding under paragraph (a)(4) of this section or the payment is made under a grandfathered obligation that is described in paragraph (b) of this section or constitutes gross proceeds from the disposition of such an obligation. A withholding agent that is making a payment must determine who the payee is under § 1.1471–3(a) with respect to that payment and the chapter 4 status of such payee. See § 1.1471–3 for requirements for determining the chapter 4 status of a payee, including additional documentation requirements that apply when a payment is made to an intermediary or flow-through entity that is not the payee. Withholding under this section applies without regard to whether the payee receives a withholdable payment as a beneficial owner or as an intermediary. See paragraph (a)(2)(iv) of this section for a description of the withholding requirements imposed on territory financial institutions as withholding agents under chapter 4. In the case of a

withholdable payment to a NFFE, a withholding agent is required to determine whether withholding applies under section 1472 and § 1.1472–1. Except as otherwise provided in the regulations under chapter 4, a withholding obligation arises on the date a payment is made, as determined under § 1.1473–1(a).

(2) [Reserved]. For further guidance, see § 1.1471–2(a)(2).

(i) *Requirement to withhold on payments of U.S. source FDAP income to participating FFIs and deemed-compliant FFIs that are NQIs, NWPs, or NWTs.* A withholding agent that, after June 30, 2014, makes a payment of U.S. source FDAP income to a participating FFI or deemed-compliant FFI that is an NQI receiving the payment as an intermediary, or a NWP or NWT, must withhold 30 percent of the payment unless the withholding is reduced under this paragraph (a)(2)(i). A withholding agent is not required to withhold on a payment, or portion of a payment, that it can reliably associate, in the manner described in § 1.1471–3(c)(2), with a valid intermediary or flow-through withholding certificate that meets the requirements of § 1.1471–3(d)(4) and a withholding statement that meets the requirements of § 1.1471–3(c)(3)(iii)(B) and that allocates the payment or portion of the payment to payees for which no withholding is required under chapter 4. Further, a withholding agent is not required to withhold on a payment that it can reliably associate with documentation indicating that the payee is a U.S. branch of a participating FFI that is treated as a U.S. person under § 1.1441–1(b)(2)(iv)(A).

(ii) *Residual withholding responsibility of intermediaries and flow-through entities.* An intermediary or flow-through entity that receives a withholdable payment after June 30, 2014, is required to withhold on such payment to the extent required under chapter 4. Notwithstanding the previous sentence, an intermediary or flow-through entity is not required to withhold if another withholding agent has withheld the full amount required. Further, an NQI, NWP, or NWT is not required to withhold with respect to a withholdable payment under chapter 4 if it has provided a valid intermediary withholding certificate or flow-through withholding certificate and all of the information required by § 1.1471–3(c)(3)(iii), and it does not know, and has no reason to know, that another withholding agent failed to withhold the correct amount. A QI's, WP's, or WT's obligation to withhold and report is determined in accordance with its QI withholding agreement, WP agreement, or WT agreement.

(iii) [Reserved]. For further guidance, see § 1.1471–2(a)(2)(iii).

(A) *Election to be withheld upon for U.S. source FDAP income.* A withholding agent is required to withhold with respect to a payment, or portion of a payment, that is U.S. source FDAP income subject to withholding that is made after June 30, 2014, to a QI that has elected in accordance with this paragraph to be withheld upon, unless such withholding agent also makes an election to be withheld upon under this paragraph (a)(2)(iii)(A) or is an FFI that may not accept primary withholding responsibility for the payment. In such case, the withholding agent must withhold 30 percent of the portion of the payment that is allocable, pursuant to a withholding statement described in § 1.1471–3(c)(3)(iii)(B) provided by the QI, to recalcitrant account holders and nonparticipating FFIs. If no such allocation information is provided, the withholding agent must apply the presumption rules of § 1.1471–3(f) to determine the chapter 4 status of the payee. A QI that is an FFI and that makes the election to be withheld upon with respect to a payment of U.S. source FDAP income may not assume primary withholding responsibility under chapter 3 for that payment. Conversely, a QI that is an FFI and that does not make the election to be withheld upon with respect to a payment of U.S. source FDAP income is required to assume primary withholding responsibility under chapter 3 for that payment. The election to be withheld upon is only available with respect to a payment of U.S. source FDAP income if—

(*1*) through (*4*) [Reserved]. For further guidance, see § 1.1471–2(a)(2)(iii)(A)(*1*) through (*4*).

(B) [Reserved]. For further guidance, see § 1.1471–2(a)(2)(iii)(B).

(iv) [Reserved]. For further guidance, see § 1.1471–2(a)(2)(iv).

(v) *Withholding obligation of a foreign branch of a U.S. financial institution.* Generally, a foreign branch of a U.S. financial institution is a withholding agent and is not an FFI. However, a QI branch of a U.S. financial institution is both a withholding agent and either a participating FFI or a registered deemed-compliant FFI. Accordingly, a QI branch of a U.S. financial institution must withhold in accordance with this section and § 1.1472–1(b) in addition to meeting its obligations under either § 1.1471–4(b) and its FFI agreement or § 1.1471–5(f). Similarly, a foreign branch of a U.S. financial institution that is also a reporting Model 1 FFI is both a withholding agent and a registered deemed-compliant FFI. Accordingly, a foreign branch of a U.S. financial institution that is a reporting Model 1 FFI must withhold in accordance with this section and § 1.1472–1(b). A foreign branch of a U.S. financial institution that is not a QI is not permitted to make an election to be withheld upon.

(vi) [Reserved]. For further guidance, see § 1.1471–2(a)(2)(vi).

(3) [Reserved]. For further guidance, see § 1.1471–2(a)(3).

(4) [Reserved]. For further guidance, see § 1.1471–2(a)(4).

(i) through (i)(B) [Reserved]. For further guidance, see § 1.1471–2(a)(4)(i) through (a)(4)(i)(B).

(ii) *Exception to withholding for certain payments made prior to July 1, 2016 (transitional).*

(A) *In general.* For any withholdable payment made prior to July 1, 2016, with respect to a preexisting obligation for which a withholding agent does not have documentation indicating the payee's status as a nonparticipating FFI, the withholding agent is not required to withhold under this section and section 1471(a) unless the payee is a prima facie FFI.

(B) *Prima facie FFIs.* If the payee is a prima facie FFI, the withholding agent must treat the payee as a nonparticipating FFI beginning on January 1, 2015, until the date the withholding agent obtains documentation sufficient to establish a different chapter 4 status of the payee. A *prima facie FFI* means any payee if—

(*1*) through (*2*)(*xviii*) [Reserved]. For further guidance, see § 1.1471–2(a)(4)(ii)(B)(*1*) through (a)(4)(ii)(B)(*2*)(*xviii*).

(iii) through (viii) [Reserved]. For further guidance, see § 1.1471–2(a)(4)(iii) through (viii).

(5) through (5)(ii) [Reserved]. For further guidance, see § 1.1471–2(a)(5) through (a)(5)(ii).

(b) [Reserved]. For further guidance, see § 1.1471–2(b).

(1) [Reserved]. For further guidance, see § 1.1471–2(b)(1).

(2) [Reserved]. For further guidance, see § 1.1471–2(b)(2).

(i) [Reserved]. For further guidance, see § 1.1471–2(b)(2)(i).

(A) [Reserved]. For further guidance, see § 1.1471–2(b)(2)(i)(A).

(*1*) Any obligation outstanding on July 1, 2014;

(*2*) through (*3*) [Reserved]. For further guidance, see § 1.1471–2(b)(2)(i)(A)(*2*) through (*3*).

(B) [Reserved]. For further guidance, see § 1.1471–2(b)(2)(i)(B).

(ii) [Reserved]. For further guidance, see § 1.1471–2(b)(2)(ii).

(A) [Reserved]. For further guidance, see § 1.1471–2(b)(2)(ii)(A).

(*1*) through (*3*) [Reserved]. For further guidance, see § 1.1471–2(b)(2)(ii)(A)(*1*) through (*3*).

(*4*) A life insurance contract under which the entire contract value is payable no later than upon the death of the individual(s) insured under the contract but, in the case of a life insurance contract that contains a provision that permits the substitution of a new individual as the insured under the contract, only until a substitution occurs; and

(*5*) [Reserved]. For further guidance, see § 1.1471–2(b)(2)(ii)(A)(*5*).

(B) [Reserved]. For further guidance, see § 1.1471–2(b)(2)(ii)(B).

(*1*) [Reserved]. For further guidance, see § 1.1471–2(b)(2)(ii)(B)(*1*).

(*2*) Lacks a stated expiration or term (for example, a savings deposit or demand deposit, a deferred annuity contract, or an annuity contract that permits a substitution of a new individual as the annuitant under the contract);

(*3*) through (*4*) [Reserved]. For further guidance, see § 1.1471–2(b)(2)(ii)(B)(*3*) through (*4*).

(iii) [Reserved]. For further guidance, see § 1.1471–2(b)(2)(iii).

(iv) *Material modification.* In the case of an obligation that constitutes indebtedness for U.S. tax purposes, a material modification is any significant modification of the debt instrument as defined in § 1.1001–3(e). For life insurance contracts, a material modification includes any substitution of the insured under the contract. In all other cases, whether a modification of an obligation is material is determined based on the facts and circumstances.

(3) through (3)(iii) [Reserved]. For further guidance, see § 1.1471–2(b)(3) through (b)(3)(iii).

(4) [Reserved]. For further guidance, see § 1.1471–2(b)(4).

(i) [Reserved]. For further guidance, see § 1.1471–2(b)(4)(i).

(ii) *Determination of material modification.* For purposes of paragraph (b)(2)(iv) of this section (defining material modification), a withholding agent, other than the issuer of the obligation (or an agent of the issuer), is required to treat a modification of the obligation as material only if the withholding agent has actual knowledge thereof, such as in the event the withholding agent receives a disclosure indicating that there has been or will be a material modification to such obligation. The issuer of the obligation (or an agent of the issuer) that is a withholding agent is required to treat a modification of the obligation as material if the withholding agent knows or has reason to know that a material modification has occurred with respect to the obligation.

(iii) [Reserved]. For further guidance, see § 1.1471–2(b)(4)(iii).

(c) [Reserved]. For further guidance, see § 1.1471–2(c).

(d) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 6.** Section 1.1471–3 is amended:

■ 1. By adding paragraphs (c)(6)(ii)(B)(*7*), (c)(8)(v), (d)(5)(iii), and (d)(11)(x) through (xii).

■ 2. By revising paragraphs (a)(3)(iii), (a)(3)(v) through (vi), (b)(3), (c)(3)(ii)(C) through (D), (c)(3)(iii)(A) introductory text, (c)(3)(iii)(A)(*5*), (c)(3)(iii)(B)(*1*) through (*4*), (c)(5)(ii)(B), (c)(6)(ii)(B)(*3*), (c)(6)(ii)(B)(*5*) through (*6*), (c)(6)(ii)(C)(*3*) through (*5*), (c)(6)(ii)(E)(*3*), (c)(6)(iv), (c)(6)(v)(A) through (B), (c)(9)(ii)(B), (c)(9)(v), (d)(1), (d)(2)(i), (d)(2)(iii), (d)(4)(i) and (ii), (d)(4)(iii) introductory text, (d)(4)(iii)(A)(*1*), (d)(4)(iv)(A), (d)(4)(iv)(C) through (D), (d)(4)(v), (d)(5)(i) through (ii), (d)(6)(vii)(A)(*1*), (d)(11)(viii)(A) introductory text, (d)(11)(viii)(C), (d)(12)(iii)(A) through (B), (e)(2) through (3), (e)(4) introductory text, (e)(4)(i) through (iv), (e)(4)(v) introductory text, (e)(4)(v)(B)(*1*) through (*2*), (e)(4)(vi)(B), (e)(4)(vii)(B), (e)(4)(viii)(A)(*4*), and (f)(1) through (9).

The additions and revisions read as follows:

**§ 1.1471–3 Identification of payee.**

(a) * * *

(3) * * *

(iii) [Reserved]. For further guidance, see § 1.1471–3T(a)(3)(iii).

* * * * *

(v) [Reserved]. For further guidance, see § 1.1471–3T(a)(3)(v).

(vi) [Reserved]. For further guidance, see § 1.1471–3T(a)(3)(vi).

* * * * *

(b) * * *

(3) [Reserved]. For further guidance, see § 1.1471–3T(b)(3).

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(C) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(ii)(C).

(D) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(ii)(D).

* * * * *

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(iii)(A).

* * * * *

(*5*) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(iii)(A)(*5*).

* * * * *

(B) * * *

(*1*) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(iii)(B)(*1*).

(*2*) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(iii)(B)(*2*).

(*i*) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(iii)(B)(*2*)(*i*).

(*ii*) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(iii)(B)(*2*)(*ii*).

(*iii*) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(iii)(B)(*2*)(*iii*).

(*3*) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(iii)(B)(*3*).

(*4*) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(iii)(B)(*4*).

* * * * *

(5) * * *

(ii) * * *

(B) [Reserved]. For further guidance, see § 1.1471–3T(c)(5)(ii)(B).

* * * * *

(6) * * *

(ii) * * *

(B) * * *

(*3*) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(ii)(B)(*3*).

* * * * *

(*5*) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(ii)(B)(*5*).

(*6*) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(ii)(B)(*6*).

(*7*) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(ii)(B)(*7*).

(C) * * *

(*3*) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(ii)(C)(*3*).

(*4*) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(ii)(C)(*4*).

(*5*) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(ii)(C)(*5*).

* * * * *

(E) * * *

(*3*) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(ii)(E)(*3*).

* * * * *

(iv) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(iv).

(v) * * *

(A) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(v)(A).

(B) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(v)(B).

* * * * *

(8) * * *

(v) [Reserved]. For further guidance, see § 1.1471–3T(c)(8)(v).

(9) * * *

(ii) * * *

(B) [Reserved]. For further guidance, see § 1.1471–3T(c)(9)(ii)(B).

* * * * *

(v) [Reserved]. For further guidance, see § 1.1471–3T(c)(9)(v).

(d) * * *

(1) [Reserved]. For further guidance, see § 1.1471–3T(d)(1).

(2) * * *

(i) [Reserved]. For further guidance, see § 1.1471–3T(d)(2)(i).

* * * * *

(iii) [Reserved]. For further guidance, see § 1.1471–3T(d)(2)(iii).

* * * * *

(4) * * *

(i) [Reserved]. For further guidance, see § 1.1471–3T(d)(4)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–3T(d)(4)(ii).

(iii) [Reserved]. For further guidance, see § 1.1471–3T(d)(4)(iii).

(A) * * *

(*1*) [Reserved]. For further guidance, see § 1.1471–3T(d)(4)(iii)(A)(*1*).

* * * * *

(iv) * * *

(A) [Reserved]. For further guidance, see § 1.1471–3T(d)(4)(iv)(A).

* * * * *

(C) [Reserved]. For further guidance, see § 1.1471–3T(d)(4)(iv)(C).

(D) [Reserved]. For further guidance, see § 1.1471–3T(d)(4)(iv)(D).

(v) [Reserved]. For further guidance, see § 1.1471–3T(d)(4)(v).

(5) * * *

(i) [Reserved]. For further guidance, see § 1.1471–3T(d)(5)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–3T(d)(5)(ii) through (d)(5)(ii)(B).

(A) [Reserved]. For further guidance, see § 1.1471–3T(d)(5)(ii)(A).

(B) [Reserved]. For further guidance, see § 1.1471–3T(d)(5)(ii)(B).

(iii) [Reserved]. For further guidance, see § 1.1471–3T(d)(5)(iii) through (d)(5)(iii)(B).

(6) * * *

(vii) * * *

(A) * * *

(*1*) [Reserved]. For further guidance, see § 1.1471–3T(d)(6)(vii)(A)(*1*).

* * * * *

(11) * * *

(viii) * * *

(A) [Reserved]. For further guidance, see § 1.1471–3T(d)(11)(viii)(A).

* * * * *

(C) [Reserved]. For further guidance, see § 1.1471–3T(d)(11)(viii)(C).

* * * * *

(x) [Reserved]. For further guidance, see § 1.1471–3T(d)(11)(x).

(xi) [Reserved]. For further guidance, see § 1.1471–3T(d)(11)(xi).

(xii) [Reserved]. For further guidance, see § 1.1471–3T(d)(11)(xii) through (d)(11)(xii)(C).

(12) * * *

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1471–3T(d)(12)(iii)(A).

(B) [Reserved]. For further guidance, see § 1.1471–3T(d)(12)(iii)(B).

(e) * * *

(2) [Reserved]. For further guidance, see § 1.1471–3T(e)(2).

(3) [Reserved]. For further guidance, see § 1.1471–3T(e)(3).

(i) [Reserved]. For further guidance, see § 1.1471–3T(e)(3)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–3T(e)(3)(ii).

(iii) [Reserved]. For further guidance, see § 1.1471–3T(e)(3)(iii).

(iv) [Reserved]. For further guidance, see § 1.1471–3T(e)(3)(iv).

(4) [Reserved]. For further guidance, see § 1.1471–3T(e)(4).

(i) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(ii) through (e)(4)(ii)(B.

(A) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(ii)(A).

(B) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(ii)(B).

(iii) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(iii).

(iv) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(iv through (e)(4)(iv)(B)(*2*).

(v) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(v).

* * * * *

(B) * * *

(*1*) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(v)(B)(*1*).

(*2*) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(v)(B)(*2*).

* * * * *

(vi) * * *

(B) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(vi)(B).

(vii) * * *

(B) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(vii)(B).

* * * * *

(viii) * * *

(A) * * *

(*4*) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(viii)(A)(*4*).

* * * * *

(f) * * *

(1) [Reserved]. For further guidance, see § 1.1471–3T(f)(1).

(2) [Reserved]. For further guidance, see § 1.1471–3T(f)(2).

(3) [Reserved]. For further guidance, see § 1.1471–3T(f)(3).

(4) [Reserved]. For further guidance, see § 1.1471–3T(f)(4).

(5) [Reserved]. For further guidance, see § 1.1471–3T(f)(5).

(6) [Reserved]. For further guidance, see § 1.1471–3T(f)(6).

(7) [Reserved]. For further guidance, see § 1.1471–3T(f)(7) through (f)(7)(ii).

(i) [Reserved]. For further guidance, see § 1.1471–3T(f)(7)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–3T(f)(7)(ii).

(8) [Reserved]. For further guidance, see § 1.1471–3T(f)(8).

(9) [Reserved]. For further guidance, see § 1.1471–3T(f)(9) through (f)(9)(ii).

* * * * *

■ **Par. 7.** Section 1.1471–3T is added to read as follows:

**§ 1.1471–3T Identification of payee (temporary).**

(a) [Reserved]. For further guidance, see § 1.1471–3(a).

(1) through (2) [Reserved]. For further guidance, see § 1.1471–3(a)(1) through (2).

(3) [Reserved]. For further guidance, see § 1.1471–3(a)(3).

(i) through (ii)(B) [Reserved]. For further guidance, see § 1.1471–3(a)(3)(i) through (a)(3)(ii)(B).

(iii) *U.S. intermediary or agent of a foreign person.* A withholding agent that makes a withholdable payment to a U.S. person and has actual knowledge that the person receiving the payment is acting as an intermediary or agent of a foreign person with respect to the payment must treat such foreign person, and not the intermediary or agent, as the payee of such payment. Notwithstanding the previous sentence, a withholding agent that makes a withholdable payment to a U.S. financial institution or a U.S. insurance broker (to the extent such withholdable payment is a payment of premiums) that is acting as an intermediary or agent with respect to the payment on behalf of one or more foreign persons may treat the U.S. financial institution or U.S. insurance broker as the payee if the withholding agent does not have reason to know that the U.S. financial institution or U.S. insurance broker will not comply with its obligations to withhold under sections 1471 and 1472.

(iv) [Reserved]. For further guidance, see § 1.1471–3(a)(3)(iv).

(v) *Disregarded entity or limited branch.* Except as otherwise provided in paragraph (a)(3)(v) through (vii) of this section, a withholding agent that makes a withholdable payment to an entity that is disregarded for U.S. federal tax purposes under § 301.7701–2(c)(2)(i) as an entity separate from its single owner must treat the single owner as the payee. The rules under § 1.1471–3(d)(4) and (e)(3) apply to determine the circumstances under which a withholding agent may treat a payment made to a disregarded entity owned by an FFI as made to a payee that is a participating FFI or registered deemed-compliant FFI, and not as a payment made to a payee that is a nonparticipating FFI. A withholding agent that makes a payment to a limited branch (including an entity disregarded

as a separate entity from its owner if such owner is an FFI and the disregarded entity is unable to comply with the terms of an FFI agreement with respect to accounts that it maintains) will be required to treat the payment as being made to a nonparticipating FFI.

(vi) *U.S. branch of certain foreign banks or foreign insurance companies.* A withholdable payment to a U.S. branch of either a participating FFI or registered deemed-compliant FFI is a payment to a U.S. person if the U.S. branch is treated as a U.S. person for purposes of § 1.1441–1(b)(2)(iv). In such case the U.S. branch is treated as the payee. A U.S. branch, however, that is treated as a U.S. person under § 1.1441–1(b)(2)(iv) is not treated as a U.S. person for purposes of the withholding certificate it may provide to a withholding agent for purposes of chapter 4. Accordingly, a U.S. branch of either a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person must furnish a withholding certificate on a Form W–8 to certify its chapter 4 status (and not a Form W–9, ''*Request for Taxpayer Identification Number and Certification*''). See also paragraph (f)(6) of this section for the rules under which a withholding agent can presume a payment constitutes income that is effectively connected with a U.S. trade or business. A U.S. branch of either a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person for purposes of chapter 3 may not make an election to be withheld upon, as described in section 1471(b)(3) and § 1.1471–2(a)(2)(iii), for purposes of chapter 4. See § 1.1471–4(c)(2)(v) for the rule requiring a U.S. branch that has elected to be treated as a U.S. person to apply the due diligence rules applicable to a U.S. withholding agent in lieu of those otherwise applicable to a participating FFI. See also § 1.1474–1(i)(1) and (2) for the requirement of a U.S. branch to report information regarding certain U.S. owners of owner documented FFIs and passive NFFEs. See § 1.1471–4(d) for rules for when a U.S. branch of a participating FFI is required to report as a U.S. person.

(vii) [Reserved]. For further guidance, see § 1.1471–3(a)(3)(vii).

(b) [Reserved]. For further guidance, see § 1.1471–3(b).

(1) through (2) [Reserved]. For further guidance, see § 1.1471–3(b)(1) through (2).

(3) *Determination of whether the payment is made to a QI, WP, or WT.* A withholding agent may treat the person who receives a payment as a QI, WP, or WT if the withholding agent can reliably associate the payment with a valid Form W–8IMY, as described in paragraph (c)(3)(iii) of this section, that indicates that the person who receives the payment is a QI, WP, or WT, provides the person's QI–EIN, WP–EIN, or WT–EIN, and the person's GIIN, if applicable.

(4) [Reserved]. For further guidance, see § 1.1471–3(b)(4).

(c) [Reserved]. For further guidance, see § 1.1471–3(c).

(1) through (2)(ii) [Reserved]. For further guidance, see § 1.1471–3(c)(1) through (c)(2)(ii).

(3) [Reserved]. For further guidance, see § 1.1471–3(c)(3).

(i) [Reserved]. For further guidance, see § 1.1471–3(c)(3)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–3(c)(3)(ii).

(A) through (B) [Reserved]. For further guidance, see § 1.1471–3(c)(3)(ii)(A) through (B).

(C) The person's entity classification for U.S. tax purposes;

(D) The person's chapter 4 status; and

(E) [Reserved]. For further guidance, see § 1.1471–3(c)(3)(ii)(E).

(iii) [Reserved]. For further guidance, see § 1.1471–3(c)(3)(iii).

(A) *In general.* A withholding certificate of an intermediary, flow-through entity, or U.S. branch of such entity (whether or not such branch is treated as a U.S. person) is valid for purposes of chapter 4 only if it is furnished on a Form W–8IMY, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person with authority to sign for the person named on the form, its validity period has not expired, and it contains the following information, statements, and certifications—

(*1*) through (*4*) [Reserved]. For further guidance, see § 1.1471–3(c)(3)(iii)(A)(*1*) through (*4*).

(*5*) A GIIN, in the case of a participating FFI or a registered deemed-compliant FFI (including a U.S. branch of such an entity, whether or not such branch is treated as a U.S. person, and a QI, WP, or WT that is a participating FFI or registered deemed-compliant FFI), and an EIN in the case of a QI, WP, or WT. Additionally, if a branch (other than a U.S. branch) of a participating FFI or registered deemed-compliant FFI outside of its country of residence acts as an intermediary, the GIIN of such branch must be provided on the withholding certificate. In the case of a U.S. branch, the GIIN provided must be the GIIN assigned to the participating FFI or registered deemed-compliant FFI.

(*6*) through (*12*) [Reserved]. For further guidance, see § 1.1471–3(c)(3)(iii)(A)(*6*) through (*12*).

(B) [Reserved]. For further guidance, see § 1.1471–3(c)(3)(iii)(B).

(*1*) *In general.* A withholding statement forms an integral part of the withholding certificate and the penalties of perjury statement provided on the withholding certificate applies to the withholding statement as well. The withholding statement may be provided in any manner, and in any form, to which the person submitting the form and the withholding agent mutually agree, including electronically. A withholding statement may be provided electronically only if it meets the requirements of § 1.1441–1(e)(3)(iv)(B). The withholding statement must be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under chapter 4. A withholding agent will be liable for tax, interest, and penalties under § 1.1474–1(a) to the extent it does not follow the presumption rules of paragraph (f) of this section for any payment, or portion thereof, for which a withholding statement is required and the withholding agent does not have a valid withholding statement prior to making a payment. A withholding agent that is making a payment for which a withholding statement is also required for purposes of chapter 3 may only rely upon the withholding statement if, in addition to providing the information required by paragraph (c)(3)(iii)(B) of this section, the withholding statement also includes all of the information required for purposes of chapter 3 and specifies the chapter 4 status of each payee or pool of payees identified on the withholding statement for purposes of chapter 3.

(*2*) *Special requirements for an FFI withholding statement.*

(*i*) An FFI withholding statement may include either payee-specific information or pooled information that indicates the portion of the payment allocable to a chapter 4 withholding rate pool of U.S. payees, each class of recalcitrant account holders identified in § 1.1471–4(d)(6), or a class of nonparticipating FFIs. If payee-specific information is provided for purposes of chapter 4 it must indicate both the portion of the payment allocated to each payee and each payee's chapter 4 status. A participating FFI that applies the escrow procedures described in § 1.1471–4(b)(6) for dormant accounts must also indicate the portion of the payment allocated to a chapter 4 withholding rate pool of recalcitrant account holders that hold dormant accounts for which the participating FFI

(and not the withholding agent) will withhold in escrow. The withholding statement provided by a participating FFI that applies the election to backup withhold under § 1.1471–4(b)(3)(iii) must also indicate the portion of the reportable payment that is a withholdable payment allocated to each recalcitrant account holders subject to backup withholding under section 3406. See section 3406 for when backup withholding is required, including the exception to backup withholding under § 31.3406(g)–1(e). Regardless of whether the FFI withholding statement provides information on a pooled or payee-specific basis, a withholding statement provided by an FFI other than an FFI acting as a WP, WT, or QI with respect to the account must also identify each intermediary or flow-through entity that receives the payment and such entity's chapter 4 status and GIIN, when applicable. An FFI withholding statement must also include any other information that the withholding agent or payor reasonably requests in order to fulfill its obligations under chapter 4, and chapters 3 and 61, if applicable.

(*ii*) An FFI withholding statement provided by a reporting Model 2 FFI or a reporting Model 1 FFI may indicate, with respect to a withholdable payment, that the payment is allocable to a chapter 4 withholding rate pool of U.S. payees, which is comprised of account holders that are not subject to withholding under chapters 3 or 4 or to backup withholding under section 3406 (for example, presumed U.S. non-exempt recipients) and that are, with respect to a reporting Model 2 FFI, the holders of non-consenting U.S. accounts as described in an applicable IGA when the FFI reports the accounts in one of the pools described in § 1.1471–4(d)(6) for the year in which the payment is made; or with respect to a reporting Model 1 FFI, the holders of accounts that have U.S. indicia for which appropriate documentation sufficient to treat the accounts as held by other than specified U.S. persons has not been provided pursuant to an applicable Model 1 IGA and the reporting Model 1 FFI reports the accounts as U.S. reportable accounts pursuant to the applicable Model 1 IGA for the year in which the payment is made.

(*iii*) An FFI withholding statement provided by a participating FFI or registered deemed-compliant FFI that is a non-U.S. payor (a payor other than a U.S. payor as defined in § 1.6049–5(c)(5)) may indicate, with respect to a withholdable payment, that the payment is allocable to a chapter 4 withholding rate pool of U.S. payees (in addition to the U.S. payees described in paragraph (c)(3)(iii)(B)(*2*)(*ii*) of this section), which is comprised of account holders that are not subject to withholding under chapters 3 or 4 or to backup withholding under section 3406 and that are, with respect to a participating FFI (including a reporting Model 2 FFI), account holders that hold U.S. accounts (as defined in § 1.1471–1(b)(134) and an applicable Model 2 IGA) that the FFI reports as U.S. accounts pursuant to § 1.1471–4(d)(3) or (5) for the year in which the payment is made; with respect to a registered deemed-compliant FFI (other than a reporting Model 1 FFI), account holders of U.S. accounts that the FFI reports pursuant to the conditions of its applicable deemed-compliant status under § 1.1471–5(f)(1) for the year in which the payment is made; or with respect to a reporting Model 1 FFI, account holders of U.S. accounts that the reporting Model 1 FFI reports as reportable U.S. accounts pursuant to an applicable Model 1 IGA, and which includes the U.S. TINs of such account holders, for the year in which the payment is made.

(*3*) *Special requirements for a chapter 4 withholding statement.* A chapter 4 withholding statement must contain the name, address, TIN (if any), entity type, and chapter 4 status of each payee, the amount allocated to each payee, a valid withholding certificate or other appropriate documentation sufficient to establish the chapter 4 status of each payee, and each intermediary or flow-through entity that receives the payment on behalf of the payee, in accordance with paragraph (d) of this section, and any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 4. Notwithstanding the prior sentence, a chapter 4 withholding statement is permitted to provide pooled allocation information with respect to payees that are treated as nonparticipating FFIs. Additionally, if the payment is a reportable amount under chapters 3 or 61, see the provisions of those chapters for any additional information that may be required (including pooled information under the alternative procedures described in § 1.1441–1(e)(3)(iv)(D), if applicable).

(*4*) *Special requirements for an exempt beneficial owner withholding statement.* An exempt beneficial owner withholding statement must include the name, address, TIN (if any), entity type, and chapter 4 status of each exempt beneficial owner on behalf of which the nonparticipating FFI is receiving the payment, the amount of the payment allocable to each exempt beneficial owner, a valid withholding certificate or other documentation sufficient to establish the chapter 4 status of each exempt beneficial owner in accordance with paragraph (d) of this section, and any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 4. The withholding statement must allocate the remainder of the payment that is not allocated to an exempt beneficial owner to the nonparticipating FFI receiving the payment. With respect to the amount of the payment allocable to each exempt beneficial owner and subject to withholding under chapter 3, see § 1.1441–1(e)(3)(iv).

(C) through (H) [Reserved]. For further guidance, see § 1.1471–3(c)(3)(iii)(C) through (H).

(iv) through (v) [Reserved]. For further guidance, see § 1.1471–3(c)(3)(iv) through (v).

(4) [Reserved]. For further guidance, see § 1.1471–3(c)(4).

(5) [Reserved]. For further guidance, see § 1.1471–3(c)(5).

(i) [Reserved]. For further guidance, see § 1.1471–3(c)(5)(i) through (c)(5)(i)(E).

(ii) [Reserved]. For further guidance, see § 1.1471–3(c)(5)(ii).

(A) [Reserved]. For further guidance, see § 1.1471–3(c)(5)(ii)(A).

(B) *Preexisting obligation documentary evidence.* With respect to a preexisting obligation of an entity, any classification in the withholding agent's records with respect to the payee that was determined based on documentation supplied by the payee (or other person receiving the payment) or a standardized industry coding system and that was recorded by the withholding agent consistent with its normal business practices for AML or another regulatory purpose (other than for tax purposes), to the extent permitted by paragraph (d) of this section and provided there is no U.S. indicia associated with the payee for which appropriate curing documentation has not been obtained as set forth in paragraph (e) of this section; and

(C) [Reserved]. For further guidance, see § 1.1471–3(c)(5)(ii)(C).

(6) [Reserved]. For further guidance, see § 1.1471–3(c)(6).

(i) [Reserved]. For further guidance, see § 1.1471–3(c)(6)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–3(c)(6)(ii).

(A) [Reserved]. For further guidance, see § 1.1471–3(c)(6)(ii)(A).

(B) [Reserved]. For further guidance, see § 1.1471–3(c)(6)(ii)(B).

(*1*) through (*2*) [Reserved]. For further guidance, see § 1.1471–3(c)(6)(ii)(B)(*1*) through (*2*).

(*3*) A beneficial owner withholding certificate that is provided by an entity described in paragraph (c)(6)(ii)(C)(*2*) of this section (other than an entity described in paragraph (c)(6)(ii)(C)(*2*)(*iii*) of this section) and documentary evidence establishing the entity's foreign status when both are provided together;

(*4*) [Reserved]. For further guidance, see § 1.1471–3(c)(6)(ii)(B)(*4*).

(*5*) A withholding certificate, written statement, or documentary evidence furnished by a foreign government, government of a U.S. territory, foreign central bank (including the Bank for International Settlements), international organization, or entity that is wholly owned by any such entities;

(*6*) Documentary evidence that is not generally renewed or amended (such as a certificate of incorporation); and

(*7*) For the validity period of a beneficial owner withholding certificate provided by an entity described in paragraph (c)(6)(ii)(C)(*2*)(*iii*) of this section, see § 1.1441–1(e)(4)(ii).

(C) [Reserved]. For further guidance, see § 1.1471–3(c)(6)(ii)(C).

(*1*) through (*2*) [Reserved]. For further guidance, see § 1.1471–3(c)(6)(ii)(C)(*1*) through (c)(6)(ii)(C)(*2*)(*x*).

(*3*) A withholding certificate or written statement of an owner-documented FFI, but not including the withholding statements, documentary evidence, and withholding certificates of its owners (unless such documentation is permitted indefinite validity under another provision);

(*4*) An owner reporting statement associated with a withholding certificate of an owner-documented FFI, provided the account balance of all accounts held by such owner-documented FFI with the withholding agent does not exceed $1,000,000 on the later of June 30, 2014, or the last day of the calendar year in which the account was opened, and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471–5(b)(4)(iii), and the owner-documented FFI does not have any contingent beneficiaries or designated classes with unidentified beneficiaries; and

(*5*) A withholding certificate of a passive NFFE or excepted territory NFFE, provided the account balance of all accounts held by such entity with the withholding agent does not exceed $1,000,000 on the later of June 30, 2014, or the last day of the calendar year in which the account was opened, and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471–5(b)(4)(iii), and the withholding agent does not know or have reason to know that the entity has any contingent beneficiaries or designated classes with unidentified beneficiaries.

(D) [Reserved]. For further guidance, see § 1.1471–3(c)(6)(ii)(D).

(E) [Reserved]. For further guidance, see § 1.1471–3(c)(6)(ii)(E).

(*1*) through (*2*) [Reserved]. For further guidance, see § 1.1471–3(c)(6)(ii)(E)(*1*) through (*2*).

(*3*) *Withholding agent's obligation with respect to a change in circumstances.* A certificate or other documentation becomes invalid on the date that the withholding agent holding the certificate or documentation knows or has reason to know that circumstances affecting the correctness of the certificate or documentation have changed. However, a withholding agent may choose to treat a person as having the same chapter 4 status that it had prior to the change in circumstances until the earlier of 90 days from the date that the certificate or documentation became invalid due to the change in circumstances or the date that a new certificate or new documentation is obtained. See, however, § 1.1441–1(e)(4)(ii)(D) for requirements, including the requirement to withhold under chapters 3 or 61, applicable when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441–1(b)(3)(iv). A withholding agent may rely on a certificate without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed. A withholding agent may require a new certificate or additional documentation at any time prior to a payment, regardless of whether the withholding agent knows or has reason to know that any information stated on the certificate or documentation has changed.

(iii) through (iii)(B) [Reserved]. For further guidance, see § 1.1471–3(c)(6)(iii) through (c)(6)(iii)(B).

(iv) *Electronic transmission of withholding certificate, written statement, and documentary evidence.* A withholding agent may accept a withholding certificate (including an acceptable substitute form), a written statement, or other such form as the IRS may prescribe, electronically in accordance with the requirements set forth in § 1.1441–1(e)(4)(iv)(B).

(v) [Reserved]. For further guidance, see § 1.1471–3(c)(6)(v).

(A) *In general.* A withholding agent may substitute its own form for an official Form W–8 (or such other official form as the IRS may prescribe). A substitute form will be acceptable if it contains provisions that are substantially similar to those of the official form, it contains the same certifications relevant to the transactions as are contained on the official form and these certifications are clearly set forth, and the substitute form includes a signature-under-penalties-of-perjury statement identical to the one on the official form. The substitute form is acceptable even if it does not contain all of the provisions contained on the official form, so long as it contains those provisions that are relevant to the transaction for which it is furnished. A withholding agent may choose to provide a substitute form that does not include all of the chapter 4 statuses provided on the official version but the substitute form must include any chapter 4 status for which withholding may apply, such as the categories for a nonparticipating FFI or passive NFFE. A withholding agent that uses a substitute form must furnish instructions relevant to the substitute form only to the extent and in the manner specified in the instructions to the official form. A withholding agent may use a substitute form that is written in a language other than English and may accept a form that is filled out in a language other than English, but the withholding agent must make available an English translation of the form and its contents to the IRS upon request. A withholding agent may refuse to accept a certificate (including the official Form W–8) from a person if the certificate provided is not an acceptable substitute form provided by the withholding agent, but only if the withholding agent furnishes the person with an acceptable substitute form within five business days of receipt of an unacceptable form from the person. In that case, the substitute form is acceptable only if it contains a notice that the withholding agent has refused to accept the form submitted by the person and that the person must submit the acceptable form provided by the withholding agent in order for the person to be treated as having furnished the required withholding certificate.

(B) *Non-IRS form for individuals.* A withholding agent may also substitute its own form for an official Form W–8BEN (for individuals), regardless of whether the substitute form is titled a Form W–8. However, in addition to the name and address of the individual that is the payee or beneficial owner, the substitute form must provide all countries in which the individual is resident for tax purposes, country of birth, a tax identification number (if any) for each country of residence, the individual's date of birth, and must

contain a signed and dated certification made under penalties of perjury that the information provided on the form is accurate and will be updated by the individual within 30 days of a change in circumstances that causes the form to become incorrect. Notwithstanding the previous sentence, the signed certification provided on a form need not be signed under penalties of perjury if the form is accompanied by documentary evidence that supports the individual's claim of foreign status. Such documentary evidence may be the same documentary evidence that is used to support foreign status in the case of a payee whose account has U.S. indicia as described in paragraph (e) of this section or § 1.1471–4(c)(4)(i)(A). The form may also request other information required for purposes of tax or AML due diligence in the United States or in other countries.

(vi) through (vii) [Reserved]. For further guidance, see § 1.1471–3(c)(6)(vi) through (vii).

(7) through (7)(ii) [Reserved]. For further guidance, see § 1.1471–3(c)(7) through (c)(7)(ii).

(8) [Reserved]. For further guidance, see § 1.1471–3(c)(8).

(i) through (iv) [Reserved]. For further guidance, see § 1.1471–3(c)(8)(i) through (iv).

(v) *Preexisting account.* A withholding agent may rely on documentation furnished by a payee for a preexisting account held at another branch location of the same withholding agent or at a branch location of a member of the expanded affiliated group of the withholding agent if the withholding agent obtains and reviews copies of such documentation supporting the chapter 4 status designated for the payee and the withholding agent has no reason to know that, at the time the documentation is obtained by the withholding agent, the documentation is unreliable or incorrect. For example, the withholding agent may not rely on documentation furnished by a payee for a preexisting account held at another branch location of the same withholding agent or at a branch location of a member of the expanded affiliated group of the withholding agent if, based on information in the withholding agent's account records, the withholding agent has reason to know that such documentation is unreliable or incorrect.

(9) [Reserved]. For further guidance, see § 1.1471–3(c)(9).

(i) [Reserved]. For further guidance, see § 1.1471–3(c)(9)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–3(c)(9)(ii).

(A) [Reserved]. For further guidance, see § 1.1471–3(c)(9)(ii)(A).

(B) The third-party data provider must be in the business of providing credit reports or business reports to customers unrelated to it and must have reviewed all information it has for the entity and verified that such additional information does not conflict with the chapter 4 status claimed by the entity. For purposes of this paragraph (c)(9)(ii)(B), a customer is related to a third-party data provider if they have a relationship with each other that is described in section 267(b).

(C) through (F) [Reserved]. For further guidance, see § 1.1471–3(c)(9)(ii)(C) through (F).

(iii) through (iv)(D) [Reserved]. For further guidance, see § 1.1471–3(c)(9)(iii) through (c)(9)(iv)(D).

(v) *Reliance upon documentation for accounts acquired in merger or bulk acquisition for value.* A withholding agent that acquires an account from a predecessor or transferor in a merger or bulk acquisition of accounts for value is permitted to rely upon valid documentation (or copies of valid documentation) collected by the predecessor or transferor. In addition, a withholding agent that acquires an account in a merger or bulk acquisition of accounts for value, other than a related party transaction, from a U.S. withholding agent, a participating FFI that has completed all due diligence required under its agreement with respect to the accounts transferred, or a reporting Model 1 FFI that has completed all due diligence required pursuant to the applicable Model 1 IGA, may also rely upon the predecessor's or transferor's determination of the chapter 4 status of an account holder for a transition period of the lesser of six months from the date of the merger or until the acquirer knows that the claim of status is inaccurate or a change in circumstances occurs. At the end of the transition period, the acquirer will be permitted to rely upon the predecessor's determination as to the chapter 4 status of the account holder only if the documentation that the acquirer has for the account holder, including documentation obtained from the predecessor or transferor, supports the chapter 4 status claimed. An acquirer that discovers at the end of the transition period that the chapter 4 status assigned by the predecessor or transferor to the account holder was incorrect and, as a result, has not withheld as it would have been required to but for its reliance upon the predecessor's determination, will be required to withhold on payments made after the transition period, if any, to the account holder equal to the amount of tax that should have been withheld during the transition period but for the erroneous classification as to the account holder's status. For purposes of this paragraph (c)(9)(v), a related party transaction is a merger or sale of accounts in which either the acquirer is in the same expanded affiliated group as the predecessor or transferor prior to or after the merger or acquisition or the predecessor or transferor (or shareholders of the predecessor or transferor) obtains a controlling interest in the acquirer or in a newly formed entity created for purposes of the merger or acquisition. See § 1.1471–4(c)(2)(ii)(B) for an additional allowance for a participating FFI to rely upon the determination made by another participating FFI as to the chapter 4 status of an account obtained as part of a merger or bulk acquisition for value.

(d) [Reserved]. For further guidance, see § 1.1471–3(d).

(1) *Reliance on pre-FATCA Form W–8.* To establish a payee's status as a foreign individual, foreign government, government of a U.S. territory, or international organization, a withholding agent may rely upon a pre-FATCA Form W–8 in lieu of obtaining an updated version of the withholding certificate. This reliance is only available in the case of a payee that is an international organization if such payee is described under section 7701(a)(18). To establish the chapter 4 status of a payee that is not a foreign individual, a foreign government, or an international organization, a withholding agent may, for payments made prior to January 1, 2017, rely upon a pre-FATCA Form W–8 in lieu of obtaining an updated version of the withholding certificate if the withholding agent has one or more forms of documentary evidence described in paragraphs (c)(5)(ii), as necessary, to establish the chapter 4 status of the payee and the withholding agent has obtained any additional documentation or information required for the particular chapter 4 status (such as withholding statements, certifications as to owners, or required documentation for underlying owners), as set forth under the specific payee rules in paragraphs (d)(2) through (12) of this section. See paragraph (d)(4)(ii) and (iv) of this section for specific requirements applicable when relying upon a pre-FATCA Form W–8 for a participating FFI or registered deemed-compliant FFI. This paragraph (d)(1) does not apply to nonregistering local banks, FFIs with only low-value accounts, sponsored FFIs, owner-documented FFIs, territory financial institutions that are not the

beneficial owners of the payment, foreign central banks (other than a foreign central bank specifically identified as an exempt beneficial owner under a Model 1 IGA or Model 2 IGA), or international organizations not described under section 7701(a)(18).

(2) [Reserved]. For further guidance, see § 1.1471–3(d)(2).

(i) *In general.* A withholding agent must treat a payee as a U.S. person, including a payee that is a foreign branch of a U.S. person (other than a branch that is treated as a QI) or is an FFI that has elected to be treated as a U.S. person for tax purposes under section 953(d), if it has a valid Form W–9 associated with the payee or if it must presume the payee is a U.S. person under the presumption rules set forth in paragraph (f) of this section. Consistent with the presumption rules in paragraph (f)(3) of this section, a withholding agent must treat a payee that has provided a valid Form W–9 as a specified U.S. person unless the Form W–9 contains a certification that the payee is other than a specified U.S. person. Notwithstanding the foregoing, a withholding agent receiving a Form W–9 indicating that the payee is other than a specified U.S. person must treat the payee as a specified U.S. person if the withholding agent knows or has reason to know that the payee's claim that it is other than a specified U.S. person is incorrect. For example, a withholding agent that receives a Form W–9 from a payee that is an individual would be required to treat the payee as a specified U.S. person regardless of whether the Form W–9 indicates that the payee is not a specified U.S. person, because an individual that is a U.S. person is not excepted from the definition of a specified U.S. person.

(ii) [Reserved]. For further guidance, see § 1.1471–3(d)(2)(ii).

(iii) *Preexisting obligations.* As an alternative to applying the rules in paragraphs (d)(2)(i) and (ii) of this section, a withholding agent that makes a payment with respect to a preexisting obligation may treat a payee as a U.S. person if it has a notation in its files that it has previously reviewed a Form W–9 that established that the payee is a U.S. person and has retained the payee's TIN. A withholding agent, other than a participating FFI or registered deemed-compliant FFI, may also treat a payee of a payment with respect to a preexisting obligation as a U.S. person if it has previously classified the payee as a U.S. person for purposes of chapters 3 or 61 and established (through the documentation or the application of the rules in § 1.6049–4(c)(1)(ii)) that the payee is an exempt recipient for purposes of chapter 61.

(3) through (3)(ii) [Reserved]. For further guidance, see § 1.1471–3(d)(3) through (d)(3)(ii).

(4) [Reserved]. For further guidance, see § 1.1471–3(d)(4).

(i) *In general.* Except as otherwise provided in paragraphs (d)(4)(ii) through (iv) or paragraphs (e)(3)(i) and (ii) of this section, a withholding agent may treat a payee as a participating FFI or registered deemed-compliant FFI only if the withholding agent has a withholding certificate identifying the payee as a participating FFI, registered deemed-compliant FFI, or branch thereof (including an entity that is disregarded as an entity separate from the FFI), and the withholding certificate contains a GIIN for the payee that is verified against the published IRS FFI list in the manner described in paragraph (e)(3) of this section (indicating when a withholding agent may rely upon a GIIN). For payments made prior to January 1, 2016, a registered deemed-compliant FFI that is a sponsored FFI must provide the GIIN of its sponsoring entity on the withholding certificate if the sponsored FFI has not obtained a GIIN. See paragraph (c)(3)(iii) of this section for additional requirements that apply to a valid withholding certificate provided by a participating FFI or registered deemed-compliant FFI that is a flow-through entity or is acting as an intermediary with respect to the payment, or by a U.S. branch of a participating FFI or registered deemed-compliant FFI (including a U.S. entity that is disregarded as an entity separate from the FFI).

(ii) *Exception for payments made prior to January 1, 2017, with respect to preexisting obligations (transitional).* For payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payee as a participating FFI or registered deemed-compliant FFI, or branch thereof (including an entity that is disregarded as an entity separate from the FFI), if the payee has provided the withholding agent with a pre-FATCA Form W–8 and (either orally or in writing) its GIIN and has indicated whether it is a participating FFI or a registered deemed-compliant FFI (or whether such branch or disregarded entity is treated as a participating FFI or a registered deemed-compliant FFI), and the withholding agent has verified the GIIN of the FFI, branch, or disregarded entity, as the context requires, in the manner described in paragraph (e)(3) of this section.

(iii) *Exception for offshore obligations.* A withholding agent that makes a payment, other than a payment of U.S. source FDAP income, with respect to an offshore obligation may treat a payee as a participating FFI or registered deemed-compliant FFI, or branch thereof (including an entity that is disregarded as an entity separate from the FFI), if the payee provides the withholding agent with its GIIN and states whether the payee is a participating FFI or a registered deemed-compliant FFI, and the withholding agent verifies the GIIN in the manner described in paragraph (e)(3) of this section. A withholding agent that makes a payment of U.S. source FDAP income with respect to an offshore obligation may treat the payee as a participating FFI or registered deemed-compliant FFI, or branch thereof (including an entity that is disregarded as an entity separate from the FFI) if—

(A) [Reserved]. For further guidance, see § 1.1471–3(d)(4)(iii)(A).

(*1*) A written statement that contains the payee's GIIN, states that the payee is the beneficial owner of the payment, and indicates whether the payee is treated as a participating FFI or a registered deemed-compliant FFI, as appropriate; and

(*2*) [Reserved]. For further guidance, see § 1.1471–3(d)(4)(iii)(A)(*2*).

(B) [Reserved]. For further guidance, see § 1.1471–3(d)(4)(iii)(B).

(iv) [Reserved]. For further guidance, see § 1.1471–3(d)(4)(iv).

(A) For payments made prior to January 1, 2015, a withholding agent may treat a payee that is an FFI or branch of an FFI (including an entity that is disregarded as an entity separate from the FFI) as a reporting Model 1 FFI if it receives a withholding certificate from the payee indicating that the payee is a reporting Model 1 FFI and the country in which the payee is a reporting Model 1 FFI, regardless of whether the certificate contains a GIIN for the payee.

(B) [Reserved]. For further guidance, see § 1.1471–3(d)(4)(iv)(B).

(C) For payments made prior to January 1, 2015, with respect to an offshore obligation, a withholding agent may treat a payee as a reporting Model 1 FFI if the payee informs the withholding agent that the payee is a reporting Model 1 FFI and provides the country in which the payee is a reporting Model 1 FFI. In the case of a payment of U.S. source FDAP income, such payee must also provide a written statement that it is the beneficial owner and documentary evidence supporting the payee's claim of foreign status (as

described in paragraph (c)(5)(i) of this section).

(D) For payments made on or after January 1, 2015, that do not constitute U.S. source FDAP income, the withholding agent may continue to treat a payee as a reporting Model 1 FFI if the payee provides the withholding agent with its GIIN, either orally or in writing, and the withholding agent verifies the GIIN in the manner described in paragraph (e)(3) of this section.

(v) *Reason to know.* Except as otherwise provided in this paragraph (d)(4), a withholding certificate or written statement pursuant to which the payee claims a status as a participating FFI or registered deemed-compliant FFI but does not provide the payee's GIIN or provides a GIIN that does not appear on the current published IRS FFI list will be invalid for purposes of chapter 4 beginning on the date that is 90 days after the date that the claim is made by the payee. The payee will be treated as an undocumented payee beginning on the date that the form is invalid, and will be subject to withholding on payments made on or after that date until valid documentation (which includes a confirmed GIIN under paragraph (e)(3)(i) of this section) is provided. A withholding agent that has withheld as required in the previous sentence may apply reimbursement or set-off procedures, as described in § 1.1474–2(a), if it is later determined that the payee appeared on the IRS FFI list as a participating FFI or registered deemed-compliant FFI at the time of payment.

(5) [Reserved]. For further guidance, see § 1.1471–3(d)(5).

(i) *In general.* Except as otherwise provided in this paragraph (d)(5), a withholding agent may treat a payee as a certified deemed-compliant FFI, other than a sponsored, closely held investment vehicle, if the withholding agent has a withholding certificate that identifies the payee as a certified deemed-compliant FFI, and the withholding certificate contains a certification by the payee that it meets the requirements to qualify as the type of certified deemed-compliant FFI identified on the withholding certificate. See paragraph (c)(3)(iii) of this section for additional requirements that apply to a valid withholding certificate provided by a certified deemed-compliant FFI that is a flow-through entity or is acting as an intermediary with respect to the payment, or by a U.S. branch of a certified deemed-compliant FFI.

(ii) *Sponsored, closely held investment vehicles*— (A) *In general.* A withholding agent may treat a payee as a sponsored, closely held investment vehicle described in § 1.1471–5(f)(2)(iii) if the withholding agent can reliably associate the payment with a withholding certificate that identifies the payee as a sponsored, closely held investment vehicle and includes the sponsoring entity's GIIN, which the withholding agent has verified against the published IRS FFI list in the manner described in paragraph (e)(3) of this section. In addition to the standards of knowledge rules indicated in paragraph (e) of this section, a withholding agent will have reason to know that the payee is not a sponsored, closely held investment vehicle described in § 1.1471–5(f)(2)(iii) if its AML due diligence indicates that the payee has in excess of 20 individual investors that own direct and/or indirect interests in the payee. See paragraph (c)(3)(iii) of this section for additional requirements that apply to a valid withholding certificate provided by a sponsored, closely held investment vehicle that is a flow-through entity or is acting as an intermediary with respect to the payment, or by a U.S. branch of such vehicle.

(B) *Offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as a sponsored, closely held investment vehicle if it obtains a written statement that indicates that the payee is a sponsored, closely held investment vehicle, and provides the sponsoring entity's GIIN, which the withholding agent has verified in the manner described in paragraph (e)(3) of this section. In the case of a payment of U.S. source FDAP income, the written statement must also indicate that the payee is the beneficial owner and must be supplemented with documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(iii) *Investment advisors and investment managers.*

(A) *In general.* A withholding agent may treat a payee as an investment advisor and investment manager described in § 1.1471–5(f)(2)(v) if the withholding agent can reliably associate the payment with a withholding certificate that identifies the payee as an investment advisor and investment manager. In addition to the standards of knowledge rules indicated in paragraph (e) of this section, a withholding agent will have reason to know that the payee is not an investment advisor and investment manager described in § 1.1471–5(f)(2)(v) if its AML due diligence documentation indicates that the payee has financial accounts.

*(B)* Offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as an investment advisor and investment manager described in § 1.1471–5(f)(2)(v) if it obtains a written statement that indicates that the payee is an investment advisor and investment manager. In the case of a payment of U.S. source FDAP income, the written statement must also indicate that the payee is the beneficial owner and must be supplemented with documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(6) [Reserved]. For further guidance, see § 1.1471–3(d)(6).

(i) through (vi) [Reserved]. For further guidance, see § 1.1471–3(d)(6)(i) through (vi).

(vii) [Reserved]. For further guidance, see § 1.1471–3(d)(6)(vii).

(A) [Reserved]. For further guidance, see § 1.1471–3(d)(6)(vii)(A).

(*1*) The payment is made with respect to an offshore obligation that has a balance or value not exceeding $1,000,000 on the later of June 30, 2014, or the last day of the calendar year in which the account was opened, and the last day of each subsequent year preceding the payment, applying the aggregation principles of § 1.1471–5(b)(4);

(*2*) through (*5*) [Reserved]. For further guidance, see § 1.1471–3(d)(6)(vii)(A)(*2*) through (*5*).

(B) [Reserved]. For further guidance, see § 1.1471–3(d)(6)(vii)(B).

(7) through (10)(iii) [Reserved]. For further guidance, see § 1.1471–3(d)(7) through (d)(10)(iii).

(11) [Reserved]. For further guidance, see § 1.1471–3(d)(11).

(i) through (vii)(B)(*3*) [Reserved]. For further guidance, see § 1.1471–3(d)(11)(i) through (d)(11)(vii)(B)(*3*).

(viii) [Reserved]. For further guidance, see § 1.1471–3(d)(11)(viii).

(A) *Exception for payments made prior to January 1, 2017, with respect to preexisting obligations of $1,000,000 or less (transitional).* A withholding agent that makes a payment prior to January 1, 2017, with respect to a preexisting obligation with a balance or value not exceeding $1,000,000 on June 30, 2014, and December 31, 2015, applying the aggregation principles of § 1.1471–5(b)(4)(iii), may treat a payee as an excepted territory NFFE described in § 1.1472–1(c)(1)(iii) if the withholding agent—

(*1*) through (*3*) [Reserved]. For further guidance, see § 1.1471–3(d)(11)(viii)(A)(*1*) through (*3*).

(B) through (B)(*2*) [Reserved]. For further guidance, see § 1.1471–3(d)(11)(viii)(B) through (d)(11)(viii)(B)(*2*).

(C) *Exception for preexisting offshore obligations of $1,000,000 or less.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation with a balance or value not exceeding $1,000,000 on June 30, 2014 (or the effective date of the FFI agreement for a withholding agent that is a participating FFI) and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471–5(b)(4)(iii), may rely upon its review conducted for AML due diligence purposes to determine whether the owners of the payee are bona fide residents of the U.S. territory in which the payee is organized, in lieu of obtaining a written statement or documentary evidence described in paragraph (d)(11)(viii)(B) of this section. The preceding sentence applies only if the withholding agent is subject, with respect to such account, to the laws of a FATF-compliant jurisdiction and has identified the residence of the owners. The withholding agent relying upon this paragraph (d)(11)(viii)(C) must still obtain a written statement, documentary evidence (as provided in paragraph (d)(11)(viii)(B) of this section), or preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) establishing that the payee is an entity other than a depository institution, custodial institution, or specified insurance company organized in a U.S. territory.

(ix) through (ix)(C) [Reserved]. For further guidance, see § 1.1471–3(d)(11)(ix) through (d)(11)(ix)(C).

(x) *Identifying a direct reporting NFFE*—(A) *In general.* A withholding agent may treat a payment as having been made to a direct reporting NFFE if it has a withholding certificate that identifies the payee as a direct reporting NFFE and the withholding certificate contains a GIIN for the payee that is verified against the published IRS FFI list in the manner described in paragraph (e)(3)(iii) of this section (indicating when a withholding agent may rely upon a GIIN).

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payment as made to a direct reporting NFFE if the withholding agent has—

(*1*)(*i*) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) for the payee providing sufficient information to determine that the payee is a foreign entity that is not a financial institution; or

(*ii*) A written statement that the payee is a foreign entity that is not a financial institution and, for a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section), and

(*2*) Received (either orally or in writing) a GIIN from the direct reporting NFFE and has verified the GIIN in the manner described in paragraph (e)(3)(iii) of this section.

(C) *Special rule for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as a direct reporting NFFE if the withholding agent has preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) providing sufficient information to determine that the payee is a foreign entity that is not a financial institution and it has received (either orally or in writing) a GIIN from the direct reporting NFFE and has verified the GIIN in the manner described in paragraph (e)(3)(iii) of this section.

(xi) *Identifying a sponsored direct reporting NFFE*—(A) *In general.* A withholding agent may treat a payment as having been made to a sponsored direct reporting NFFE if it has a withholding certificate that identifies the payee as a sponsored direct reporting NFFE and the withholding certificate includes the sponsored direct reporting NFFE's GIIN, which the withholding agent has verified against the published IRS FFI list in the manner described in paragraph (e)(3)(iv) of this section (indicating when a withholding agent may rely upon a GIIN). For payments prior to January 1, 2016, a sponsored direct reporting NFFE may provide the GIIN of its sponsoring entity on the withholding certificate if the sponsored direct reporting NFFE has not obtained a GIIN.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payment as made to a sponsored direct reporting NFFE if the withholding agent has—

(*1*) A written statement that the payee is a foreign entity that is a sponsored direct reporting NFFE and, for a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section), and

(*2*) Received (either orally or in writing) the GIIN of the sponsored direct reporting NFFE and has verified the GIIN in the manner described in paragraph (e)(3)(iv) of this section. For payments prior to January 1, 2016, such requirement may be fulfilled by receiving (either orally or in writing) the GIIN of the sponsoring entity to the extent that the sponsored direct reporting NFFE has not obtained a GIIN.

(xii) *Identification of excepted inter-affiliate FFI.*

(A) *In general.* A participating FFI may treat a payee as an excepted inter-affiliate FFI described in § 1.1471–5(e)(5)(iv) if it has obtained a withholding certificate identifying the payee as such an entity.

(B) *Offshore obligations.* A participating FFI that makes a payment with respect to an offshore obligation may treat the payment as made to an excepted inter-affiliate FFI described in § 1.1471–5(e)(5)(iv) if the participating FFI obtains a written statement in which the payee certifies that it is a foreign entity operating as an excepted inter-affiliate FFI and that it is a member of an expanded affiliated group of participating FFIs or registered deemed-compliant FFIs. In the case of a payment of U.S. source FDAP income, the written statement must also indicate that the payee is the beneficial owner and must be supplemented with documentary evidence (as described in § 1.1471–3(c)(5)(i)) that provides the participating FFI with sufficient information to establish that the payee is an excepted inter-affiliate FFI described in § 1.1471–5(e)(5)(iv).

(C) *Reason to know.* A participating FFI has reason to know that an entity is not an excepted inter-affiliate FFI if it makes any payments (other than a payment of bank deposit interest) to such entity.

(12) [Reserved]. For further guidance, see § 1.1471–3(d)(12).

(i) through (ii) [Reserved]. For further guidance, see § 1.1471–3(d)(12)(i) through (ii).

(iii) [Reserved]. For further guidance, see § 1.1471–3(d)(12)(iii).

(A) *In general.* A passive NFFE will be required to provide to the withholding agent either a written certification (contained on a withholding certificate or in a written statement) that it does not have any substantial U.S. owners or the name, address, and TIN of each substantial U.S. owner of the NFFE, to avoid being withheld upon under § 1.1472–1(b).

(B) *Exception for preexisting obligations of $1,000,000 or less (transitional).* A withholding agent that makes a payment prior to January 1, 2017, with respect to a preexisting obligation with a balance or value not exceeding $1,000,000 on June 30, 2014,

and December 31, 2015, applying the aggregation principles of § 1.1471–5(b)(4)(iii), may rely upon its review conducted for AML due diligence purposes to identify any substantial U.S. owners of the payee in lieu of obtaining the certification or information required in paragraph (d)(12)(iii)(A) of this section if the withholding agent is subject, with respect to such obligation, to the laws of a FATF-compliant jurisdiction and has identified the residence of any controlling persons (within the meaning of the withholding agent's AML due diligence rules). A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation with a balance or value not exceeding $1,000,000 on June 30, 2014, (or the effective date of the FFI agreement for a withholding agent that is a participating FFI) and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471–5(b)(4)(iii), may rely upon its review conducted for AML due diligence purposes to identify any substantial U.S. owners of the payee in lieu of obtaining the certification or information required in paragraph (d)(12)(iii)(A) of this section if the withholding agent is subject, with respect to such obligation, to the laws of a FATF-compliant jurisdiction and has identified the residence of any controlling persons (within the meaning of the withholding agent's AML due diligence rules).

(e) [Reserved]. For further guidance, see § 1.1471–3(e).

(1) [Reserved]. For further guidance, see § 1.1471–3(e)(1).

(2) *Notification by the IRS.* A withholding agent that has received notification by the IRS that a claim of status as a U.S. person, a participating FFI, a deemed-compliant FFI, or other entity entitled to a reduced rate of withholding under section 1471 or 1472 is incorrect knows that such a claim is incorrect beginning on the date that is 30 days after the date the notice is received.

(3) *GIIN verification.*

(i) *In general.* A withholding agent that has received a payee's claim of status as a participating FFI or registered deemed-compliant FFI, and that is required under paragraph (d)(4) of this section to confirm that the FFI or branch thereof (including an entity that is disregarded as an entity separate from the FFI) claiming status as a participating FFI or registered deemed-compliant FFI has a GIIN that appears on the published IRS FFI list, has reason to know that such payee is not such a financial institution if the payee's name (including a name reasonably similar to the name the withholding agent has on file for the payee) and GIIN do not appear on the most recently published IRS FFI list within 90 days of the date that the claim is made. For purposes of this paragraph (e)(3)(i), the GIIN that the withholding agent must confirm is, with respect to a payee that is a participating FFI or registered deemed-compliant FFI, the GIIN assigned to the FFI identifying its country of residence for tax purposes (or place of organization if the FFI has no country of residence) or, with respect to a payment that is made to a branch of, or an entity that is disregarded as an entity separate from, a participating FFI or registered deemed-compliant FFI located outside of the FFI's country of residence or organization, the GIIN assigned to the FFI identifying the country in which the branch or disregarded entity receiving the payment is located. The withholding agent will have reason to know that a withholdable payment is made to a limited branch (including a disregarded entity) of a participating or registered deemed-compliant FFI when it is directed to make the payment to an address in a jurisdiction other than that of the participating FFI or registered deemed-compliant FFI (or branch of, or disregarded entity wholly owned by, such FFI) that is identified as the FFI (or branch of, or disregarded entity wholly owned by, such FFI) that is supposed to receive the payment and for which the FFI's GIIN is not confirmed as described in the preceding sentence. For example, if a participating FFI has identified Branch A, located in Jurisdiction A, as its branch to receive withholdable payments on a withholding certificate described in § 1.1471–3(e)(3)(ii), but subsequently directs the withholding agent to make the payment to an address of the FFI in Jurisdiction B, then the withholding agent will have reason to know that the payment is made to a limited branch, unless the withholding agent obtains documentation to treat the payment to the address in Jurisdiction B as made to a payee that is a participating FFI or deemed-compliant FFI. An FFI whose registration with the IRS as a participating FFI or a registered deemed-compliant FFI is in process but has not yet received a GIIN may provide a withholding agent with a Form W–8 claiming the chapter 4 status it applied for and writing ''applied for'' in the box for the GIIN. In such case, the withholding agent will have 90 days from the date it receives the Form W–8 to obtain a GIIN and to verify the accuracy of the GIIN against the published IRS FFI list before it has reason to know that the payee is not a participating FFI or registered deemed-compliant FFI. If an FFI is removed from the published IRS FFI list, the withholding agent knows that such FFI is not a participating FFI or registered deemed-compliant FFI on the earlier of the date that the withholding agent discovers that the FFI has been removed from the list or the date that is one year from the date the FFI's GIIN was actually removed from the list.

(ii) *Special rules for reporting Model 1 FFIs.* Prior to January 1, 2015, a withholding agent that receives an FFI's claim of status as a reporting Model 1 FFI will not be required to confirm that the FFI has a GIIN that appears on the published IRS FFI list. A withholding agent has reason to know that the FFI is not a reporting Model 1 FFI if the withholding agent does not have a permanent residence address for the FFI, or an address of the relevant branch of the FFI, located in the country in which the FFI claims to be a reporting Model 1 FFI, or the withholding agent is making a payment to a branch of the FFI at an address in a country that does not have in effect a Model 1 IGA.

(iii) *Special rules for direct reporting NFFEs.* A withholding agent that has received a payee's claim of status as a direct reporting NFFE and that is required under paragraph (d)(11)(x) of this section to confirm that the entity claiming status as a direct reporting NFFE has a GIIN that appears on the published IRS FFI list, has reason to know that such payee is not such a NFFE if the payee's name (including a name reasonably similar to the name the withholding agent has on file for the payee) and GIIN do not appear on the most recently published IRS FFI list within 90 days of the date that the claim is made. A payee whose registration with the IRS as a direct reporting NFFE is in process but has not yet received a GIIN may provide a withholding agent with a Form W–8 claiming the chapter 4 status it applied for and writing ''applied for'' in the box for the GIIN. In such case, the withholding agent will have 90 days from the date it receives the Form W–8 to verify the accuracy of the GIIN against the published IRS FFI list before it has reason to know that the payee is not a direct reporting NFFE. If a direct reporting NFFE is removed from the published IRS FFI list, the withholding agent knows that such NFFE is not a direct reporting NFFE on the earlier of the date that the withholding agent discovers that the NFFE has been removed from the list or the date that is one year from the date the NFFE's GIIN was actually removed from the list.

(iv) *Special rules for sponsored direct reporting NFFEs and sponsoring entities*—(A) *Sponsored direct reporting NFFEs.* A withholding agent that has received a payee's claim of status as a sponsored direct reporting NFFE and that is required under paragraph (d)(11)(xi) of this section to confirm that the entity claiming status as a sponsored direct reporting NFFE has a GIIN that appears on the published IRS FFI list, has reason to know that such payee is not such a NFFE if its name (including a name reasonably similar to the name the withholding agent has on file for the payee) and GIIN do not appear on the most recently published IRS FFI list within 90 days of the date that the claim is made. A sponsored direct reporting NFFE whose registration with the IRS as a sponsored direct reporting NFFE is in process but has not yet received a GIIN may provide a withholding agent with a Form W–8 claiming the chapter 4 status it applied for and writing ''applied for'' in the box for the GIIN. In such case, the withholding agent will have 90 days from the date it receives the Form W–8 to verify the accuracy of the GIIN against the published IRS FFI list before it has reason to know that the payee is not a sponsored direct reporting NFFE. If a sponsored direct reporting NFFE is removed from the published IRS FFI list, the withholding agent knows that such NFFE is not a sponsored direct reporting NFFE on the earlier of the date that the withholding agent discovers that the sponsored entity has been removed from the list or the date that is one year from the date the sponsored entity's GIIN was actually removed from the list.

(B) *Sponsoring entities (transitional rule).* For payments made prior to January 1, 2016, a withholding agent that has received a payee's claim of status as a sponsored direct reporting NFFE has reason to know that such payee is not such a NFFE if the name of its sponsoring entity (including a name reasonably similar to the name the withholding agent has on file for the sponsoring entity) and the GIIN of its sponsoring entity do not appear on the most recently published IRS FFI list within 90 days of the date that the claim is made. A sponsoring entity whose registration with the IRS is in process but has not yet received a GIIN may provide a withholding agent with a Form W–8 claiming the chapter 4 status it applied for and writing ''applied for'' in the box for the GIIN. In such case, the withholding agent will have 90 days from the date it receives the Form W–8 to verify the accuracy of the GIIN against the published IRS FFI list before it has reason to know that the payee is not a sponsored direct reporting NFFE. If the sponsoring entity of the NFFE is removed from the published IRS FFI list, the withholding agent knows that such NFFE is not a sponsored direct reporting NFFE on the earlier of the date that the withholding agent discovers that the sponsoring entity has been removed from the list or the date that is one year from the date the sponsoring entity's GIIN was actually removed from the list.

(4) *Reason to know.* A withholding agent has reason to know that a claim of chapter 4 status is unreliable or incorrect if its knowledge of relevant facts or statements contained in the withholding certificate or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the claim being made. For an obligation other than a preexisting obligation, a withholding agent has reason to know that a person's claim of chapter 4 status is unreliable or incorrect if any information contained in its account opening files or other customer account files, including documentation collected for AML due diligence purposes, conflicts with the chapter 4 status being claimed. A withholding agent will not, however, have reason to know that a person's claim of chapter 4 status is unreliable or incorrect based on documentation collected for AML due diligence purposes until the date that is 30 days after the obligation is created. In addition to the specific standards of knowledge set forth in this paragraph (e) regarding a person's claim of chapter 4 status, a withholding agent is also required to apply any specific standards of knowledge applicable to the chapter 4 status claimed as set forth in paragraph (d) of this section. A withholding agent that has obtained documentation to reliably associate a payment to a foreign person under paragraph (c) of this section has reason to know that the person's claim of foreign status is unreliable or incorrect only to the extent provided in this paragraph (e)(4). See also § 1.1441–1(e)(4)(ii)(D) for requirements that apply when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441–1(b)(3)(iv). The limits on reason to know for multiple obligations held by the same person set forth in § 1.1441–7(b)(11) shall apply by substituting the term *chapter 4 status* for the term *foreign status.* See § 1.1471–3(e)(4)(vii) for the limits on reason to know with respect to a preexisting obligation.

(i) *Reason to know regarding an entity's chapter 4 status.* A withholding agent has reason to know that a withholding certificate, written statement, or documentary evidence provided by or on behalf of an entity is unreliable or incorrect if there is information on the face of the documentation or in the withholding agent's account files that conflicts with the entity's claim regarding its chapter 4 status. For example, a withholding agent has reason to know that an entity's claim that it is an excepted NFFE is unreliable or incorrect if the withholding agent has obtained a financial statement or credit report for AML purposes that indicates that the entity is engaged in business as a financial institution. See also paragraph (e)(4) of this section for the 30-day period before a withholding agent has reason to know a claim is unreliable or incorrect based on AML information. Further, a withholding agent that has classified an entity as engaged in a particular type of business based on its records, such as through the use of a standardized industry coding system, has reason to know that the chapter 4 status claimed by the entity is unreliable or incorrect if the entity's claim conflicts with the withholding agent's classification of the entity's business type.

(ii) *Reason to know applicable to withholding certificates.*

(A) *In general.* A withholding agent has reason to know that a withholding certificate provided by a person is unreliable or incorrect if the withholding certificate is incomplete with respect to any item on the certificate that is relevant to the claims made by the person, the withholding certificate contains any information that is inconsistent with the person's claim, the withholding agent has other account information that is inconsistent with the person's claim, or the withholding certificate lacks information necessary to establish entitlement to an exemption from withholding for chapter 4 purposes. Except as otherwise provided in this paragraph (e)(4)(ii)(A), a withholding agent that has obtained a withholding certificate to reliably associate a payment to a foreign person under paragraph (c) of this section has reason to know that the person's claim of foreign status is unreliable or incorrect only if there are U.S. indicia, as described in § 1.1441–7(b)(5), associated with the person and for which appropriate documentation sufficient to cure the U.S. indicia has not been obtained in accordance with § 1.1441–7(b) within 90 days of when the U.S. indicia was first identified by the withholding agent. See also § 1.1441–1(e)(4)(ii)(D) for requirements

that apply when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441–1(b)(3)(iv). A withholding agent that relies on an agent to review and maintain a withholding certificate is considered to know or have reason to know the facts within the knowledge of the agent.

(B) *Withholding certificate provided by an FFI.* A withholding agent that obtains a withholding certificate to reliably associate a payment to a participating FFI, a registered deemed-compliant FFI, a sponsoring entity, or a sponsored FFI does not need to apply the standards of knowledge described in § 1.1441–7(b)(5) if it has confirmed the FFI's GIIN on the current published IRS FFI list, in the manner described under paragraph (e)(3) of this section, within 90 days of receipt of the withholding certificate.

(iii) *Reason to know applicable to written statements.* A withholding agent must apply the standards of knowledge applicable to withholding certificates, as set forth in paragraph (e)(4)(ii) of this section, to determine whether it has reason to know that a written statement is unreliable or incorrect in terms of establishing a person's claim of foreign status. The rules under paragraph (e)(4)(ii) shall be applied by substituting the term *written statement* for *withholding certificate*.

(iv) *Reason to know applicable to documentary evidence.*

(A) *In general.* A withholding agent may not treat documentary evidence provided by a person as valid if the documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence. For example, documentary evidence is not valid if it is provided in person by an individual and the photograph or signature on the documentary evidence does not match the appearance or signature of the person presenting the document. A withholding agent may not treat documentary evidence as valid if the documentary evidence contains information that is inconsistent with the person's claim as to its chapter 4 status, the withholding agent has other account information that is inconsistent with the person's chapter 4 status, or the documentary evidence lacks information necessary to establish the person's chapter 4 status. Additionally, a withholding agent that has obtained documentary evidence to reliably associate a payment to a foreign person under paragraph (c) of this section has reason to know that the person's claim of foreign status is unreliable or incorrect only if there are U.S. indicia, as described in § 1.1441–7(b)(8), associated with the person and appropriate documentation sufficient to cure the U.S. indicia has not been obtained in accordance with § 1.1441–7(b) within 90 days of when the U.S. indicia was first identified by the withholding agent. See also § 1.1441–1(e)(4)(ii)(D) for requirements when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441–1(b)(3)(iv).

(B) *Standards of knowledge applicable to certain types of documentary evidence*—(*1*) *Financial statement.* A withholding agent that obtains a financial statement for purposes of establishing that a foreign payee meets a certain asset threshold has reason to know that the chapter 4 status claimed is unreliable or incorrect only if the total assets shown on the financial statement for the payee, and if relevant the payee's expanded affiliated group, are not within the permissible thresholds, or the footnotes to the financial statement indicate that the payee is not a foreign entity or is not a type of FFI eligible for the chapter 4 status claimed. A withholding agent that obtains a financial statement for purposes of establishing that the payee is an active NFFE will be required to review the balance sheet and income statement to determine whether the payee meets the income and asset thresholds set forth in § 1.1472–1(c)(1)(iv) and the footnotes of the financial statement for an indication that the payee is not a foreign entity or is a financial institution. A withholding agent that obtains a financial statement for purposes of establishing a chapter 4 status for a payee that does not require the payee to meet an asset or income threshold will be required to review only the footnotes to the financial statement to determine whether the financial statement supports the claim of chapter 4 status. A withholding agent that is not relying upon a financial statement to establish the chapter 4 status of the payee (for example because it has other documentation that establishes the payee's chapter 4 status) is not required to independently evaluate the financial statement solely because the withholding agent also has collected the financial statement in the course of its account opening or other procedures.

(*2*) *Organizational documents.* A withholding agent that obtains organizational documents for a payee solely for the purpose of supporting the chapter 4 status claimed by the entity will only be required to review the document sufficiently to establish that the entity is a foreign person and that the purposes for which the entity was formed and its basic activities appear to be of a type consistent with the chapter 4 status claimed, unless otherwise specified in paragraph (d) of this section. A withholding agent that obtains organizational documents for the purpose of establishing that an entity has a particular chapter 4 status will only be required to review the document to the extent needed to establish that the entity is a foreign person, that the requirements applicable to the particular chapter 4 status are met, and that the document was executed, but will not be required to review the remainder of the document.

(v) *Specific standards of knowledge applicable when only documentary evidence is a code or classification described in paragraph (c)(5)(ii)(B) of this section.* A withholding agent may not rely upon a classification described in paragraph (c)(5)(ii)(B) of this section or a standardized industry coding system to treat an entity as having a foreign status if there are U.S. indicia described in paragraph (e)(4)(v)(A) of this section associated with the entity, unless such U.S. indicia are cured in the manner set forth in paragraph (e)(4)(v)(B) of this section.

(A) through (A)(*7*) [Reserved]. For further guidance, see § 1.1471–3(e)(4)(v)(A) through (e)(4)(v)(A)(*7*).

(B) [Reserved]. For further guidance, see § 1.1471–3(e)(4)(v)(B).

(*1*) If there are U.S. indicia described in paragraphs (e)(4)(v)(A)(*1*) through (*4*) of this section associated with the entity, the withholding agent may treat the entity as a foreign person only if the withholding agent obtains a withholding certificate for the entity and one form of documentary evidence, described in paragraph (c)(5) of this section, that establishes the entity's status as a foreign person (such as a certificate of incorporation).

(*2*) If there are U.S. indicia described in paragraphs (e)(4)(v)(A)(*1*) through (*4*) of this section associated with the entity and the withholding agent is making a payment with respect to an offshore obligation, the withholding agent may also treat the entity as a foreign person if the withholding agent obtains a withholding certificate for the entity and the withholding agent treats the entity as foreign for purposes of foreign tax reporting. A withholding agent will treat an entity as foreign for purposes of foreign tax reporting only if the withholding agent classifies the entity as a resident of the country in which the obligation is maintained, the withholding agent is required to report a payment made to the entity annually

on a tax information statement that is filed with the tax authority of the country in which the account is maintained as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

(*3*) [Reserved]. For further guidance, see § 1.1471–3(e)(4)(v)(B)(*3*).

(vi) [Reserved]. For further guidance, see § 1.1471–3(e)(4)(vi).

(A) through (A)(*2*) [Reserved]. For further guidance, see § 1.1471–3(e)(4)(vi)(A) through (e)(4)(vi)(A)(*2*).

(B) *Limits on reason to know with respect to documentation received from participating FFIs and registered deemed-compliant FFIs that are intermediaries or flow-through entities.* A withholding agent that receives documentation from a participating FFI or registered deemed-compliant FFI that is not the payee must apply the requirements of paragraph (e)(4)(vi)(A) of this section, except that the withholding agent may rely upon the chapter 4 status provided by the participating FFI or registered deemed-compliant FFI in the withholding statement unless the withholding agent has information that conflicts with the chapter 4 status provided. If underlying documentation is provided for the payee and information in the documentation or in the withholding agent's records conflicts with the chapter 4 status claimed, the withholding agent has reason to know that the chapter 4 status claimed is unreliable or incorrect. A withholding agent is not, however, required to verify information contained in documentation provided by an intermediary or flow-through entity that is a participating FFI or registered deemed-compliant FFI that is not facially incorrect and is not required to obtain supporting documentation for the payee in addition to a withholding certificate unless the withholding agent obtains such documentation for purposes of chapters 3 or 61 or unless the withholding agent knows that the review conducted by the participating FFI or registered deemed-compliant FFI for purposes of chapter 4 was not adequate. For example, a withholding agent that receives a withholding statement from a participating FFI that is an intermediary stating that the payee is a registered deemed-compliant FFI is only required to determine that any withholding certificate provided for the payee contains a GIIN and that the GIIN does not appear to be facially invalid (for example, because it does not contain the correct amount of digits), but is not subject to the requirements set forth in paragraph (e)(3) of this section. Similarly, a withholding agent that receives from a participating FFI that is a partnership a withholding statement claiming that the payee is an active NFFE has reason to know that the claim is unreliable or incorrect if it receives a withholding statement that contains a U.S. address for the payee unless the partnership also provides a copy of documentation sufficient to cure the U.S. indicia in the manner set forth in paragraph (e) of this section or the withholding statement indicates that appropriate documentation sufficient to cure the U.S. indicia in the manner set forth in paragraph (e) of this section has been obtained and provides details of such documentation, such as the type of documentation and an identification number of the person contained in the document.

(vii) [Reserved]. For further guidance, see § 1.1471–3(e)(4)(vii).

(A) [Reserved]. For further guidance, see § 1.1471–3(e)(4)(vii)(A).

(B) *Reason to know there are U.S. indicia associated with preexisting obligations.* With respect to a preexisting obligation, a withholding agent may apply the limits on reason to know described in § 1.1441–7(b)(3)(ii) for a person that the withholding agent has previously documented for purposes of chapters 3 or 61 (applied without regard to the fact that section 1441 generally applies to reportable amounts under chapter 3 and without regard to whether the person was so documented before July 1, 2014). A withholding agent that applies the limits on reason to know described in § 1.1441–7(b)(3)(ii) must, however, review for U.S. indicia any additional documentation upon which the withholding agent is relying to determine the chapter 4 status of the person, if any.

(viii) [Reserved]. For further guidance, see § 1.1471–3(e)(4)(viii).

(A) [Reserved]. For further guidance, see § 1.1471–3(e)(4)(viii)(A).

(*1*) through (*3*) [Reserved]. For further guidance, see § 1.1471–3(e)(4)(viii)(A)(*1*) through (*3*).

(*4*) Is a spouse or unmarried child under the age of 21 years of an individual described in one of the paragraphs (e)(4)(viii)(A)(*1*) through (*3*) of this section;

(B) through (D) [Reserved]. For further guidance, see § 1.1471–3(e)(4)(viii)(B) through (D).

(5) through (6) [Reserved]. For further guidance, see § 1.1471–3(e)(5) through (6).

(f) [Reserved]. For further guidance, see § 1.1471–3(f).

(1) *In general.* A withholding agent that cannot, prior to the payment, reliably associate (within the meaning of paragraph (c) of this section) the payment with valid documentation may rely on the presumptions of this paragraph (f) to determine the status of the payee (or other person receiving the payment) as a U.S. or foreign person and such person's other relevant characteristics (for example, as a nonparticipating FFI). Paragraph (f)(2) of this section provides the presumption rules with respect to classification as an individual or entity. Paragraph (f)(3) of this section provides the presumption rules to determine a payee's U.S. or foreign status. Paragraph (f)(4) of this section provides the presumption rules with respect to an entity's chapter 4 status. Paragraph (f)(5) of this section provides the presumption rules with respect to an intermediary or flow-through entity. Paragraph (f)(6) of this section provides the presumption rules with respect to effectively connected income paid to a U.S. branch of a payee. Paragraph (f)(7) of this section provides the presumption rules that apply to a payment made to joint payees. Paragraph (f)(8) of this section provides rules for how a payee may rebut the presumptions described in this paragraph (f). Paragraph (f)(9) of this section provides the consequences to a withholding agent that fails to withhold in accordance with the presumptions set forth in this paragraph (f) or that has actual knowledge or reason to know facts that are contrary to the presumptions set forth in this paragraph (f).

(2) *Presumptions of classification as an individual or entity and entity as the beneficial owner.* A withholding agent that cannot reliably associate a payment with a valid withholding certificate, or that has received valid documentary evidence (as described in paragraph (c)(5) of this section), but cannot determine a payee's status as an individual or an entity from the documentary evidence, must apply the presumption rules of § 1.1441–1(b)(3)(ii) to determine the payee's classification as an individual, trust, partnership, corporation, intermediary, or flow-through entity. Additionally, a withholding agent that receives valid documentary evidence with respect to an entity must apply the rules under § 1.1441–1(b)(3)(ii) to determine when it may treat such entity as a beneficial owner.

(3) *Presumptions of U.S. or foreign status.* If a withholding agent cannot reliably associate a payment with a valid withholding certificate or valid documentary evidence from which it is possible to determine the payee's U.S. or foreign status, it must apply the

presumption rules of § 1.1441–1(b)(3)(iii) to determine the U.S. or foreign status of the payee (substituting the term *withholdable payment* for the term *payment*). In the case of a payment that a withholding agent can reliably associate with valid documentation that indicates the payment is made to a U.S. person but does not indicate whether the person is a specified U.S. person, the payment will be presumed made to a specified U.S. person unless the withholding agent can apply the presumption rules of § 1.6049–4(c)(1)(ii)(B), (C), (D), (E), (I), (J), (K), (L), or (N), to presume that the person is other than a specified U.S. person, or the person's name reasonably indicates that the person is a bank (for example because it contains the word *Bank* or a foreign equivalent).

(4) *Presumption of chapter 4 status for a foreign entity.* If a withholding agent cannot reliably associate a valid withholding certificate or valid documentary evidence sufficient to determine the chapter 4 status of the entity receiving payment under paragraph (d) of this section (for example, as a participating FFI, nonparticipating FFI, or NFFE), it must presume that the entity is a nonparticipating FFI.

(5) *Presumption of chapter 4 status of payee with respect to a payment to an intermediary or flow-through entity.* If a withholding agent makes a payment to a foreign flow-through entity or intermediary, including a payment that it is required to treat as made to such an entity under paragraphs (f)(2) and (3) of this section, and cannot reliably associate such payment with valid documentation under paragraph (c) of this section, the withholding agent must presume that the payment is made to a nonparticipating FFI.

(6) *Presumption of effectively connected income for payments to certain U.S. branches.* A withholding agent that makes a payment to a U.S. branch described in this paragraph (f)(6) may presume, in the absence of documentation indicating otherwise, that the U.S. branch is the payee of a payment that is effectively connected with the conduct of a trade or business in the United States if the withholding agent has obtained an EIN from the U.S. branch (either orally or in writing). A U.S. branch is described in this paragraph (f)(6) if it is a U.S. branch of a foreign bank subject to regulatory supervision by the Federal Reserve Board or a U.S. branch of a foreign insurance company required to file an annual statement on a form approved by the National Association of Insurance Commissioners with the Insurance Department of a State, a Territory, or the District of Columbia. A payment is treated as made to a U.S. branch of a foreign bank or foreign insurance company if the payment is credited to an account maintained in the United States in the name of a U.S. branch of the foreign person, or the payment is made to an address in the United States where the U.S. branch is located and the name of the U.S. branch appears on documents (in written or electronic form) associated with the payment (for example, the check mailed or letter addressed to the branch).

(7) *Joint payees*—(i) *In general.* If a withholding agent makes a payment to joint payees and cannot reliably associate the payment with valid documentation from each payee but all of the joint payees appear to be individuals, then the payment is presumed made to an unidentified U.S. person. If any joint payee does not appear, by its name and other information contained in the account file, to be an individual, then the entire payment will be treated as made to a nonparticipating FFI. However, if one of the joint payees provides a Form W–9 in accordance with the procedures described in §§ 31.3406(d)–1 through 31.3406(d)–5, the payment shall be treated as made to that payee.

(ii) *Exception for offshore obligations.* If a withholding agent makes a payment outside the United States with respect to an offshore obligation held by joint payees and cannot reliably associate a payment with valid documentation from each payee but all of the joint payees appear to be individuals, then the payment is presumed made to an unknown foreign individual if the payment with respect to the offshore obligation is made outside the United States (as described in § 1.6049–5(e)).

(8) *Rebuttal of presumptions.* A payee may rebut the presumptions described in paragraphs (f)(2) through (7) of this section by providing reliable documentation to the withholding agent or, if applicable, to the IRS.

(9) *Effect of reliance on presumptions and of actual knowledge or reason to know otherwise*—(i) *In general.* Except as otherwise provided in this paragraph (f)(9), a withholding agent that withholds on a payment under section 1471 or 1472 in accordance with the presumptions set forth in this paragraph (f) shall not be liable for withholding under this section even if it is later established that the payee has a chapter 4 status other than the status presumed. A withholding agent that fails to report and withhold in accordance with the presumptions described in paragraphs (f)(2) through (7) of this section with respect to a payment that it cannot reliably associate with valid documentation shall be liable for tax, interest, and penalties. See § 1.1474–1(a) for the extent of a withholding agent's liability for failing to withhold in accordance with the presumptions described in this paragraph (f).

(ii) *Actual knowledge or reason to know that amount of withholding is greater than is required under the presumptions or that reporting of the payment is required.* Notwithstanding the provisions of paragraph (f)(9)(i) of this section, a withholding agent that knows or has reason to know that the status or characteristics of the person are other than what is presumed under this paragraph (f) may not rely on the presumptions described in this paragraph (f) to the extent that, if it determined the status of the person based on such knowledge or reason to know, it would be required to withhold (under this section or another withholding provision of the Code) an amount greater than would be the case if it relied on the presumptions described in this paragraph (f). In such a case, the withholding agent must rely on its knowledge or reason to know rather than on the presumptions set forth in this paragraph (f). Failure to do so shall result in liability for tax, interest, and penalties to the extent described in § 1.1474–1(a).

(g) [Reserved]. For further guidance, see § 1.1471–3(g).

(h) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 8.** Section 1.1471–4 is amended:

■ 1. By removing paragraph (d)(3)(v).

■ 2. By redesignating paragraphs (d)(3)(vi) through (viii) as paragraphs (d)(3)(v) through (vii).

■ 3. By adding paragraphs (d)(2)(iii)(C), (d)(2)(ii)(F), and (d)(6)(vii).

■ 4. By revising paragraphs (a)(3), (b)(1) through (3), (b)(6), (c)(5)(iv)(B)(*2*)(*vi*), (c)(5)(iv)(E), (d)(1), (d)(2)(i), (d)(2)(ii)(A), (d)(2)(ii)(B)(*2*), (d)(2)(ii)(E), (d)(2)(iii)(A), (d)(2)(iii)(B) introductory text, (d)(3)(ii)(E), (d)(3)(iii)(F), (d)(5)(v) through (vi), (d)(7)(i), (d)(7)(ii)(A), (d)(7)(iii), (d)(7)(iv)(A) through (B), (d)(8), (d)(9) *Example 3, Example 5,* and *Example 7,* (e)(1), (e)(2)(ii), (f)(4)(i) through (ii), (g)(1) introductory text, (g)(1)(ii), and (g)(2).

■ 5. By removing the heading of paragraph (d)(7) and adding introductory text to paragraph (d)(7).

The additions and revisions read as follows:

**§ 1.1471–4 FFI agreement.**

(a) * * *

(3) [Reserved]. For further guidance, see § 1.1471–4T(a)(3).

* * * * *

(b) * * *

(1) [Reserved]. For further guidance, see § 1.1471–4T(b)(1).

(2) [Reserved]. For further guidance, see § 1.1471–4T(b)(2).

(3) [Reserved]. For further guidance, see § 1.1471–4T(b)(3).

(i) [Reserved]. For further guidance, see § 1.1471–4T(b)(3)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–4T(b)(3)(ii).

(iii) [Reserved]. For further guidance, see § 1.1471–4T(b)(3)(iii).

* * * * *

(6) [Reserved]. For further guidance, see § 1.1471–4T(b)(6).

* * * * *

(c) * * *

(5) * * *

(iv) * * *

(B) * * *

(*2*) * * *

(*vi*) [Reserved]. For further guidance, see § 1.1471–4T(c)(5)(iv)(B)(*2*)(*vi*).

* * * * *

(E) [Reserved]. For further guidance, see § 1.1471–4T(c)(5)(iv)(E).

* * * * *

(d) * * *

(1) [Reserved]. For further guidance, see § 1.1471–4T(d)(1).

(2) * * *

(i) [Reserved]. For further guidance, see § 1.1471–4T(d)(2)(i).

(ii) * * *

(A) [Reserved]. For further guidance, see § 1.1471–4T(d)(2)(ii)(A).

(B) * * *

(*2*) [Reserved]. For further guidance, see § 1.1471–4T(d)(2)(ii)(B)(*2*).

* * * * *

(E) [Reserved]. For further guidance, see § 1.1471–4T(d)(2)(ii)(E).

(F) [Reserved]. For further guidance, see § 1.1471–4T(d)(2)(ii)(F).

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1471–4T(d)(2)(iii)(A).

(B) [Reserved]. For further guidance, see § 1.1471–4T(d)(2)(iii)(B).

* * * * *

(C) [Reserved]. For further guidance, see § 1.1471–4T(d)(2)(iii)(C).

(3) * * *

(ii) * * *

(E) [Reserved]. For further guidance, see § 1.1471–4T(d)(3)(ii)(E).

(iii) * * *

(F) [Reserved]. For further guidance, see § 1.1471–4T(d)(3)(iii)(F).

* * * * *

(5) * * *

(v) [Reserved]. For further guidance, see § 1.1471–4T(d)(5)(v).

(vi) [Reserved]. For further guidance, see § 1.1471–4T(d)(5)(vi).

* * * * *

(6) * * *

(vii) [Reserved]. For further guidance, see § 1.1471–4T(d)(6)(vi).

* * * * *

(7) [Reserved]. For further guidance, see § 1.1471–4T(d)(7).

(i) [Reserved]. For further guidance, see § 1.1471–4T(d)(7)(i).

(ii) * * *

(A) [Reserved]. For further guidance, see § 1.1471–4T(d)(7)(ii)(A).

* * * * *

(iii) [Reserved]. For further guidance, see § 1.1471–4T(d)(7)(iii).

(iv) * * *

(A) [Reserved]. For further guidance, see § 1.1471–4T(d)(7)(iv)(A).

(B) [Reserved]. For further guidance, see § 1.1471–4T(d)(7)(iv)(B).

(8) [Reserved]. For further guidance, see § 1.1471–4T(d)(8).

(9) * * *

*Example 3.* [Reserved]. For further guidance, see § 1.1471–4T(d)(9), *Example 3.*

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*Example 5.* [Reserved]. For further guidance, see § 1.1471–4T(d)(9), *Example 5.*

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*Example 7.* [Reserved]. For further guidance, see § 1.1471–4T(d)(9), *Example 7.*

(e) * * *

(1) [Reserved]. For further guidance, see § 1.1471–4T(e)(1).

(2) * * *

(ii) [Reserved]. For further guidance, see § 1.1471–4T(e)(2)(ii).

* * * * *

(f) * * *

(4) * * *

(i) [Reserved]. For further guidance, see § 1.1471–4T(f)(4)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–4T(f)(4)(ii).

(g) * * *

(1) [Reserved]. For further guidance, see § 1.1471–4T(g)(1).

* * * * *

(ii) [Reserved]. For further guidance, see § 1.1471–4T(g)(1)(ii).

* * * * *

(2) [Reserved]. For further guidance, see § 1.1471–4T(g)(2).

* * * * *

■ **Par. 9.** Section 1.1471–4T is added to read as follows:

**§ 1.1471–4T FFI Agreement (temporary).**

(a) [Reserved]. For further guidance, see § 1.1471–4(a).

(1) through (2) [Reserved]. For further guidance, see § 1.1471–4(a)(1) through (2).

(3) *Reporting.* A participating FFI is required to report the information described in paragraph (d) of this section annually with respect to U.S. accounts under section 1471(c) and accounts held by recalcitrant account holders. A participating FFI must also comply with the filing requirements described in § 1.1474–1(c) and (d) to report payments that are chapter 4 reportable amounts paid to recalcitrant account holders and nonparticipating FFIs (including the transitional reporting of foreign reportable amounts paid to nonparticipating FFIs for calendar years 2015 and 2016 described in § 1.1471–4(d)(2)(ii)(F)). A participating FFI that is unable to obtain a waiver, if required by foreign law, to report an account as required under paragraph (d) of this section must close or transfer such account within a reasonable period of time as described in paragraph (i) of this section.

(4) through (7) [Reserved]. For further guidance, see § 1.1471–4(a)(4) through (7).

(b) [Reserved]. For further guidance, see § 1.1471–4(b).

(1) *In general.* Except as otherwise provided in a Model 2 IGA, a participating FFI is required to deduct and withhold a tax equal to 30 percent of any withholdable payment made by such participating FFI to an account held by a recalcitrant account holder or to a nonparticipating FFI after June 30, 2014, to the extent required under paragraph (b)(3) of this section. See paragraph (b)(2) of this section for rules for a participating FFI to identify the payee of a payment in order to determine whether withholding is required under this paragraph (b). See paragraph (b)(4) of this section for the extent of a participating FFI's requirement to deduct and withhold tax on a foreign passthru payment made by such participating FFI to an account held by a recalcitrant account holder or to a nonparticipating FFI. See paragraph (b)(5) of this section for the rules for withholding on payments to limited branches and limited FFIs. See paragraph (b)(6) for the special allowance to set aside in escrow amounts withheld with respect to dormant accounts. See paragraph (b)(7) of this section for the withholding requirements of certain U.S. branches of participating FFIs. See § 1.1471–2 for the exceptions to and special rules for withholding and the exclusion from the definitions of the terms *withholdable payment* and *foreign passthru payment* that applies to any payment made under a grandfathered obligation or the gross proceeds from the disposition of such an obligation. See § 1.1474–1(d)(4)(iii)

for the requirement of participating FFIs to report payments that are chapter 4 reportable amounts. See § 1.1474–6 for the coordination of withholding on payments under this paragraph (b) with the other withholding provisions under the Code.

(2) *Withholding determination.* Except as otherwise provided under § 1.1471–2 and, with respect to certain preexisting accounts, under paragraph (c) of this section, a participating FFI is required to determine whether withholding applies at the time a payment is made by reliably associating the payment with valid documentation described in paragraph (c) of this section for the payee of the payment. For a payment made to an account, if the account is held by one or more individuals, the payee is each individual account holder. For a payment made to an account held by an entity, except as otherwise provided in § 1.1471–3(a)(3), the payee is the account holder. If the participating FFI makes a withholdable payment to a payee that is an entity and the payment is made with respect to an obligation that is not an account, except as otherwise provided in § 1.1471–3(a)(3), the payee is the person to whom the payment is made. See § 1.1473–1(a) to determine when a payment is made in the case of a withholdable payment. If a participating FFI cannot reliably associate a payment (or any portion of a payment) with valid documentation, the rules described in paragraph (c) of this section shall apply to determine the chapter 4 status of the account holder (and payee if other than the account holder). Notwithstanding the foregoing, a participating FFI may establish after the date of payment that withholding was not required to the extent permitted under § 1.1471–3(c)(7) or may apply the procedures provided in § 1.1474–2 when overwithholding occurs.

(3) *Satisfaction of withholding requirements.*

(i) *In general.* A participating FFI that complies with the withholding obligations of this paragraph (b) with respect to accounts held by recalcitrant account holders and payees that are nonparticipating FFIs shall be deemed to satisfy its withholding obligations under sections 1471(a) and 1472 with respect to such account holders and payees.

(ii) *Withholding not required.* A participating FFI that is an NQI, NWP, NWT, or that is a QI that elects under section 1471(b)(3) not to assume withholding responsibility for a payment and that provides its withholding agent with the information necessary to allocate all or a portion of the payment to each payee as part of a withholding certificate described in § 1.1471–3(c)(3)(iii) will generally not be required to withhold under paragraph (b)(1) of this section. See § 1.1471–2(a)(2)(ii), however, for the circumstances under which a participating FFI that is an NQI, NWP, or NWT has a residual withholding responsibility. See also § 1.1471–3(c)(9)(iii)(B) for the circumstances under which a participating FFI that is a broker has a residual withholding responsibility as an intermediary of the payment and may also be liable for any underwithholding that occurs. See §§ 1.1471–2(a) and 1.1472–1(a)(2)(i) and the QI, WP, or WT agreement for the withholding requirements of a participating FFI that is a QI, WP, or WT for purposes of chapter 4.

(iii) *Election to withhold under section 3406.* A participating FFI may elect to satisfy its withholding obligation under paragraph (b)(1) of this section with respect to recalcitrant account holders that are also U.S. non-exempt recipients subject to backup withholding under section 3406 receiving withholdable payments, to the extent that the payments also constitute reportable payments, by applying withholding under section 3406 at the backup withholding rate to such withholdable payments. A participating FFI may make the election described in this paragraph only if it complies with the information reporting rules under chapter 61 and section 3406. Nothing in this paragraph relieves a participating FFI of its requirement to backup withhold under section 3406 with respect to reportable payments that are not also withholdable payments. See § 1.1474–6(f) for the general rule that satisfying withholding requirements under chapter 4 will satisfy backup withholding requirements under section 3406 for a payment that is both a withholdable payment and a reportable payment.

(4) through (5)(ii) [Reserved]. For further guidance, see § 1.1471–4(b)(4) through (b)(5)(ii).

(6) *Special rule for dormant accounts.* A participating FFI that makes a withholdable payment not otherwise subject to withholding under chapter 3 or backup withholding under section 3406 to a recalcitrant account holder of a dormant account that it maintains must withhold on the account for purposes of chapter 4. However, the participating FFI may, in lieu of depositing the tax withheld, set aside the amount withheld in escrow until the date that the account ceases to be a dormant account. In such case, the tax withheld becomes due 90 days following the date that the account ceases to be a dormant account if the account holder does not provide the documentation required under paragraph (c) of this section or becomes refundable to the account holder if the account holder provides the documentation required under paragraph (c) of this section establishing that withholding does not apply. A participating FFI that maintains a dormant account of a recalcitrant account holder and that elects to escrow withheld tax pursuant to this paragraph (b)(6) may not delegate the responsibility to escrow withheld tax to the withholding agent from which it is receiving payment. Once a dormant account escheats irrevocably to a foreign government under the relevant laws in the jurisdiction in which the participating FFI (or branch thereof) operates, the participating FFI is no longer required to deposit with the IRS the amount held in escrow with respect to the account. See paragraph (d)(6)(ii) of this section for the definition of dormant account.

(7) [Reserved]. For further guidance, see § 1.1471–4(b)(7).

(c) [Reserved]. For further guidance, see § 1.1471–4(c).

(1) through (4)(iii)(B) [Reserved]. For further guidance, see § 1.1471–4(c)(1) through (c)(4)(iii)(B).

(5) [Reserved]. For further guidance, see § 1.1471–4(c)(5).

(i) through (iii)(C) [Reserved]. For further guidance, see § 1.1471–4(c)(5)(i) through (c)(5)(iii)(C).

(iv) [Reserved]. For further guidance, see § 1.1471–4(c)(5)(iv).

(A) [Reserved]. For further guidance, see § 1.1471–4(c)(5)(iv)(A).

(B) [Reserved]. For further guidance, see § 1.1471–4(c)(5)(iv)(B).

(*1*) through (*1*)(*vii*) [Reserved]. For further guidance, see § 1.1471–4(c)(5)(iv)(B)(*1*) through (c)(5)(iv)(B)(*1*)(*vii*).

(*2*) [Reserved]. For further guidance, see § 1.1471–4(c)(5)(iv)(B)(*2*).

(*i*) through (*v*) [Reserved]. For further guidance, see § 1.1471–4(c)(5)(iv)(B)(*2*)(*i*) through (*v*).

(*vi*) *Standing instructions to pay amounts.* If information required to be reviewed with respect to the account contains standing instructions to pay amounts from the account to an account maintained in the United States for an account holder, the participating FFI must retain a record of a withholding certificate and either a form of documentary evidence described in § 1.1471–3(c)(5)(i)(A) through (C) or a written reasonable explanation (as defined in § 1.1441–7(b)(12)) establishing the account holder's status as a foreign person.

(*vii*) [Reserved]. For further guidance, see § 1.1471–4(c)(5)(iv)(B)(*2*)(*vii*).

(C) through (D)(*4*)(*vi*) [Reserved]. For further guidance, see § 1.1471–4(c)(5)(iv)(C) through (c)(5)(iv)(D)(*4*)(*vi*).

(E) Exception for preexisting individual accounts previously documented as held by foreign individuals. A participating FFI that has previously obtained documentation from an account holder to establish the account holder's status as a foreign individual in order to meet its obligations under its QI, WP, or WT agreement with the IRS, or to fulfill its reporting obligations as a U.S. payor under chapter 61, is not required to perform the electronic search described in paragraph (c)(5)(iv)(C) of this section or the enhanced review described in paragraph (c)(5)(iv)(D)(*3*) of this section for such account. Additionally, a participating FFI with a U.S. payor as its paying agent is not required to perform the electronic search described in paragraph (c)(5)(iv)(C) of this section or the enhanced review described in paragraph (c)(5)(iv)(D)(*3*) of this section for an account for which its paying agent that is a U.S. payor has previously obtained documentation to establish the account holder's status as a foreign individual under chapter 61. The participating FFI is required, however, to perform the relationship manager inquiry described in paragraph (c)(5)(iv)(D)(*2*) of this section if the account is a high-value account described in paragraph (c)(5)(iv)(D)(*1*) of this section. For purposes of this paragraph (c)(5)(iv)(E), a participating FFI has documented an account holder's foreign status under chapter 61 if the participating FFI (or its paying agent that is a U.S. payor) has retained a record of the documentation required under chapter 61 to establish the foreign status of an individual and the account received a reportable payment as defined under section 3406(b) in any prior year that was properly reported in that year. In the case of a participating FFI that is a QI, WP, or WT, the participating FFI has documented an account holder's foreign status under its QI, WP, or WT agreement (as applicable) if the participating FFI has met the relevant documentation and reporting requirements of its agreement with respect to an account holder that received a reportable amount in any year in which its agreement was in effect.

(6) through (7) [Reserved]. For further guidance, see § 1.1471–4(c)(6) through (7).

(d) [Reserved]. For further guidance, see § 1.1471–4(d).

(1) *Scope of paragraph.* This paragraph (d) provides rules addressing the information reporting requirements applicable to participating FFIs with respect to U.S. accounts, accounts held by owner-documented FFIs, and recalcitrant account holders. Paragraph (d)(2) of this section describes the accounts subject to reporting under this paragraph (d), and specifies the participating FFI that is responsible for reporting an account or account holder. Paragraph (d)(3) of this section describes the information required to be reported and the manner of reporting by a participating FFI under section 1471(c)(1) with respect to a U.S. account or an account held by an owner-documented FFI. Paragraph (d)(4) of this section provides definitions of terms applicable to paragraph (d)(3). Paragraph (d)(5) of this section describes the conditions for a participating FFI to elect to report its U.S. accounts and accounts held by owner-documented FFIs under section 1471(c)(2) and the information required to be reported under such election. Paragraph (d)(6) of this section provides rules for a participating FFI to report its recalcitrant account holders. Paragraph (d)(7) of this section provides special transitional reporting rules applicable to reports due in 2015 and 2016. Paragraph (d)(8) of this section provides the reporting requirements of a participating FFI that is a QI, WP, or WT with respect to U.S. accounts. See chapter 61 for reporting requirements that may apply to a payor that is a participating FFI or registered deemed-compliant FFI with respect to payees. See § 301.1474–1(a) for the requirement for a financial institution to file the information required under this paragraph (d) on magnetic media.

(2) [Reserved]. For further guidance, see § 1.1471–4(d)(2).

(i) *Accounts subject to reporting.* Subject to the rules of paragraph (d)(7) of this section, a participating FFI shall report by the time and in the manner prescribed in paragraph (d)(3)(vi) of this section, the information described in paragraph (d)(3) of this section with respect to accounts maintained at any time during each calendar year for which the participating FFI is responsible for reporting under paragraph (d)(2)(ii) of this section and that it is required to treat as U.S. accounts or accounts held by owner-documented FFIs, including accounts that are identified as U.S. accounts by the end of such calendar year pursuant to a change in circumstances during such year as described in paragraph (c)(2)(iii) of this section. Alternatively, a participating FFI may elect to report under paragraph (d)(5) of this section with respect to such accounts for each calendar year. With respect to accounts held by recalcitrant account holders, a participating FFI is required to report with respect to each calendar year under paragraph (d)(6) of this section and not under paragraph (d)(3) or (5) of this section. For separate reporting requirements of participating FFIs with respect to foreign reportable amounts and for transitional rules for participating FFIs to report certain foreign reportable amounts paid to accounts held by nonparticipating FFIs, see § 1.1471–4(d)(2)(ii)(F).

(ii) [Reserved]. For further guidance, see § 1.1471–4(d)(2)(ii).

(A) *In general.* Except as otherwise provided in paragraphs (d)(2)(ii)(B) through (F) of this section, the participating FFI that maintains the account is responsible for reporting the account in accordance with the requirements of paragraph (d)(2)(iii), (d)(3), or (d)(5) of this section (as applicable) for each calendar year. Except as otherwise provided in paragraph (d)(2)(ii)(C) of this section, a participating FFI is responsible for reporting accounts held by recalcitrant account holders that it maintains in accordance with the requirements of paragraph (d)(6) of this section. A participating FFI is not required to report the information required under paragraph (d)(6) of this section with respect to an account held by a recalcitrant account holder of another participating FFI even if that other participating FFI holds the account as an intermediary on behalf of such account holder and regardless of whether the participating FFI is required to report payments made to the recalcitrant account holder of such other FFI under § 1.1474–1(d)(4)(iii).

(B) [Reserved]. For further guidance, see § 1.1471–4(d)(2)(ii)(B).

(*1*) [Reserved]. For further guidance, see § 1.1471–4(d)(2)(ii)(B)(*1*).

(*2*) If the territory financial institution does not agree to be treated as a U.S. person with respect to a withholdable payment, the participating FFI must report with respect to each specified U.S. person or substantial U.S. owner of an entity that is treated as a passive NFFE with respect to which the territory financial institution acts as an intermediary and provides the participating FFI with the information and documentation required under § 1.1471–3(c)(3)(iii)(G). The participating FFI shall be treated as having satisfied these reporting requirements if it reports with respect to each such specified U.S. person or

substantial U.S. owner of a passive NFFE either—

(*i*) The information required by chapter 61 and described in paragraph (d)(5)(ii) or (d)(5)(iii) of this section (except account number); or

(*ii*) The information described in paragraph (d)(3)(ii), (d)(3)(iii), or (d)(3)(iv) of this section (except account number and account balance or value).

(C) through (D) [Reserved]. For further guidance, see § 1.1471–4(d)(2)(ii)(C) through (D).

(E) *Requirement to identify the GIIN of a branch that maintains an account.* A participating FFI may report under paragraph (d)(3) or (d)(5) of this section either with respect to all of its U.S. accounts and recalcitrant accounts, or separately with respect to any clearly identified group of accounts (such as by line of business or the location of where the account is maintained). A participating FFI shall include the GIIN assigned to the participating FFI or its branches to identify the jurisdiction of the FFI or branch that maintains the accounts subject to reporting under paragraph (d)(3) or (d)(5) of this section. Additionally, a participating FFI shall file with the IRS the information required to be reported on accounts that it maintains in accordance with the forms and their accompanying instructions provided by the IRS. For the definition of a branch that applies for purposes of this paragraph (d), see paragraph (e)(2)(ii) of this section.

(F) *Reporting by participating FFIs and registered deemed-compliant FFIs (including QIs, WPs, WTs, and certain U.S. branches not treated as U.S. persons) for accounts of nonparticipating FFIs (transitional).* Except as otherwise provided in the instructions to Form 8966, ''FATCA Report,'' if a participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI or registered deemed-compliant FFI that is not treated as a U.S. person) maintains an account for a nonparticipating FFI (including a limited branch and limited FFI treated as a nonparticipating FFI), the participating FFI or registered deemed-compliant FFI must report on Form 8966 the name and address of the nonparticipating FFI, and the aggregate amount of foreign source payments, as described in paragraph (d)(4)(iv) of this section, paid to or with respect to each such account (foreign reportable amount) for each of the calendar years 2015 and 2016. If, however, the participating FFI is prohibited under domestic law from reporting on a specific payee basis without consent from the nonparticipating FFI account holder and the participating FFI has not been able to obtain such consent, the participating FFI may instead report the aggregate number of accounts held by such non-consenting nonparticipating FFIs and the aggregate amount of foreign reportable amounts paid with respect to such accounts, as described in paragraph (d)(4)(iv) of this section, during the calendar year. A participating FFI may, in lieu of reporting only foreign reportable amounts, report all income, gross proceeds, and redemptions (irrespective of the source) paid to the nonparticipating FFI's account by the participating FFI during the calendar year. In addition, the participating FFI must retain the account statements related to such nonparticipating FFI accounts. See paragraphs (d)(6)(iv), (v), (vi) and (vii) of this section for rules relating to reporting on recalcitrant account holders. Form 8966 shall be filed electronically with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates.

(iii) [Reserved]. For further guidance, see § 1.1471–4(d)(2)(iii).

(A) *Special reporting rule for U.S. payors other than U.S. branches.* Participating FFIs that are U.S. payors (other than U.S. branches) shall be treated as having satisfied the chapter 4 reporting requirements described in paragraph (d)(2)(i) of this section with respect to accounts that the participating FFI is required to treat as U.S. accounts, or accounts held by owner-documented FFIs, if the participating FFI reports with respect to each such account either—

(*1*) The information required by chapter 61 and described in paragraph (d)(5)(ii) or (d)(5)(iii) of this section; or

(*2*) The information described in paragraph (d)(3)(ii), (d)(3)(iii), or (d)(3)(iv) of this section. However, such participating FFI that is required to report on such accounts under chapter 61 is not relieved of that obligation.

(B) *Special reporting rules for U.S. branches treated as U.S. persons.* A U.S. branch of a participating FFI (and reporting Model 1 FFI) that is treated as a U.S. person shall be treated as having satisfied the reporting requirements described in paragraph (d)(2)(i) of this section if it reports under—

(*1*) through (*4*) [Reserved]. For further guidance, see § 1.1471–4(d)(2)(iii)(B)(*1*) through (*4*).

(C) *Special reporting rules for U.S. branches not treated as U.S. persons.* A U.S. branch of a registered deemed-compliant FFI or limited FFI that is not treated as a U.S. person shall be treated as having satisfied the reporting requirements described in paragraph (d)(2)(i) of this section if it reports the information described in paragraph (d)(2)(iii)(B)(*1*) through (*4*) of this section with respect to account holders of accounts that the U.S. branch is required to treat as U.S. accounts or accounts held by owner-documented FFIs.

(3) [Reserved]. For further guidance, see § 1.1471–4(d)(3).

(i) [Reserved]. For further guidance, see § 1.1471–4(d)(3)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–4(d)(3)(ii).

(A) through (D) [Reserved]. For further guidance, see § 1.1471–4(d)(3)(ii)(A) through (D).

(E) Such other information as is otherwise required to be reported under this paragraph (d)(3) or in the form described in paragraph (d)(3)(v) of this section and its accompanying instructions.

(iii) [Reserved]. For further guidance, see § 1.1471–4(d)(3)(iii).

(A) through (E) [Reserved]. For further guidance, see § 1.1471–4(d)(3)(iii)(A) through (E).

(F) Such other information as is otherwise required to be reported under this paragraph (d)(3) or in the form described in paragraph (d)(3)(v) of this section and its accompanying instructions.

(iv) through (iv)(F) [Reserved]. For further guidance, see § 1.1471–4(d)(3)(iv) through (d)(3)(iv)(F).

(v) [Reserved]. For further guidance, see § 1.1471–4(d)(3)(v).

(vi) [Reserved]. For further guidance, see § 1.1471–4(d)(3)(vi).

(vii) [Reserved]. For further guidance, see § 1.1471–4(d)(3)(vii).

(4) through (4)(v) [Reserved]. For further guidance, see § 1.1471–4(d)(4) through (d)(4)(v).

(5) [Reserved]. For further guidance, see § 1.1471–4(d)(5).

(i) through (iv) [Reserved]. For further guidance, see § 1.1471–4(d)(5)(i) through (d)(5)(iv).

(v) *Time and manner of making the election.* A participating FFI (or one or more branches of the participating FFI) may make the election described in this paragraph (d)(5) by reporting the information described in this paragraph (d)(5) on the form described in paragraph (d)(5)(vii) of this section on the next reporting date following the end of the calendar year for which the election is made. A participating FFI may make an election under this paragraph (d)(5) either with respect to all of its U.S. accounts and recalcitrant accounts or, separately, with respect to any clearly identified group of accounts (such as by line of business or the

location where the account is maintained).

(vi) *Revocation of election.* A participating FFI may revoke the election described in paragraph (d)(5)(i) of this section (as a whole or with regard to any clearly identified group of accounts) by reporting the information described in paragraph (d)(3) of this section beginning on the first reporting date with respect to the calendar year that follows the calendar year for which it last reports an account under this paragraph (d)(5).

(vii) [Reserved]. For further guidance, see § 1.1471–4(d)(5)(vii).

(6) [Reserved]. For further guidance, see § 1.1471–4(d)(6).

(i) through (v) [Reserved]. For further guidance, see § 1.1471–4(d)(6)(i) through (v).

(vi) *Extensions in filing.* The IRS shall grant an automatic 90-day extension of time in which to file Form 8966. Form 8809, ''Request for Extension of Time to File Information Returns,'' (or such other form as the IRS may prescribe) must be used to request such extension of time and must be filed no later than the due date of Form 8966. Under certain hardship conditions, the IRS may grant an additional 90-day extension. A request for extension due to hardship must contain a statement of the reasons for requesting the extension and such other information as the forms or instructions may require.

(vii) [Reserved]. For further guidance, see § 1.1471–4(d)(6)(vii).

(7) *Special reporting rules with respect to the 2014 and 2015 calendar years*

(i) *In general.* If the effective date of the FFI agreement of a participating FFI is on or before December 31, 2015, the participating FFI is required to report U.S. accounts and accounts held by owner-documented FFIs that it maintained (or that it is otherwise required to report under paragraph (d)(2)(ii) of this section) during the 2014 and 2015 calendar years in accordance with paragraph (d)(7)(ii) or (iii) of this section.

(ii) [Reserved]. For further guidance, see § 1.1471–4(d)(7)(ii).

(A) *Reporting with respect to the 2014 calendar year.* With respect to accounts maintained during the 2014 calendar year—

(*1*) through (*3*) [Reserved]. For further guidance, see § 1.1471–4(d)(7)(ii)(A)(*1*) through (*3*).

(B) [Reserved]. For further guidance, see § 1.1471–4(d)(7)(ii)(B).

(*1*) through (*2*) [Reserved]. For further guidance, see § 1.1471–4(d)(7)(ii)(B)(*1*) through (*2*).

(iii) *Participating FFIs that report under § 1.1471–4(d)(5).* A participating FFI that elects to report under paragraph (d)(5) of this section may report only the information described in paragraphs (d)(7)(ii)(A)(*1*) and (*3*) of this section for its 2014 calendar year. With respect to its 2015 calendar year, a participating FFI is required to report all of the information required to be reported under paragraphs (d)(5)(i) through (iii) of this section but may exclude from such reporting amounts reportable under section 6045.

(iv) [Reserved]. For further guidance, see § 1.1471–4(d)(7)(iv).

(A) *In general.* Except as provided in paragraph (d)(7)(iv)(B) of this section, reporting under paragraph (d)(7)(ii) of this section shall be made on Form 8966 (or such other form as the IRS may prescribe), in the manner described in paragraph (d)(3)(vi) of this section. Reporting under paragraph (d)(7)(iii) of this section shall be made in accordance with paragraph (d)(5)(vii) of this section.

(B) *Special determination date and timing for reporting with respect to the 2014 calendar year.* With respect to the 2014 calendar year, a participating FFI must report under paragraph (d)(3) or (5) of this section on all accounts that are identified and documented under paragraph (c) of this section as U.S. accounts or accounts held by owner-documented FFIs as of December 31, 2014, (or as of the date an account is closed if the account is closed prior to December 31, 2014) if such account was outstanding on July 1, 2014. Reporting for the 2014 calendar year shall be filed with the IRS on or before March 31, 2015. However, a U.S. payor (including a U.S. branch of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person) that reports in accordance with paragraph (d)(2)(iii) of this section may report all or a portion of its U.S. accounts and accounts held by owner-documented FFIs in accordance with the dates otherwise applicable to reporting under chapter 61 with respect to the 2014 calendar year.

(8) *Reporting requirements of QIs, WPs, and WTs.* In general, the reporting requirements with respect to the U.S. accounts maintained by a participating FFI that is a QI, WP, or WT will be consistent with the reporting requirements with respect to such accounts of a participating FFI that is not a QI, WP, or WT. See the QI, WP, or WT agreement for the coordination of the chapter 4 reporting obligations of a participating FFI that also is a QI, WP, or WT.

(9) [Reserved]. For further guidance, see § 1.1471–4(d)(9).

*Example 1.* [Reserved]. For further guidance, see § 1.1471–4(d)(9), *Example 1.*

*Example 2.* [Reserved]. For further guidance, see § 1.1471–4(d)(9), *Example 2.*

*Example 3. U.S. owned foreign entity.* FC, a passive NFFE, holds a custodial account with PFFI1, a participating FFI. U, a specified U.S. person, owns 3% of the only class of stock of FC. Q, another specified U.S. person, owns 12% of the only class of stock of FC. U is not a substantial U.S. owner of FC. See § 1.1473–1(b). Q is a substantial U.S. owner of FC and FC identifies her as such to PFFI1. PFFI1 does not elect to report under paragraph (d)(5) of this section. PFFI1 must complete and file the reporting form described in paragraph (d)(3)(v) of this section and report the information described in paragraph (d)(3)(iii) with respect to both FC and Q. See paragraph (d)(3)(ii) of this section.

*Example 4.* [Reserved]. For further guidance, see § 1.1471–4(d)(9), *Example 4.*

*Example 5. Owner-documented FFI.* DC, an owner-documented FFI under § 1.1471–3(d)(6), holds a custodial account with PFFI1, a participating FFI. U, a specified U.S. person, owns 3% of the only class of stock of DC. Q, another specified U.S. person, owns 12% of the only class of stock of DC. Both U and Q are persons identified in § 1.1471–3(d)(6)(iv)(A)(*1*) and DC identifies U and Q to PFFI1 and otherwise provides to PFFI1 all of the information required to be reported with respect to DC. PFFI1 must complete and file a form described in paragraph (d)(3)(v) of this section with regard to U and Q. See paragraph (d)(3)(iii) of this section.

*Example 6.* [Reserved]. For further guidance, see § 1.1471–4(d)(9), *Example 6.*

*Example 7. Sponsored FFI.* DC2 is an FFI that has agreed to have a sponsoring entity, PFFI1, fulfill DC2's chapter 4 responsibilities under § 1.1471–5(f)(2)(iii). U, a specified U.S. person, holds an equity interest in DC2 that is a financial account under § 1.1471–5(b)(3)(iii). PFFI1 must complete and file a form described in paragraph (d)(3)(v) of this section with regard to U's account on behalf of DC2. See paragraph (d)(2)(ii)(C) of this section.

(e) [Reserved]. For further guidance, see § 1.1471–4(e).

(1) *In general.* Except as otherwise provided in this paragraph (e)(1) or paragraphs (e)(2) and (e)(3) of this section, each FFI that is a member of an expanded affiliated group must have the chapter 4 status of a participating FFI, deemed-compliant FFI, or exempt beneficial owner as a condition for any member of such group to obtain the status of a participating FFI or registered deemed-compliant FFI. Accordingly, except as otherwise provided in published guidance, each FFI other than a certified deemed-compliant FFI or exempt beneficial owner in an expanded affiliated group must submit a registration form to the IRS in such manner as the IRS may prescribe requesting an FFI agreement, registered deemed-compliant status, or limited FFI

status as a condition for any member to become a participating FFI or registered deemed-compliant FFI. Except as provided in paragraph (e)(2) of this section, each FFI other than a certified deemed-compliant FFI or exempt beneficial owner that is a member of such group must also agree to all of the requirements for the status for which it applies with respect to all accounts maintained at all of its branches, offices, and divisions. For the withholding requirements of a participating FFI with respect to its limited branches and its affiliates that are limited FFIs, see paragraph (b)(5) of this section. Notwithstanding the foregoing, an FFI (or branch thereof) that is treated as a participating FFI or a deemed-compliant FFI pursuant to a Model 1 IGA or Model 2 IGA will maintain such status provided that it meets the terms for such status pursuant to such agreement.

(2) [Reserved]. For further guidance, see § 1.1471–4(e)(2).

(i) [Reserved]. For further guidance, see § 1.1471–4(e)(2)(i).

(A) through (C) [Reserved]. For further guidance, see § 1.1471–4(e)(2)(i)(A) through (C).

(ii) *Branch defined.* For purposes of this section, a branch is a unit, business, or office of an FFI that is treated as a branch under the regulatory regime of a country or that is otherwise regulated under the laws of a country as separate from other offices, units, or branches of the FFI and also includes an entity that is disregarded as an entity separate from an FFI (including branches maintained by such disregarded entity). For purposes of this section, a branch includes a unit, business, or office of an FFI located in a country in which it is resident, and a unit, business, or office of an FFI located in the country in which the FFI is created or organized. All units, businesses, and offices of a participating FFI located in a single country, and all entities disregarded as entities separate from a participating FFI and located in a single country, shall be treated as a single branch and may use the same GIIN. An account will be treated as maintained by a branch or disregarded entity if the rights and obligations of the account holder and the participating FFI with regard to such account (including any assets held in the account) are governed by the laws of the country of the branch or disregarded entity.

(iii) through (v) [Reserved]. For further guidance, see § 1.1471–4(e)(2)(iii) through (v).

(3) through (4) [Reserved]. For further guidance, see § 1.1471–4(e)(3) through (4).

(f) [Reserved]. For further guidance, see § 1.1471–4(f).

(1) through (3)(iv)(C) [Reserved]. For further guidance, see § 1.1471–4(f)(1) through (f)(3)(iv)(C).

(4) [Reserved]. For further guidance, see § 1.1471–4(f)(4).

(i) *General inquiries.* The IRS, based upon the information reporting forms described in paragraphs (d)(3)(v), (d)(5)(vii), or (d)(6)(iv) of this section filed with the IRS for each calendar year, may request additional information with respect to the information reported on the forms or may request the account statements described in paragraph (d)(4)(v) of this section. The IRS may request additional information to determine an FFI's compliance with its FFI agreement and to assist the IRS with its review of account holder compliance with tax reporting requirements.

(ii) *Inquiries regarding substantial non-compliance.* If, based on the information reporting forms described in paragraphs (d)(3)(v), (d)(5)(vii), or (d)(6)(iv) of this section filed with the IRS for each calendar year, the certifications made by the responsible officer described in paragraph (f)(3) of this section, or any other information related to the participating FFI's compliance with its FFI agreement, the IRS determines in its discretion that the participating FFI may not have substantially complied with the requirements of its FFI agreement, the IRS may request from the responsible officer (or designee) information necessary to verify the participating FFI's compliance with the FFI agreement. The IRS may request, for example, a description or copy of the participating FFI's policies and procedures for fulfilling the requirements of the FFI agreement, a description of the participating FFI's procedures for conducting its periodic review, or a copy of any written reports documenting the findings of such review in order to evaluate the sufficiency of the participating FFI's compliance program and review of such program. The IRS may also request the performance of specified review procedures by a person (including an external auditor or third-party consultant) that the IRS identifies as competent to perform such procedures given the facts and circumstances surrounding the FFI's potential failure to comply with the FFI agreement. The IRS may make these requests to a sponsoring entity with respect to any sponsored FFI.

(g) [Reserved]. For further guidance, see § 1.1471–4(g).

(1) *Defined.* An event of default occurs if a participating FFI fails to perform material obligations required with respect to the due diligence, verification, withholding, or reporting requirements of the FFI agreement or if the IRS determines that the participating FFI has failed to substantially comply with the requirements of the FFI agreement. An event of default also includes the occurrence of the following—

(i) [Reserved]. For further guidance, see § 1.1471–4(g)(1)(i).

(ii) Failure to significantly reduce, over a period of time, the number of account holders or payees that the participating FFI is required to treat as recalcitrant account holders or nonparticipating FFIs, as a result of the participating FFI failing to comply with the due diligence procedures for the identification and documentation of account holders and payees, as set forth in paragraph (c) of this section;

(iii) through (ix) [Reserved]. For further guidance, see § 1.1471–4(g)(1)(iii) through (ix).

(2) *Notice of event of default.* Following an event of default known by or disclosed to the IRS, the IRS will deliver to the participating FFI a notice of default specifying the event of default. The IRS will request that the participating FFI remediate the event of default within a specified time period. The participating FFI must respond to the notice of default and provide information responsive to an IRS request for information or state the reasons why the participating FFI does not agree that an event of default has occurred. Taking into account the terms of any applicable Model 2 IGA, if the participating FFI does not provide a response within the specified time period, the IRS may, at its sole discretion, deliver a notice of termination that terminates the FFI's participating FFI status. A participating FFI may request, within a reasonable period of time, reconsideration of a notice of default or notice of termination by written request to the Deputy Commissioner (International), LB&I.

(3) [Reserved]. For further guidance, see § 1.1471–4(g)(3).

(h) through (j) [Reserved]. For further guidance, see § 1.1471–4(h) through (j).

(k) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 10.** Section 1.1471–5 is amended:

■ 1. By removing paragraphs (a)(3)(ii) (b)(3)(v)(B)(*3*), and (b)(3)(vi)(B)(*3*).

■ 2. By redesignating paragraphs (a)(3)(iii) through (a)(3)(vi) as paragraphs (a)(3)(ii) through (a)(3)(v) and paragraph (j) as paragraph (l).

■ 3. By adding paragraphs (f)(1)(i)(F)(*3*)(*vii*), (f)(2)(v), (j), and (k).

■ 4. By revising paragraphs (a)(3)(i), (a)(4)(i), (b)(1)(iii)(B)(*2*), (b)(3)(iv), (b)(3)(v)(A), (b)(3)(v)(B)(*1*) through (*2*), (b)(3)(vi), (c), (e)(1)(v)(A), (e)(3)(ii), (e)(4)(v) *Example 7* through *Example 8,* (e)(5)(i)(A)(*3*), (e)(5)(i)(B) introductory text, (e)(5)(i)(B)(*1*), (e)(5)(i)(C), (e)(5)(i)(D)(*1*)(*iv*) through (*v*), (e)(5)(iv)(B), (f)(1)(i)(A)(*6*), (f)(1)(i)(B)(*1*), (f)(1)(i)(B)(*3*), (f)(1)(i)(C)(*2*), (f)(1)(i)(D)(*4*) through (*6*), (f)(1)(i)(D)(*7*) introductory text, (f)(1)(i)(E), (f)(1)(i)(F)(*1*)(*ii*), (f)(1)(i)(F)(*3*)(*v*) through (*vi*), (f)(1)(i)(F)(*5*), (f)(1)(ii)(B), (f)(2) introductory text, (f)(2)(i)(B), (f)(2)(iii) through (iv), (f)(4)(i), (g)(3)(i)(D), and (i).

The additions and revisions read as follows:

**§ 1.1471–5 Definitions applicable to section 1471.**

(a) * * *

(3) * * *

(i) [Reserved]. For further guidance, see § 1.1471–5T(a)(3)(i).

* * * * *

(4) * * *

(i) [Reserved]. For further guidance, see § 1.1471–5T(a)(4)(i).

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(B) * * *

(*2*) [Reserved]. For further guidance, see § 1.1471–5T(b)(1)(iii)(B)(*2*).

* * * * *

(3) * * *

(iv) [Reserved]. For further guidance, see § 1.1471–5T(b)(3)(iv).

(v) * * *

(A) [Reserved]. For further guidance, see § 1.1471–5T(b)(3)(v)(A).

(B) * * *

(*1*) [Reserved]. For further guidance, see § 1.1471–5T(b)(3)(v)(B)(*1*).

(*2*) [Reserved]. For further guidance, see § 1.1471–5T(b)(3)(v)(B)(*2*).

(vi) [Reserved]. For further guidance, see § 1.1471–5T(b)(3)(vi) through (b)(3)(vi)(B)(*2*).

* * * * *

(c) [Reserved]. For further guidance, see § 1.1471–5T(c).

* * * * *

(e) * * *

(1) * * *

(v) * * *

(A) [Reserved]. For further guidance, see § 1.1471–5T(e)(1)(v)(A).

* * * * *

(3) * * *

(ii) [Reserved]. For further guidance, see § 1.1471–5T(e)(3)(ii).

* * * * *

(4) * * *

(v) * * *

*Example 7.* [Reserved]. For further guidance, see § 1.1471–5T(e)(4)(v), *Example 7.*

*Example 8.* [Reserved]. For further guidance, see § 1.1471–5T(e)(4)(v), *Example 8.*

* * * * *

(5) * * *

(i) * * *

(A) * * *

(*3*) [Reserved]. For further guidance, see § 1.1471–5T(e)(5)(i)(A)(*3*).

(B) [Reserved]. For further guidance, see § 1.1471–5T(e)(5)(i)(B).

(*1*) [Reserved]. For further guidance, see § 1.1471–5T(e)(5)(i)(B)(*1*).

* * * * *

(C) [Reserved]. For further guidance, see § 1.1471–5T(e)(5)(i)(C).

(D) * * *

(*1*) * * *

(*iv*) [Reserved]. For further guidance, see § 1.1471–5T(e)(5)(i)(D)(*1*)(*iv*).

(*v*) [Reserved]. For further guidance, see § 1.1471–5T(e)(5)(i)(D)(*1*)(*v*).

* * * * *

(iv) * * *

(B) [Reserved]. For further guidance, see § 1.1471–5T(e)(5)(iv)(B).

* * * * *

(f) * * *

(1) * * *

(i) * * *

(A) * * *

(*6*) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(A)(*6*).

* * * * *

(B) * * *

(*1*) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(B)(*1*).

* * * * *

(*3*) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(B)(*3*).

(C) * * *

(*2*) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(C)(*2*).

* * * * *

(D) * * *

(*4*) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(D)(*4*).

(*5*) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(D)(*5*).

(*6*) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(D)(*6*).

(*7*) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(D)(*7*).

* * * * *

(E) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(E). through (f)(1)(i)(E)(*2*).

(F) * * *

(*1*) * * *

(*ii*) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(F)(*1*)(*ii*).

* * * * *

(*3*) * * *

(*v*) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(F)(*3*)(*v*).

(*vi*) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(F)(*3*)(*vi*).

(*vii*) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(F)(*3*)(*vii*).

* * * * *

(*5*) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(F)(*5*).

(ii) * * *

(B) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(ii)(B).

* * * * *

(2) [Reserved]. For further guidance, see § 1.1471–5T(f)(2).

(i) * * *

(B) [Reserved]. For further guidance, see § 1.1471–5T(f)(2)(i)(B).

* * * * *

(iii) [Reserved]. For further guidance, see § 1.1471–5T(f)(2)(iii) through (f)(2)(iii)(E).

(iv) [Reserved]. For further guidance, see § 1.1471–5T(f)(2)(iv) through (f)(2)(iv)(E).

(F) [Reserved]. For further guidance, see § 1.1471–5T(f)(2)(iv)(F).

(v) [Reserved]. For further guidance, see § 1.1471–5T(f)(2)(v) through (f)(2)(v)(B).

* * * * *

(4) * * *

(i) [Reserved]. For further guidance, see § 1.1471–5T(f)(4)(i).

* * * * *

(g) * * *

(3) * * *

(i) * * *

(D) [Reserved]. For further guidance, see § 1.1471–5T(g)(3)(i)(D).

* * * * *

(i) [Reserved]. For further guidance, see § 1.1471–5T(i) through (i)(10).

(j) [Reserved]. For further guidance, see § 1.1471–5T(j).

(k) [Reserved]. For further guidance, see § 1.1471–5T(k).

■ **Par. 11.** Section 1.1471–5T is added to read as follows:

**§ 1.1471–5T Definitions applicable to section 1471 (temporary).**

(a) [Reserved]. For further guidance, see § 1.1471–5(a).

(1) through (2) [Reserved]. For further guidance, see § 1.1471–5(a)(1) through (2).

(3) [Reserved]. For further guidance, see § 1.1471–5(a)(3).

(i) *In general.* Except as otherwise provided in this paragraph (a)(3), the *account holder* is the person listed or identified as the holder or owner of the account with the FFI that maintains the account, regardless of whether such person is a flow-through entity. Thus, for example, except as otherwise provided in paragraph (a)(3)(ii) of this

section, if a trust (including a simple or grantor trust) or an estate is listed as the holder or owner of a financial account, the trust or estate is the account holder, rather than its owners or beneficiaries. Similarly, except as otherwise provided in this paragraph (a)(3), if a partnership is listed as the holder or owner of a financial account, the partnership is the account holder, rather than the partners in the partnership. In the case of an account held by an entity that is disregarded for U.S. federal tax purposes under § 301.7701–2(c)(2)(i), the account shall be treated as held by the person owning such entity. With respect to an account held by an exempt beneficial owner, such account is treated as held by an exempt beneficial owner only when all payments made to such account would be treated as made to an exempt beneficial owner. See § 1.1471–6(h) for when a payment derived from certain commercial activities is not treated as made to an exempt beneficial owner.

(ii) [Reserved]. For further guidance, see § 1.1471–5(a)(3)(ii).

(iii) [Reserved]. For further guidance, see § 1.1471–5(a)(3)(iii).

(iv) [Reserved]. For further guidance, see § 1.1471–5(a)(3)(iv).

(v) [Reserved]. For further guidance, see § 1.1471–5(a)(3)(v).

(4) [Reserved]. For further guidance, see § 1.1471–5(a)(4).

(i) *Exception for certain individual accounts of participating FFIs.* Unless a participating FFI elects under paragraph (a)(4)(ii) of this section not to apply this paragraph (a)(4)(i), the term U.S. account shall not include any depository account maintained by such financial institution during a calendar year if the account is held solely by one or more individuals and, with respect to each holder of such account, the aggregate balance or value of all depository accounts held by each such individual does not exceed $50,000 as of the end of the calendar year or on the date the account is closed. For rules for determining the account balance or value, see paragraphs (a)(3)(iii) and (b)(4) of this section.

(ii) [Reserved]. For further guidance, see § 1.1471–5(a)(4)(ii).

(iii) [Reserved]. For further guidance, see § 1.1471–5(a)(4)(iii).

(b) [Reserved]. For further guidance, see § 1.1471–5(b).

(1) [Reserved]. For further guidance, see § 1.1471–5(b)(1).

(i) through (ii) [Reserved]. For further guidance, see § 1.1471–5(b)(1)(i) through (ii).

(iii) [Reserved]. For further guidance, see § 1.1471–5(b)(1)(iii).

(A) [Reserved]. For further guidance, see § 1.1471–5(b)(1)(iii)(A).

(B) [Reserved]. For further guidance, see § 1.1471–5(b)(1)(iii)(B).

(*1*) [Reserved]. For further guidance, see § 1.1471–5(b)(1)(iii)(B)(*1*).

(*2*) The return earned on the interest is determined, directly or indirectly, primarily by reference to one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or one or more passive NFFEs that are members of the entity's expanded affiliated group (as determined under paragraph (b)(3)(vi) of this section);

(*3*) through (*4*) [Reserved]. For further guidance, see § 1.1471–5(b)(1)(iii)(B)(*3*) through (*4*).

(C) [Reserved]. For further guidance, see § 1.1471–5(b)(1)(iii)(C) through (b)(1)(iii)(C)(*2*).

(iv) [Reserved]. For further guidance, see § 1.1471–5(b)(1)(iv).

(2) [Reserved]. For further guidance, see § 1.1471–5(b)(2) through (b)(2)(vi).

(3) [Reserved]. For further guidance, see § 1.1471–5(b)(3).

(i) through (iii) [Reserved]. For further guidance, see § 1.1471–5(b)(3)(i) through (b)(3)(iii)(B)(*3*).

(iv) *Regularly traded on an established securities market.* To determine if debt or equity interests described in paragraph (b)(1)(iii) of this section are regularly traded, the principles of § 1.1472–1(c)(1)(i)(A)(*2*)(*i*) and (*ii*) shall apply with respect to the interests, and the principles of § 1.1472–1(c)(1)(i)(B)(*1*) shall apply for this purpose in the case of an initial public offering of such interests. See § 1.1472–1(c)(1)(i)(C) for the definition of an established securities market. For purposes of paragraph (b)(1)(iii) of this section, an interest is not regularly traded on an established securities market if the holder of the interest (excluding a financial institution acting as an intermediary) is registered on the books of the investment entity. The preceding sentence shall not apply to the extent a holder's interest is registered prior to July 1, 2014, on the books of the investment entity.

(v) [Reserved]. For further guidance, see § 1.1471–5(b)(3)(v).

(A) *Equity interest.* The value of an equity interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments if the return earned on such interest (including upon a sale, exchange, or redemption) is determined primarily by reference to profits or assets of a U.S. person or equity interests in a U.S. person.

(B) [Reserved]. For further guidance, see § 1.1471–5(b)(3)(v)(B).

(*1*) Debt is convertible into equity interests in a U.S. person; or

(*2*) The return earned on such interest (including upon a sale, exchange, or redemption) is determined primarily by reference to profits or assets of a U.S. person or equity interests in a U.S. person.

(vi) *Return earned on the interest (including upon a sale, exchange, or redemption) determined, directly or indirectly, primarily by reference to one or more investment entities or passive NFFEs.*

(A) *Equity interest.* The return earned on an equity interest is determined, directly or indirectly, primarily by reference to one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group if the return on such interest (including upon a sale, exchange, or redemption) is determined primarily by reference to profits or assets of, or equity interests in, one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group.

(B) *Debt interest.* The return earned on a debt interest is determined, directly or indirectly, primarily by reference to one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group if—

(*1*) Debt is convertible into equity interests in one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group; or

(*2*) The return on such interest (including upon a sale, exchange, or redemption) is determined primarily by reference to profits or assets of, or equity interests in, one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group.

(vii) [Reserved]. For further guidance, see § 1.1471–5(b)(3)(vii) through (b)(3)(vii)(D)(*3*).

(4) through (5) [Reserved]. For further guidance, see § 1.1471–5(b)(4) through (5).

(c) *U.S. owned foreign entity.* The term *U.S. owned foreign entity* means any foreign entity that has one or more substantial U.S. owners (as defined in § 1.1473–1(b)). See § 1.1473–1(e) for the definition of foreign entity for purposes of chapter 4. For the requirements applicable to determining direct and

indirect ownership in an entity, see § 1.1473–1(b)(2).

(d) [Reserved]. For further guidance, see § 1.1471–5(d).

(e) [Reserved]. For further guidance, see § 1.1471–5(e).

(1) [Reserved]. For further guidance, see § 1.1471–5(e)(1).

(i) through (iv) [Reserved]. For further guidance, see § 1.1471–5(e)(1)(i) through (iv).

(v) [Reserved]. For further guidance, see § 1.1471–5(e)(1)(v).

(A) Is part of an expanded affiliated group that includes a depository institution, custodial institution, specified insurance company, or investment entity described in paragraphs (e)(4)(i)(B) or (C) of this section; or

(B) [Reserved]. For further guidance, see § 1.1471–5(e)(1)(v)(B).

(2) [Reserved]. For further guidance, see § 1.1471–5(e)(2) through (e)(2)(iv).

(3) [Reserved]. For further guidance, see § 1.1471–5(e)(3).

(i) [Reserved]. For further guidance, see § 1.1471–5(e)(3)(i) through (e)(3)(i)(B).

(ii) *Income attributable to holding financial assets and related financial services.* For purposes of this paragraph (e)(3), the term *income attributable to holding financial assets and related financial services* means custody, account maintenance, and transfer fees; commissions and fees earned from executing and pricing securities transactions; income earned from extending credit to customers with respect to financial assets held in custody by the entity (or acquired through such extension of credit); income earned on the bid-ask spread of financial assets; fees for providing financial advice with respect to financial assets held in (or potentially to be held in) custody by the entity; and fees for clearance and settlement services.

(iii) [Reserved]. For further guidance, see § 1.1471–5(e)(3)(iii).

(4) [Reserved]. For further guidance, see § 1.1471–5(e)(4).

(i) through (iv) [Reserved]. For further guidance, see § 1.1471–5(e)(4)(i) through (e)(4)(iv)(B).

(v) [Reserved]. For further guidance, see § 1.1471–5(e)(4)(v).

*Example 1* through *Example 6* [Reserved]. For further guidance, see § 1.1471–5(e)(4)(v), *Example 1* through *Example 6.*

*Example 7. Individual introducing broker.* IB, an individual introducing broker, primarily conducts a business of providing advice to clients, has discretionary authority to manage clients' assets, and uses the services of a foreign entity to conduct and execute trades on behalf of clients. IB provides services as an investment advisor and manager to Entity, a foreign corporation. Entity has earned 50% or more of its gross income for the past three years from investing, reinvesting, or trading in financial assets. Because IB is an individual, notwithstanding that IB primarily conducts certain investment-related activities, IB is not an investment entity under paragraph (e)(4)(i)(A) of this section. Further, Entity is not an investment entity under paragraph (e)(4)(i)(B) of this section because Entity is managed by IB, an individual.

*Example 8. Entity introducing broker.* IB, a foreign entity introducing broker, primarily conducts a business of providing advice to clients, has discretionary authority to manage clients' assets, and uses the services of a foreign entity to conduct and execute trades on behalf of clients. IB provides its services as an investment advisor and manager to Entity, a foreign corporation. Entity has earned 50% or more of its gross income for the past three years from investing, reinvesting, or trading in financial assets. Because IB is an entity that primarily conducts certain investment-related activities, IB is an investment entity under paragraph (e)(4)(i)(A) of this section. Further, Entity is an investment entity under paragraph (e)(4)(i)(B) of this section because it is managed by IB, an investment entity that performs certain of the activities described in paragraph (e)(4)(i)(A) of this section on behalf of Entity.

(5) [Reserved]. For further guidance, see § 1.1471–5(e)(5).

(i) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i).

(A) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i)(A).

(*1*) through (*2*) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i)(A)(*1*) through (*2*).

(*3*) The entity does not hold itself out as (and was not formed in connection with or availed of by) an arrangement or investment vehicle that is a private equity fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy to acquire or fund companies and to treat the interests in those companies as capital assets held for investment purposes. For purposes of determining whether an entity was formed in connection with or availed of by such an arrangement or investment vehicle, any entity that existed at least six months prior to its acquisition by such arrangement or investment vehicle and that, prior to the acquisition, regularly conducted activities in the ordinary course of business will not be considered to have been formed in connection with or availed of by the arrangement or investment vehicle, in the absence of other facts suggesting the existence of an investment strategy described in the prior sentence.

(B) *Nonfinancial group.* An expanded affiliated group defined in § 1.1471–5(i)(2) is a *nonfinancial group* if, taking into account the application of this section—

(*1*) For the three-year period (or the period during which the expanded affiliated group has been in existence, if shorter) ending on December 31 of the year preceding the year in which the determination is made, no more than 25 percent of the gross income of the expanded affiliated group (excluding income derived by any member that is an entity described in paragraph (e)(5)(ii) or (iii) of this section and income derived from transactions between members of the expanded affiliated group) consists of passive income (as defined in § 1.1472–1(c)(1)(iv)); no more than five percent of the gross income of the expanded affiliated group is derived by members of the expanded affiliated group that are FFIs (excluding income derived from transactions between members of the expanded affiliated group or by any member of the expanded affiliated group that is a certified deemed-compliant FFI); and no more than 25 percent of the value of assets held by the expanded affiliated group (excluding assets held by a member that is an entity described in paragraph (e)(5)(ii) or (iii) of this section and assets resulting from transactions between related members of the expanded affiliated group) are assets that produce or are held for the production of passive income; and

(*2*) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i)(B)(*2*).

(C) *Holding company.* For purposes of this paragraph (e)(5)(i), an entity is a holding company if its primary activity consists of holding (directly or indirectly) all or part of the outstanding stock of one or more members of its expanded affiliated group. A partnership or any other non-corporate entity shall be treated as a holding company if substantially all the activities of such partnership (or other entity) consist of holding more than 50 percent of the voting power and value of the stock of one or more common parent corporation(s) of one or more expanded affiliated group(s). If a partnership or other non-corporate entity owns more than 50 percent of the voting power and value of the stock of more than one common parent corporation of an expanded affiliated group, each common parent corporation's expanded affiliated group will be treated as a separate expanded affiliated group for purposes of applying the rules of this section unless a non-corporate entity is treated as the common parent entity of the expanded affiliated group in accordance with § 1.1471–5(i)(10).

(D) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i)(D).

(*1*) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i)(D)(*1*).

(*i*) through (*iii*) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i)(D)(*1*)(*i*) through (*iii*).

(*iv*) Managing the working capital of the expanded affiliated group (or any member thereof) such as by pooling the cash balances of affiliates (including both positive and deficit cash balances) or by investing or trading in financial assets solely for the account and risk of such entity or any member of its expanded affiliated group; or

(*v*) Acting as a financing vehicle for the expanded affiliated group (or any member thereof).

(*2*) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i)(D)(*2*).

(*i*) through (*ii*) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i)(D)(*2*)(*i*) through (*ii*).

(E) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i)(E).

(ii) through (iii) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(ii) through (iii).

(iv) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(iv).

(A) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(iv)(A).

(B) The entity does not hold an account (other than a depository account in the country in which the entity is operating to pay for expenses in that country) with or receive payments from any withholding agent other than a member of its expanded affiliated group;

(C) through (D) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(iv)(C) through (D).

(v) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(v) through (e)(5)(vi)(D).

(6) [Reserved]. For further guidance, see § 1.1471–5(e)(6).

(f) [Reserved]. For further guidance, see § 1.1471–5(f).

(1) [Reserved]. For further guidance, see § 1.1471–5(f)(1).

(i) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i).

(A) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(A).

(*1*) through (*5*) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(A)(*1*) through (*5*).

(*6*) By the later of June 30, 2014, or the date it registers as a deemed-compliant FFI, the FFI implements policies and procedures, consistent with those set forth for a participating FFI under § 1.1471–4(c), to monitor whether the FFI opens or maintains an account for a specified U.S. person who is not a resident of the country in which the FFI is incorporated or organized (including a U.S. person that was a resident when the account was opened but subsequently ceases to be a resident), an entity controlled or beneficially owned (as determined under the FFI's AML due diligence) by one or more specified U.S. persons that are not residents of the country in which the FFI is incorporated or organized, or a nonparticipating FFI. Such policies and procedures must provide that if any such account is discovered, the FFI will close such account, transfer such account to a participating FFI, reporting Model 1 FFI, or U.S. financial institution, or withhold and report on such account as would be required under § 1.1471–4(b) and (d) if the FFI were a participating FFI.

(*7*) through (*9*) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(A)(*7*) through (*9*).

(B) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(B).

(*1*) By the later of June 30, 2014, or the date it registers with the IRS pursuant to paragraph (f)(1)(ii) of this section, the FFI implements policies and procedures to ensure that within six months of opening a U.S. account or an account held by a recalcitrant account holder or a nonparticipating FFI, the FFI either transfers such account to an affiliate that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, closes the account, or becomes a participating FFI.

(*2*) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(B)(*2*).

(*3*) By the later of June 30, 2014, or the date it registers with the IRS pursuant to paragraph (f)(1)(ii) of this section, the FFI implements policies and procedures to ensure that it identifies any account that becomes a U.S. account or an account held by a recalcitrant account holder or a nonparticipating FFI due to a change in circumstances. Within six months of the date on which the FFI first has knowledge or reason to know of the change in the account holder's chapter 4 status, the FFI transfers any such account to an affiliate that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, closes the account, or becomes a participating FFI.

(C) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(C).

(*1*) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(C)(*1*).

(*2*) Each holder of record of direct debt interests in the FFI in excess of $50,000, of any direct equity interests in the FFI (for example the holders of its units or global certificates), and of any other account holder of the FFI is a participating FFI, a registered deemed-compliant FFI, a retirement plan described in § 1.1471–6(f), a non-profit organization described in paragraph (e)(5)(vi) of this section, a U.S. person that is not a specified U.S. person, a nonreporting IGA FFI, or an exempt beneficial owner. Notwithstanding the prior sentence, an FFI will not be prohibited from qualifying as a qualified collective investment vehicle solely because it has issued interests in bearer form provided that the FFI ceased issuing interests in such form after December 31, 2012, retires all such interests upon surrender, and establishes policies and procedures to redeem or immobilize all such interests prior to January 1, 2017, and that prior to payment the FFI documents the account holder in accordance with the procedures set forth in § 1.1471–4(c) applicable to accounts other than preexisting accounts and agrees to withhold and report on such accounts as would be required under § 1.1471–4(b) and (d) if it were a participating FFI. For purposes of this paragraph (f)(1)(i)(C), an FFI may disregard equity interests owned by specified U.S. persons acquired with seed capital within the meaning of paragraph (i)(4) of this section if the specified U.S. person is described in paragraph (i)(3)(i) and (ii) of this section (substituting the term *U.S. person* for the terms *FFI* and *member*), and the specified U.S. person neither has held, nor intends to hold, such interest for more than three years.

(*3*) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(C)(*3*).

(D) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(D).

(*1*) through (*3*) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(D)(*1*) through (*3*).

(*4*) The FFI ensures that by the later of December 31, 2014, or six months after the date the FFI registers as a deemed-compliant FFI, each agreement that governs the distribution of its debt or equity interests prohibits sales and other transfers of debt or equity interests in the FFI (other than interests that are both distributed by and held through a participating FFI) to specified U.S. persons, nonparticipating FFIs, or passive NFFEs with one or more substantial U.S. owners. In addition, by that date, the FFI's prospectus and all marketing materials must indicate that sales and other transfers of interests in the FFI to specified U.S. persons, nonparticipating FFIs, or passive NFFEs with one or more substantial U.S. owners are prohibited unless such interests are both distributed by and held through a participating FFI.

(*5*) The FFI ensures that by the later of December 31, 2014, or six months after the date the FFI registers as a

deemed-compliant FFI, each agreement entered into by the FFI that governs the distribution of its debt or equity interests requires the distributor to notify the FFI of a change in the distributor's chapter 4 status within 90 days of the change. The FFI must, with respect to any distributor that ceases to qualify as a distributor identified in paragraph (f)(1)(i)(D)(*3*) of this section, terminate its distribution agreement with the distributor, or cause the distribution agreement to be terminated, within 90 days of the notification of the distributor's change in status and, with respect to all debt and equity interests of the FFI issued through that distributor, redeem those interests, convert those interests to direct holdings in the fund, or cause those interests to be transferred to another distributor identified in paragraph (f)(1)(i)(D)(*3*) of this section within six months of the distributor's change in status.

(*6*) With respect to any of the FFI's preexisting direct accounts that are held by the beneficial owner of the interest in the FFI, the FFI reviews those accounts in accordance with the procedures (and time frames) described in § 1.1471–4(c) applicable to preexisting accounts to identify any U.S. account or account held by a nonparticipating FFI. Notwithstanding the previous sentence, the FFI will not be required to review the account of any individual investor that purchased its interest at a time when all of the FFI's distribution agreements and its prospectus contained an explicit prohibition of the issuance and/or sale of shares to U.S. entities and U.S. resident individuals. An FFI will not be required to review the account of any investor that purchased its interest in bearer form until the time of payment, but at such time will be required to document the account in accordance with procedures set forth in § 1.1471–4(c) applicable to accounts other than preexisting accounts. By the later of December 31, 2014, or six months after the date the FFI registers as a deemed-compliant FFI, the FFI will be required to certify to the IRS either that it did not identify any U.S. account or account held by a nonparticipating FFI as a result of its review or, if any such accounts were identified, that the FFI will either redeem such accounts, transfer such accounts to an affiliate or other FFI that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, or withhold and report on such accounts as would be required under § 1.1471–4(b) and (d) if it were a participating FFI.

(*7*) By the later of June 30, 2014, or the date that it registers as a deemed-compliant FFI, the FFI implements the policies and procedures described in § 1.1471–4(c) to ensure that it either—

(*i*) through (*ii*) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(D)(*7*)(*i*) through (*ii*).

(*8*) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(D)(*8*).

(E) *Qualified credit card issuers and servicers.* An FFI is described in this paragraph (f)(1)(i)(E) if the FFI meets the following requirements.

(*1*) The FFI is an FFI solely because it is an issuer or servicer of credit cards that accepts deposits, on its own behalf or, in the case of a servicer, on behalf of a credit card issuer, only when a customer makes a payment in excess of a balance due with respect to the credit card account and the overpayment is not immediately returned to the customer.

(*2*) By the later of June 30, 2014, or the date it registers as a deemed-compliant FFI, the FFI implements policies and procedures to either prevent a customer deposit in excess of $50,000 or to ensure that any customer deposit in excess of $50,000 is refunded to the customer within 60 days. For this purpose, a customer deposit does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

(F) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(F).

(*1*) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(F)(*1*).

(*i*) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(F)(*1*)(*i*).

(*ii*) An entity, other than a nonparticipating FFI, has agreed with the FFI to act as a sponsoring entity for the FFI.

(*2*) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(F)(*2*) through (f)(1)(i)(F)(*2*)(*iii*).

(*3*) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(F)(*3*).

(*i*) through (*iv*) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(F)(*3*)(*i*) through (*iv*).

(*v*) Identifies the FFI in all reporting completed on the FFI's behalf to the extent required under §§ 1.1471–4(d)(2)(ii)(C) and 1.1474–1;

(*vi*) Performs the verification procedures required under § 1.1471–4(f) on behalf of the FFI, including the certification required under § 1.1471–4(f)(3);

(*vii*) Performs the verification procedures required under paragraphs (j) and (k) of this section; and

(*viii*) Has not had its status as a sponsoring entity revoked.

(*4*) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(F)(*4*).

(*5*) A sponsoring entity is not liable for any failure to comply with the obligations contained in paragraph (f)(1)(i)(F)(*3*) of this section unless the sponsoring entity is a withholding agent that is separately liable for the failure to withhold on or report with respect to a payment made to the sponsored FFI. A sponsored FFI will remain liable for any failure of its sponsoring entity to comply with the obligations contained in paragraph (f)(1)(i)(F)(*3*) of this section that the sponsoring entity has agreed to undertake on behalf of the FFI, even if the sponsoring entity is also a withholding agent and is itself separately liable for the failure to withhold on or report with respect to a payment made to the sponsored FFI. The same tax, interest, or penalties, however, shall not be collected more than once.

(ii) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(ii).

(A) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(ii)(A).

(B) Have its responsible officer certify every three years to the IRS, either individually or collectively for the FFI's expanded affiliated group, that all of the requirements for the deemed-compliant category claimed by the FFI have been satisfied since the later of the date the FFI registers as a deemed-compliant FFI or June 30, 2014;

(C) through (D) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(ii)(C) through (D).

(iii) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(iii).

(2) *Certified deemed-compliant FFIs.* A *certified deemed-compliant FFI* means an FFI described in any of paragraphs (f)(2)(i) through (v) of this section that has certified as to its status as a deemed-compliant FFI by providing a withholding agent with the documentation described in § 1.1471–3(d)(6) applicable to the relevant deemed-compliant category. A certified deemed-compliant FFI also includes a nonreporting FFI under a Model 1 IGA and a nonreporting FFI treated as a certified deemed-compliant FFI under a Model 2 IGA. A certified deemed-compliant FFI is not required to register with the IRS.

(i) [Reserved]. For further guidance, see § 1.1471–5(f)(2)(i).

(A) [Reserved]. For further guidance, see § 1.1471–5(f)(2)(i)(A) through (f)(2)(i)(A)(*2*).

(B) The FFI's business consists primarily of receiving deposits from and making loans to, with respect to a bank, retail customers that are unrelated to such bank and, with respect to a credit union or similar cooperative credit organization, members, provided that no

such member has a greater than 5 percent interest in such credit union or cooperative credit organization. For purposes of this paragraph (f)(2)(i)(B), a customer is related to a bank if the customer and the bank have a relationship described in section 267(b). For purposes of determining whether a member has a greater than 5 percent interest in a credit union or cooperative credit organization, the member must aggregate the ownership or beneficial interests in the credit union or cooperative credit organization that are owned or held by a related member. A member of a credit union or cooperative credit organization is related to another member if the relationship of such members is described in section 267(b).

(C) through (F) [Reserved]. For further guidance, see § 1.1471–5(f)(2)(i)(C) through (F).

(ii) [Reserved]. For further guidance, see § 1.1471–5(f)(2)(ii) through (f)(2)(ii)(C).

(iii) *Sponsored, closely held investment vehicles.* Subject to the provisions of paragraph (f)(2)(iii)(F) of this section, an FFI is described in this paragraph (f)(2)(iii) if it meets the requirements described in paragraphs (f)(2)(iii)(A) through (D) of this section.

(A) The FFI is an FFI solely because it is an investment entity and is not a QI, WP, or WT.

(B) A participating FFI, reporting Model 1 FFI, or U.S. financial institution agrees to fulfill all due diligence, withholding, and reporting responsibilities that the FFI would have assumed if it were a participating FFI.

(C) Twenty or fewer individuals own all of the debt and equity interests in the FFI (disregarding debt interests owned by U.S. financial institutions, participating FFIs, registered deemed-compliant FFIs, and certified deemed-compliant FFIs and equity interests owned by an entity if that entity owns 100 percent of the equity interests in the FFI and is itself a sponsored FFI under this paragraph (f)(2)(iii)).

(D) The sponsoring entity complies with the following requirements—

(*1*) The sponsoring entity has registered with the IRS as a sponsoring entity;

(*2*) The sponsoring entity agrees to perform, on behalf of the FFI, all due diligence, withholding, reporting, and other requirements that the FFI would have been required to perform if it were a participating FFI and retains documentation collected with respect to the FFI for a period of six years;

(*3*) The sponsoring entity identifies the FFI in all reporting completed on the FFI's behalf to the extent required under §§ 1.1471–4(d)(2)(ii)(C) and 1.1474–1;

(*4*) Performs the verification procedures required under § 1.1471–4(f) on behalf of the FFI, including the certification required under § 1.1471–4(f)(3);

(*5*) Performs the verification procedures required under paragraphs (j) and (k) of this section; and

(*6*) The sponsoring entity has not had its status as a sponsor revoked.

(E) The IRS may revoke a sponsoring entity's status as a sponsoring entity with respect to all sponsored FFIs if there is a material failure by the sponsoring entity to comply with its obligations under this paragraph (f)(2)(iii)(E) with respect to any sponsored FFI. A sponsoring entity is not liable for any failure to comply with the obligations contained in this paragraph (f)(2)(iii)(E) unless the sponsoring entity is a withholding agent that is separately liable for the failure to withhold on or report with respect to the payment made to the sponsored FFI. A sponsored FFI will remain liable for any failure of its sponsoring entity to comply with the obligations contained in this paragraph (f)(2)(iii)(E) that the sponsoring entity has agreed to undertake on behalf of the FFI, even if the sponsoring entity is also a withholding agent and is itself separately liable for the failure to withhold on or report with respect to a payment made to the sponsored FFI. The same tax, interest, or penalties, however, shall not be collected more than once.

(iv) *Limited life debt investment entities (transitional).* An FFI is described in this paragraph (f)(2)(iv) if the FFI is the beneficial owner of the payment (or of payments made with respect to the account) and the FFI meets the following requirements.

(A) The FFI is an investment entity that issued one or more classes of debt or equity interests to investors pursuant to a trust indenture or similar agreement and all of such interests were issued on or before January 17, 2013.

(B) The FFI was in existence as of January 17, 2013, and has entered into a trust indenture or similar agreement that requires the FFI to pay to investors holding substantially all of the interests in the FFI, no later than a set date or period following the maturity of the last asset held by the FFI, all amounts that such investors are entitled to receive from the FFI.

(C) The FFI was formed and operated for the purpose of purchasing or acquiring specific types of debt instruments or interests therein and holding those assets subject to reinvestment only under prescribed circumstances to maturity.

(D) Substantially all of the assets of the FFI consist of debt instruments or interests therein.

(E) All payments made to the investors of the FFI (other than holders of a de minimis interest) are either cleared through a clearing organization or custodial institution that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution or made through a transfer agent that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution.

(F) The FFI's trustee or fiduciary is not authorized through a fiduciary duty or otherwise to fulfill the obligations of a participating FFI under § 1.1471–4 and no other person has the authority to fulfill the obligations of a participating FFI under § 1.1471–4 on behalf of the FFI.

(v) *Investment advisors and investment managers.* An FFI is described in this paragraph (f)(2)(v) if the FFI meets the following requirements:

(A) The FFI is a financial institution solely because it is described in § 1.1471–5(e)(4)(i)(A).

(B) The FFI does not maintain financial accounts.

(3) [Reserved]. For further guidance, see § 1.1471–5(f)(3).

(i) [Reserved]. For further guidance, see § 1.1471–5(f)(3)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–5(f)(3)(ii).

(A) through (E) [Reserved]. For further guidance, see § 1.1471–5(f)(3)(ii)(A) through (E).

(4) [Reserved]. For further guidance, see § 1.1471–5(f)(4).

(i) The distributor provides investment services to at least 30 customers unrelated to each other and fewer than half of the distributor's customers are related to each other. For purposes of this paragraph (f)(4)(i), customers are related to each other if they have a relationship with each other described in section 267(b).

(ii) through (viii) [Reserved]. For further guidance, see § 1.1471–5(f)(4)(ii) through (viii).

(g) [Reserved]. For further guidance, see § 1.1471–5(g).

(1) through (2) [Reserved]. For further guidance, see § 1.1471–5(g)(1) through (g)(2)(iv).

(3) [Reserved]. For further guidance, see § 1.1471–5(g)(3).

(i) [Reserved]. For further guidance, see § 1.1471–5(g)(3)(i).

(A) through (C) [Reserved]. For further guidance, see § 1.1471–5(g)(3)(i)(A) through (C).

(D) *Preexisting accounts that become high-value accounts.* With respect to a

calendar year beginning after December 31, 2015, an account holder that is described in paragraph (g)(2) of this section and that holds a preexisting account that a participating FFI identifies as a high-value account pursuant to § 1.1471–4(c)(5)(iv)(D) will be treated as a recalcitrant account holder beginning on the earlier of the date a withholdable payment is made to the account following end of the calendar year in which the account is identified as a high-value account or the date that is six months after the calendar year end.

(ii) through (iii) [Reserved]. For further guidance, see § 1.1471–5(g)(3)(ii) through (iii).

(4) [Reserved]. For further guidance, see § 1.1471–5(g)(4).

(h) [Reserved]. For further guidance, see § 1.1471–5(h) through (h)(2).

(i) *Expanded affiliated group— Scope of paragraph.* This paragraph (i) defines the term *expanded affiliated group* for purposes of chapter 4. For the requirements of a participating FFI with respect to members of its expanded affiliated group that are FFIs, see § 1.1471–4(e).

(1) [Reserved]. For further guidance, see § 1.1471–5(i)(1).

(2) *Expanded affiliated group defined.* Except as otherwise provided in this paragraph (i), an *expanded affiliated group* is defined in accordance with the principles of section 1504(a) to mean one or more chains of members connected through ownership by a common parent entity if the common parent entity directly owns stock or other equity interests meeting the requirements of paragraph (i)(4) of this section in at least one of the other members (for purposes of this paragraph (i), the constructive ownership rules of section 318 do not apply). Generally, only a corporation shall be treated as the common parent entity of an expanded affiliated group, unless the taxpayer elects to follow the approach described in paragraph (i)(10).

(3) *Member of expanded affiliated group.* The term *member of an expanded affiliated group* means a corporation or any entity other than a corporation (such as a partnership or trust) with respect to which the ownership requirements of paragraph (i)(4) of this section are met, regardless of whether such entity is a U.S. person or a foreign person, but excluding corporations described in paragraphs (1), (4), (6), (7), or (8) of section 1504(b).

(4) *Ownership test.* The ownership requirements of this paragraph (i)(4) are met if—

(i) *Corporations.* For purposes of paragraph (i)(2) of this section, a corporation (except the common parent entity) will be considered owned by another member entity or by the common parent entity if more than 50 percent of the total voting power of the stock of such corporation and more than 50 percent of the total value of the stock of such corporation is owned directly by one or more other members of the group (including the common parent entity).

(A) *Stock not to include certain preferred stock.* For purposes of this paragraph (i)(4), the term *stock* does not include any stock which is described in section 1504(a)(4).

(B) *Valuation.* For purposes of section 1471(e) and this section, all shares of stock within a single class are considered to have the same value in determining the ownership percentage. Thus, control premiums and minority blockage discounts within a single class are not taken into account.

(ii) *Partnerships.* For purposes of paragraph (i)(2) of this section, a partnership will be considered owned by another member entity (including the common parent entity) if more than 50 percent (by value) of the capital or profits interest in the partnership is owned directly by one or more other members of the group (including the common parent entity).

(iii) *Trusts.* For purposes of paragraph (i)(2) of this section, a trust will be considered owned by another member entity or by the common parent entity if more than 50 percent (by value) of the beneficial interest in such trust is owned directly by one or more other members of the group (including the common parent entity). A beneficial interest in a trust includes an interest held by an entity treated as a grantor or other owner of the trust under sections 671 through 679 and a beneficial trust interest.

(5) *Treatment of warrants, options, and obligations convertible into equity for determining ownership.* For purposes of paragraph (i)(4) of this section, ownership of warrants, options, obligations convertible into the equity of a corporation or entity other than a corporation, and other similar interests is not considered for purposes of determining whether an entity is a member of an expanded affiliated group, except as follows:

(i) Ownership of a warrant, option, obligation convertible into stock, or other similar instrument creating an interest in a corporation will be considered for purposes of paragraph (i)(4) of this section to the extent that the common parent or member of the expanded affiliated group that holds such instrument also maintains voting rights with respect to such corporation. However, interests described in § 1.1504–4(d)(2) will not be treated as options.

(ii) Ownership of a warrant, option, obligation convertible into an equity interest, or other similar instrument creating an interest in a corporation or entity other than a corporation will be considered for purposes of paragraph (i)(4) of this section to the extent that such instrument is reasonably certain to be exercised, based on all of the facts and circumstances and in accordance with the principles set forth in § 1.1504–4(g).

(6) *Exception for FFIs holding certain capital investments.* Notwithstanding paragraphs (i)(2) and (i)(4) of this section, an investment entity will not be considered a member of an expanded affiliated group as a result of a contribution of seed capital by a member of such expanded affiliated group if—

(i) The member that owns the investment entity is an FFI that is in the business of providing seed capital to form investment entities, the interests in which it intends to sell to investors that do not have a relationship with each other described in section 267(b);

(ii) The investment entity is created in the ordinary course of such other FFI's business described in paragraph (i)(6)(i) of this section;

(iii) As of the date the FFI acquired the equity interest, any equity interest in the investment entity in excess of 50 percent of the total value of the stock of the investment entity is intended to be held by such other FFI (including ownership by other members of such other FFI's expanded affiliated group) for no more than three years from the date on which such other FFI first acquired an equity interest in the investment entity; and

(iv) In the case of an equity interest that has been held by such other FFI for over three years from the date referenced in paragraph (i)(6)(iii) of this section, the aggregate value of the equity interest held by such other FFI and the equity interests held by other members of its expanded affiliated group is 50 percent or less of the total value of the stock of the investment entity.

(7) *Seed capital.* For purposes of this paragraph (i), the term *seed capital* means an initial capital contribution made to an investment entity that is intended as a temporary investment and is deemed by the manager of the entity to be necessary or appropriate for the establishment of the entity, such as for the purpose of establishing a track record of investment performance for such entity, achieving economies of scale for diversified investment,

avoiding an artificially high expense to return ratio, or similar purposes.

(8) *Anti-abuse rule.* A change in ownership, voting rights, or the form of an entity that results in an entity meeting or not meeting the ownership requirements described in paragraph (i)(4) of this section will be disregarded for purposes of determining whether an entity is a member of an expanded affiliated group if the change is pursuant to a plan a principal purpose of which is to avoid reporting or withholding that would otherwise be required under any chapter 4 provision. For purposes of this paragraph (i)(8), a change in voting rights includes a separation of voting rights and value.

(9) *Exception for limited life debt investment entities.* Notwithstanding paragraphs (i)(2) and (i)(4) of this section, an entity that meets the requirements of § 1.1471–5(f)(2)(iv), including the requirements to have been in existence as of January 17, 2013, and to have issued interests in the entity on or before January 17, 2013, will not be considered a member of an expanded affiliated group as a result of any member of such expanded affiliated group owning interests in such entity.

(10) *Partnerships, trusts, and other non-corporate entities.* For purposes of determining the composition of an expanded affiliated group, an entity other than a corporation may elect to be treated as the common parent entity. Taxpayers following this approach may not, in a later year, follow the rule described in paragraph (i)(2) without the approval of the Commissioner. See also § 1.1471–5(e)(5)(i)(C).

(j) *Sponsoring entity verification.* [Reserved].

(k) *Sponsoring entity event of default.* [Reserved].

(l) [Reserved]. For further guidance, see § 1.1471–5(l).

(m) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 12.** In § 1.1471–6, revise paragraphs (d)(1), (d)(4), (f)(2)(iii)(B) through) (C), (f)(3)(ii) through (iii), (f)(5) through (6), (g), and (h)(2) to read as follows:

**§ 1.1471–6 Payments beneficially owned by exempt beneficial owners.**

* * * * *

(d) * * *

(1) [Reserved]. For further guidance, see § 1.1471–6T(d)(1).

* * * * *

(4) [Reserved]. For further guidance, see § 1.1471–6T(d)(4).

* * * * *

(f) * * *

(2) * * *

(iii) * * *

(B) [Reserved]. For further guidance, see § 1.1471–6T(f)(2)(iii)(B).

(C) [Reserved]. For further guidance, see § 1.1471–6T(f)(2)(iii)(C).

* * * * *

(3) * * *

(ii) [Reserved]. For further guidance, see § 1.1471–6T(f)(3)(ii).

(iii) [Reserved]. For further guidance, see § 1.1471–6T(f)(3)(iii).

* * * * *

(5) [Reserved]. For further guidance, see § 1.1471–6T(f)(5).

(6) [Reserved]. For further guidance, see § 1.1471–6T(f)(6).

* * * * *

(g) [Reserved]. For further guidance, see § 1.1471–6T(g).

(h) * * *

(2) [Reserved]. For further guidance, see § 1.1471–6T(h)(2) through (h)(2)(iii).

* * * * *

■ **Par. 13.** Section 1.1471–6T is added to read as follows:

**§ 1.1471–6T Payments beneficially owned by exempt beneficial owners (temporary).**

(a) through (c) [Reserved]. For further guidance, see § 1.1471–6(a) through (c)(3).

(d) [Reserved]. For further guidance, see § 1.1471–6(d).

(1) *In general.* Solely for purposes of this section and except as provided in paragraph (h) of this section, the term *foreign central bank of issue* means an institution that is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. Such an institution is generally the custodian of the banking reserves of the country under whose law it is organized.

(2) through (3) [Reserved]. For further guidance, see § 1.1471–6(d)(2) through (3).

(4) *Income on certain transactions.* Solely for purposes of determining whether an entity is an exempt beneficial owner of a payment under this paragraph (d), a foreign central bank of issue is a beneficial owner with respect to income earned on cash and securities, including cash and securities held as collateral or securities held in connection with a securities lending transaction, held by the foreign central bank of issue in the ordinary course of its operations as a central bank of issue.

(e) [Reserved]. For further guidance, see § 1.1471–6(e).

(f) [Reserved]. For further guidance, see § 1.1471–6(f).

(1) [Reserved]. For further guidance, see § 1.1471–6(f)(1).

(2) [Reserved]. For further guidance, see § 1.1471–6(f)(2).

(i) through (ii) [Reserved]. For further guidance, see § 1.1471–6(f)(2)(i) through (ii).

(iii) [Reserved]. For further guidance, see § 1.1471–6(f)(2)(iii).

(A) [Reserved]. For further guidance, see § 1.1471–6(f)(2)(iii)(A).

(B) The fund receives at least 50 percent of its total contributions (other than transfers of assets from accounts described in § 1.1471–5(b)(2)(i)(A) (referring to retirement and pension accounts), from retirement and pension accounts described in an applicable Model 1 or Model 2 IGA, or from other retirement funds described in this paragraph (f) or in an applicable Model 1 or Model 2 IGA) from the sponsoring employers;

(C) Distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to accounts described in § 1.1471–5(b)(2)(i)(A) (referring to retirement and pension accounts), to retirement and pension accounts described in an applicable Model 1 or Model 2 IGA, or to other retirement funds described in this paragraph (f) or in an applicable Model 1 or Model 2 IGA), or penalties apply to distributions or withdrawals made before such specified events; or

(D) [Reserved]. For further guidance, see § 1.1471–6(f)(2)(iii)(D).

(3) [Reserved]. For further guidance, see § 1.1471–6(f)(3).

(i) [Reserved]. For further guidance, see § 1.1471–6(f)(3)(i).

(ii) The fund is sponsored by one or more employers and each of these employers are not investment entities or passive NFFEs;

(iii) Employee and employer contributions to the fund (other than transfers of assets from other retirement plans described in paragraph (f)(1) of this section, from accounts described in § 1.1471–5(b)(2)(i)(A) (referring to retirement and pension accounts), or retirement and pension accounts described in an applicable Model 1 or Model 2 IGA) are limited by reference to earned income and compensation of the employee, respectively;

(iv) through (v) [Reserved]. For further guidance, see § 1.1471–6(f)(3)(iv) through (v).

(4) [Reserved]. For further guidance, see § 1.1471–6(f)(4).

(5) *Investment vehicles exclusively for retirement funds.* A fund established exclusively to earn income for the benefit of one or more retirement funds described in paragraphs (f)(1) through (5) of this section or in an applicable

Model 1 or Model 2 IGA, accounts described in § 1.1471–5(b)(2)(i)(A) (referring to retirement and pension accounts), or retirement and pension accounts described in an applicable Model 1 or Model 2 IGA.

(6) *Pension fund of an exempt beneficial owner.* A fund established and sponsored by an exempt beneficial owner described in paragraph (b), (c), (d), or (e) of this section or an exempt beneficial owner (other than a fund that qualifies as an exempt beneficial owner) described in an applicable Model 1 or Model 2 IGA to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the exempt beneficial owner (or persons designated by such employees), or that are not current or former employees, but the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the exempt beneficial owner.

(7) [Reserved]. For further guidance, see § 1.1471–6(f)(7).

(g) *Entities wholly owned by exempt beneficial owners.* A person is described in this paragraph (g) if it is an FFI solely because it is an investment entity, each direct holder of an equity interest in the investment entity is an exempt beneficial owner described in paragraph (b), (c), (d), (e), (f), or (g) of this section or an exempt beneficial owner described in an applicable Model 1 or Model 2 IGA, and each direct holder of a debt interest in the investment entity is either a depository institution (with respect to a loan made to such entity), an exempt beneficial owner described in paragraph (b), (c), (d), (e), (f), or (g) of this section, or an exempt beneficial owner described in an applicable Model 1 or Model 2 IGA.

(h) [Reserved]. For further guidance, see § 1.1471–6(h).

(1) [Reserved]. For further guidance, see § 1.1471–6(h)(1).

(2) *Limitation.* Paragraph (h)(1) of this section will not apply to a foreign central bank of issue as described in paragraph (d) if—

(i) The entity undertakes commercial financial activity described in paragraph (h)(1) of this section solely for or at the direction of other exempt beneficial owners and such commercial financial activity is consistent with the purposes of the entity;

(ii) The entity has no outstanding debt that would be a financial account under § 1.1471–5(b)(1)(iii)(C); and

(iii) The entity only maintains financial accounts that are depository accounts for current or former employees of the entity (and the spouses and children of such employees) or financial accounts for exempt beneficial owners.

(i) [Reserved]. For further guidance, see § 1.1471–6(i).

(j) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 14.** Section 1.1472–1 is amended:

■ 1. By redesignating paragraph (f) as paragraph (h).

■ 2. By adding paragraphs (c)(1)(vi) through (vii), (c)(3) through (5), (f), and (g).

■ 3. By revising paragraphs (b)(1) introductory text, (b)(2), (c)(1) introductory text, (c)(1)(i) introductory text, (c)(1)(ii) through (iii), (c)(1)(iv) introductory text, (c)(1)(iv)(C), (c)(1)(v), (c)(2), and (d)(1) through (2).

The additions and revisions read as follows:

**§ 1.1472–1 Withholding on NFFEs.**

* * * * *

(b) * * *

(1) [Reserved]. For further guidance, see § 1.1472–1T(b)(1).

* * * * *

(2) [Reserved]. For further guidance, see § 1.1472–1T(b)(2).

(c) * * *

(1) [Reserved]. For further guidance, see § 1.1472–1T(c)(1).

(i) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(i).

* * * * *

(ii) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(ii).

(iii) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(iii).

(iv) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(iv).

* * * * *

(C) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(iv)(C).

(v) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(v).

(vi) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(vi).

(vii) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(vii).

(2) [Reserved]. For further guidance, see § 1.1472–1T(c)(2).

(3) [Reserved]. For further guidance, see § 1.1472–1T(c)(3).

(4) [Reserved]. For further guidance, see § 1.1472–1T(c)(4).

(5) [Reserved]. For further guidance, see § 1.1472–1T(c)(5) through (c)(5)(iv).

(d) * * *

(1) [Reserved]. For further guidance, see § 1.1472–1T(d)(1).

(2) [Reserved]. For further guidance, see § 1.1472–1T(d)(2).

* * * * *

(f) [Reserved]. For further guidance, see § 1.1472–1T(f).

(g) [Reserved]. For further guidance, see § 1.1472–1T(g).

* * * * *

■ **Par. 15.** Section 1.1472–1T is added to read as follows:

**§ 1.1472–1T Withholding on NFFEs (temporary).**

(a) [Reserved]. For further guidance, see § 1.1472–1(a).

(b) [Reserved]. For further guidance, see § 1.1472–1(b).

(1) *In general.* Except as otherwise provided in paragraph (b)(2) of this section (providing transitional relief) or paragraphs (c)(1) or (2) of this section (providing exceptions for payments to an excepted NFFE or an exempt beneficial owner), § 1.1471–2(a)(4)(i) (providing an exception to withholding if the withholding agent lacks control, custody, or knowledge), § 1.1471–2(a)(4)(vii) (providing an exception to withholding for payments made to an account held with or equity interests traded through a clearing organization with FATCA-compliant membership), or § 1.1471–2(a)(4)(viii) (providing an exception to withholding for payments to certain excepted accounts), a withholding agent must withhold 30 percent of any withholdable payment made after June 30, 2014, to a payee that is a NFFE unless—

(i) through (iii) [Reserved]. For further guidance, see § 1.1472–1(b)(1)(i) through (iii).

(2) *Transitional relief.* For any withholdable payment made prior to July 1, 2016, with respect to a preexisting obligation to a payee that is not a prima facie FFI and for which a withholding agent does not have documentation indicating the payee's status as a passive NFFE when the NFFE has failed to provide the owner certification as required under § 1.1471–3(d)(12)(iii), the withholding agent is not required to withhold under this section or report under § 1.1474–1(i)(2) (describing the reporting obligations of withholding agents with respect to NFFEs).

(c) [Reserved]. For further guidance, see § 1.1472–1(c).

(1) *Payments to an excepted NFFE.* A withholding agent is not required to withhold under section 1472(a) and paragraph (b) of this section on a withholdable payment (or portion thereof) if the withholding agent can treat the payment as made to a payee that is an excepted NFFE. For purposes of this paragraph, the term *excepted NFFE* means a payee that the withholding agent may treat as a NFFE that is a QI, WP, or WT. Additionally, the term *excepted NFFE* means, with respect to the payment, a NFFE

described in paragraphs (c)(1)(i) through (vii) of this section to the extent the withholding agent may treat the NFFE as the beneficial owner of the payment.

(i) *Publicly traded corporation.* A NFFE is described in this paragraph (c)(1)(i) if it is a corporation the stock of which is regularly traded on one or more established securities markets for the calendar year.

(A) through (C) [Reserved]. For further guidance, see § 1.1472–1(c)(1)(i)(A) through (c)(1)(i)(C)(*3*).

(ii) *Certain affiliated entities related to a publicly traded corporation.* A NFFE is described in this paragraph (c)(1)(ii) if it is a corporation that is a member of the same expanded affiliated group (as defined in § 1.1471–5(i)) as a corporation described in paragraph (c)(1)(i) of this section.

(iii) *Certain territory entities.* A NFFE is described in this paragraph (c)(1)(iii) if it is a territory entity that is directly or indirectly wholly owned by one or more bona fide residents of the U.S. territory under the laws of which the entity is organized. The term *bona fide resident of a U.S. territory* means an individual who qualifies as a bona fide resident under section 937(a) and § 1.937–1.

(iv) *Active NFFEs.* A NFFE is described in this paragraph (c)(1)(iv) if it is an entity (an *active NFFE*) and less than 50 percent of its gross income for the preceding taxable year (*i.e.,* calendar or fiscal) is passive income and less than 50 percent of the weighted average percentage of assets (tested quarterly) held by it are assets that produce or are held for the production of passive income, as determined after the application of paragraph (c)(1)(iv)(B) of this section (passive assets).

(A) through (B) [Reserved]. For further guidance, see § 1.1472–1(c)(1)(iv)(A) through (c)(1)(B)(*2*)(*ii*).

(C) *Methods of measuring assets.* For purposes of this paragraph (c)(1)(iv), the value of a NFFE's assets is determined based on the fair market value or book value of the assets that is reflected on the NFFE's balance sheet (as determined under either a U.S. or an international financial accounting standard).

(v) *Excepted nonfinancial entities.* A NFFE is described in this paragraph (c)(1)(v) if it is an entity described in § 1.1471–5(e)(5) (referring to holding companies, treasury centers, and captive finance companies that are members of a nonfinancial group; start-up companies; entities that are liquidating or emerging from bankruptcy; and non-profit organizations).

(vi) *Direct reporting NFFEs.* A NFFE is described in this paragraph (c)(1)(vi) if it meets the requirements described in § 1.1472–1(c)(3) to be treated as a direct reporting NFFE.

(vii) *Sponsored direct reporting NFFEs.* A NFFE is described in this paragraph (c)(1)(vii) if it meets the requirements described in § 1.1472–1(c)(5) to be treated as a sponsored direct reporting NFFE.

(2) *Payments made to an exempt beneficial owner.* A withholding agent is not required to withhold on a withholdable payment (or portion thereof) under section 1472(a) and paragraph (b) of this section if the withholding agent may treat the payment as made to an exempt beneficial owner.

(3) Definition of *direct reporting NFFE.* A *direct reporting NFFE* means a NFFE that elects to report information about its direct or indirect substantial U.S. owners to the IRS and meets the following requirements—

(i) The NFFE must register on Form 8957, ''FATCA Registration,'' (or such other form as the IRS may prescribe) with the IRS to obtain a GIIN pursuant to the procedures prescribed by the IRS;

(ii) The NFFE must report directly to the IRS on Form 8966, ''FATCA Report,'' (or such other form as the IRS may prescribe) the following information for each calendar year (or, may be required by the IRS to certify on Form 8966, or in such other manner as the IRS may prescribe, that the NFFE has no substantial U.S. owners):

(A) The name, address, and TIN of each substantial U.S. owner (as defined in § 1.1473–1(b)) of such NFFE;

(B) The total of all payments made to each substantial U.S. owner (including the gross amounts paid or credited to the substantial U.S. owner with respect to such owner's equity interest in the NFFE during the calendar year, which include payments in redemption or liquidation (in whole or part) of the substantial U.S. owner's equity interest in the NFFE);

(C) The value of each substantial U.S. owner's equity interest in the NFFE determined by applying the rules described in § 1.1471–5(b)(4) (substituting the term *equity* for the terms *account* and *financial account*);

(D) The name, address, and GIIN of the NFFE, and

(E) Any other information as required by Form 8966 (or such other form as the IRS may prescribe) and its accompanying instructions;

(iii) The NFFE must obtain a written certification (contained on a withholding certificate or in a written statement) from each person that would be treated as a substantial U.S. owner of the NFFE if such person were a specified U.S. person. Such written certification must indicate whether the person is a substantial U.S. owner of the NFFE, and if so, the name, address and TIN of the person. If the NFFE has reason to know that such written certification is unreliable or incorrect, it must contact the person and request a revised written certification. If no revised written certification is received, the NFFE must treat the person as a substantial U.S. owner and report on Form 8966 the information required under paragraph (c)(3)(ii) of this section. The NFFE has reason to know that such a written certification is unreliable or incorrect if the certification is inconsistent with information in the NFFE's possession, including information that the NFFE provides to a financial institution in order for the financial institution to meet its AML or other account identification due diligence procedures with respect to the NFFE's account, information that is publicly available, and U.S. indicia as described in § 1.1441–7(b) and for which appropriate documentation sufficient to cure the U.S. indicia in the manner set forth in § 1.1441–7(b)(8) has not been obtained.

(iv) The NFFE must keep records that it produces in the ordinary course of its business that summarize the activity (including the gross amounts described in paragraph (c)(3)(ii)(B) that are paid or credited to each of its substantial U.S. owners) relating to its transactions with respect to the equity of the NFFE held by each of its substantial U.S. owners for any calendar year in which the owner was required to be reported under paragraph (c)(3)(ii) of this section. The records must be retained for the longer of six years or the retention period under the NFFE's normal business procedures. A NFFE may be required to extend the six year retention period if the IRS requests such an extension prior to the expiration of the six year period;

(v) The NFFE must respond to requests made by the IRS for additional information with respect to any substantial U.S. owner that is subject to reporting by the NFFE or with respect to the records described in paragraphs (c)(3)(iii) or (iv) of this section;

(vi) The NFFE must make a periodic certification to the IRS within each six-month period following the end of each certification period relating to its compliance with respect to the election described in paragraphs (c)(3) and (4) of this section. The first certification period begins on the date a GIIN is issued and ends at the close of the third full calendar year following that date. Each subsequent certification period is the three calendar year period following

the close of the previous certification period. The certification will require an officer of the NFFE to certify to the following statements—

(A)(*1*) The NFFE has not had any events of default described in paragraph (c)(4)(v) of this section; or

(*2*) If there are any events of default, appropriate measures were taken to remediate such failures and to prevent such failures from recurring; and

(B) With respect to any failure to report to the extent required under paragraph (c)(3)(ii), the NFFE has corrected such failure by filing the appropriate information returns; and

(vii) The NFFE has not had its status as a direct reporting NFFE revoked by the IRS.

(4) *Election to be treated as a direct reporting NFFE*—(i) *Manner of making election.* A NFFE may elect to be treated as a direct reporting NFFE by registering on Form 8957 (or such other form as the IRS may prescribe) with the IRS to obtain a GIIN pursuant to the procedures prescribed by the IRS.

(ii) *Effective date of election.* The election is effective upon the issuance of a GIIN to the NFFE.

(iii) *Revocation of election by NFFE.* The election may not be revoked by the NFFE without the consent of the Commissioner. The NFFE must notify its sponsoring entity (if applicable) and all relevant withholding agents if it revokes its election.

(iv) *Revocation of election by Commissioner.* The election may be revoked by the Commissioner upon an event of default described in paragraph (v) of this section.

(v) *Event of default.* An event of default occurs if a direct reporting NFFE fails to perform any of the obligations described in (c)(3)(i) through (vi) of this section. An event of default also includes any misrepresentation of a material fact to the IRS.

(vi) *Notice of event of default.* Following an event of default known by or disclosed to the IRS, the IRS will deliver to the NFFE a notice of default specifying the event of default. The IRS will request that the NFFE remediate the event of default within a specified time period. The NFFE must respond to the notice of default and provide information responsive to an IRS request for information or state the reasons why the NFFE does not agree that an event of default has occurred. If the NFFE does not provide a response within the specified time period, the IRS may, at its sole discretion, deliver a notice to the NFFE that its election to be treated as a direct reporting NFFE has been revoked. A NFFE may request, within 90 days of receipt, reconsideration of a notice of default or notice of revocation by written request to the Deputy Commissioner (International), LB&I.

(vii) *Remediation of event of default.* A NFFE will be permitted to remediate an event of default to the extent it agrees with the IRS on a remediation plan. The IRS may, as part of a remediation plan, require additional information from the NFFE.

(5) *Election by a direct reporting NFFE to be treated as a sponsored direct reporting NFFE.*

(i) *Definition of sponsored direct reporting NFFE.* A NFFE is a *sponsored direct reporting NFFE* if the NFFE is a direct reporting NFFE and if another entity, other than a nonparticipating FFI, has agreed with the NFFE to act as its sponsoring entity, as described in paragraph (c)(5)(ii) of this section.

(ii) *Requirements for sponsoring entity of a sponsored direct reporting NFFE.* A sponsoring entity meets the requirements of this paragraph (c)(5)(ii) if the sponsoring entity—

(A) Is authorized to act on behalf of the NFFE;

(B) Has registered with the IRS as a sponsoring entity;

(C) Has registered the NFFE with the IRS as a sponsored direct reporting NFFE;

(D) Agrees to perform, on behalf of the NFFE, all due diligence, reporting, and other requirements that the NFFE would have been required to perform as a direct reporting NFFE;

(E) Identifies the NFFE in all reporting completed on the NFFE's behalf;

(F) Complies with the certification and other requirements in paragraphs (f) and (g) of this section;

(G) Has not had its status as a sponsoring entity revoked; and

(H) Agrees to notify all relevant withholding agents and the IRS if its status as a sponsoring entity is revoked, if it otherwise ceases to be the sponsoring entity of any of its sponsored direct reporting NFFEs (for example, if the sponsored direct reporting NFFE changes sponsors), or if the status of any of its sponsored direct reporting NFFEs has been revoked.

(iii) *Revocation of status as sponsoring entity.* The IRS may revoke a sponsoring entity's status as a sponsoring entity with respect to all sponsored direct reporting NFFEs if there is a material failure by the sponsoring entity to comply with its obligations under paragraph (c)(5)(ii) of this section with respect to any sponsored direct reporting NFFE.

(iv) *Liability of sponsoring entity.* A sponsoring entity is not liable for any failure to comply with the obligations contained in paragraph (c)(5)(ii) of this section. A sponsored direct reporting NFFE will remain liable for all of its chapter 4 obligations without regard to any failure of its sponsoring entity to comply with the obligations contained in paragraph (c)(5)(ii) of this section that the sponsoring entity has agreed to undertake on behalf of the NFFE.

(d) [Reserved]. For further guidance, see § 1.1472–1(d).

(1) *In general.* For purposes of this section, except in the case of a payee that is a QI, WP, or WT, a withholding agent may treat a withholdable payment as beneficially owned by the payee as determined under § 1.1471–3. Thus, a withholding agent may treat a withholdable payment as beneficially owned by an excepted NFFE (other than a QI, WP, or WT) if the withholding agent can reliably associate the payment with valid documentation to determine the payee's status as an excepted NFFE under the rules of § 1.1471–3(d).

(2) *Payments made to a NFFE that is a QI, WP, or WT.* A withholding agent may treat the payee of a withholdable payment as a NFFE that is a QI, WP, or WT if the withholding agent can reliably associate the payment with valid documentation to determine the payee's status as such under the rules of § 1.1471–3(b)(3) and (d).

(3) through (5) [Reserved]. For further guidance, see § 1.1472–1(d)(3) through (5).

(e) [Reserved]. For further guidance, see § 1.1472–1(e) through (e)(2).

(f) *Sponsoring entity verification.* [Reserved].

(g) *Sponsoring entity event of default.* [Reserved].

(h) [Reserved]. For further guidance, see § 1.1472–1(h).

(i) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 16.** Section 1.1473–1 is amended by revising paragraphs (a)(2)(vi), (a)(3)(iii)(B)(*4*), (a)(4)(vi), (a)(5)(i) through (vi), and (b)(2)(v) and by adding new paragraph (a)(4)(vii) to read as follows:

**§ 1.1473–1 Section 1473 definitions.**

(a) * * *

(2) * * *

(vi) [Reserved]. For further guidance, see § 1.1473–1T(a)(2)(vi).

* * * * *

(3) * * *

(iii) * * *

(B) * * *

(*4*) [Reserved]. For further guidance, see § 1.1473–1T(a)(3)(iii)(B)(*4*).

* * * * *

(4) * * *

(vi) [Reserved]. For further guidance, see § 1.1473–1T(a)(4)(vi).

(vii) [Reserved]. For further guidance, see § 1.1473–1T(a)(4)(vii).

(5) * * *

(i) [Reserved]. For further guidance, see § 1.1473–1T(a)(5)(i).

(ii) [Reserved]. For further guidance, see § 1.1473–1T(a)(5)(ii).

(iii) [Reserved]. For further guidance, see § 1.1473–1T(a)(5)(iii).

(iv) [Reserved]. For further guidance, see § 1.1473–1T(a)(5)(iv).

(v) [Reserved]. For further guidance, see § 1.1473–1T(a)(5)(v).

(vi) [Reserved]. For further guidance, see § 1.1473–1T(a)(5)(vi).

* * * * *

(b) * * *

(2) * * *

(v) [Reserved]. For further guidance, see § 1.1473–1T(b)(2)(v).

* * * * *

■ **Par. 17.** Section 1.1473–1T is added to read as follows:

**§ 1.1473–1T Section 1473 definitions (temporary).**

(a) [Reserved]. For further guidance, see § 1.1473–1(a).

(1) [Reserved]. For further guidance, see § 1.1473–1(a)(1) through (a)(1)(ii).

(2) [Reserved]. For further guidance, see § 1.1473–1(a)(2).

(i) through (v) [Reserved]. For further guidance, see § 1.1473–1(a)(2)(i) through (v).

(vi) *Special rule for sales of interest bearing debt obligations.* Income that is otherwise described as U.S. source FDAP income in paragraphs (a)(2)(i) through (v) of this section does not include an amount of interest accrued on the date of a sale or exchange of an interest bearing debt obligation if the sale occurs between two interest payment dates and is not part of a plan described in § 1.1441–3(b)(2)(ii).

(vii) [Reserved]. For further guidance, see § 1.1473–1(a)(2)(vii) through (a)(2)(vii)(B).

(3) [Reserved]. For further guidance, see § 1.1473–1(a)(3).

(i) through (ii) [Reserved]. For further guidance, see § 1.1473–1(a)(3)(i) through (a)(3)(ii)(C).

(iii) [Reserved]. For further guidance, see § 1.1473–1(a)(3)(iii).

(A) [Reserved]. For further guidance, see § 1.1473–1(a)(3)(iii)(A).

(B) [Reserved]. For further guidance, see § 1.1473–1(a)(3)(iii)(B).

(*1*) through (*3*) [Reserved]. For further guidance, see § 1.1473–1(a)(3)(iii)(B)(*1*) through (*3*).

(*4*) In the case of a sale of an obligation described in paragraph (a)(2)(vi), gross proceeds includes any interest accrued between interest payment dates other than an amount described in paragraph (a)(2)(vi) of this section that is treated as U.S. source FDAP income; and

(*5*) [Reserved]. For further guidance, see § 1.1473–1(a)(3)(iii)(B)(*4*).

(4) [Reserved]. For further guidance, see § 1.1473–1(a)(4).

(i) through (v) [Reserved]. For further guidance, see § 1.1473–1(a)(4)(i) through (v).

(vi) *Offshore payments of U.S. source FDAP income prior to 2017 (transitional).* A payment with respect to an offshore obligation made prior to January 1, 2017, if such payment is U.S. source FDAP income and made by a person that is not acting as an intermediary or as a WP or WT with respect to the payment. The exception for offshore payments of U.S. source FDAP income provided in the preceding sentence shall not apply, however, in the case of a flow-through entity that has a residual withholding requirement with respect to its partners, owners, or beneficiaries under § 1.1471–2(a)(2)(ii), or in the case of payments made with respect to debt or equity issued by a U.S. person (excluding interest payments made by a foreign branch of a U.S. financial institution with respect to depository accounts it maintains for retail customers). For purposes of this paragraph (a)(4)(vi), an intermediary includes a person that acts as a qualified securities lender as defined for purposes of chapter 3 and does not include a person acting as an insurance broker with respect to premiums.

(vii) *Collateral arrangements prior to 2017 (transitional).* A payment made prior to January 1, 2017, by a secured party with respect to collateral securing one or more transactions under a collateral arrangement, provided that only a commercially reasonable amount of collateral is held by the secured party as part of the collateral arrangement. For purposes of this paragraph (a)(4)(vii), the term *transaction* generally includes a debt instrument, a derivative financial instrument (including a notional principal contract, future, forward, and option), and any securities lending transaction, sale-repurchase transaction, margin loan, or substantially similar transaction that is subject to a collateral arrangement.

(5) [Reserved]. For further guidance, see § 1.1473–1(a)(5).

(i) *In general.* This paragraph (a)(5) provides special rules for a flow-through entity, complex trust, or estate to determine when such entity must treat a payment of U.S. source FDAP income that is also a withholdable payment as having been paid by such entity to its partners, owners, or beneficiaries (as applicable depending on the type of entity).

(ii) *Partnerships.* An amount of U.S. source FDAP income that is also a withholdable payment is treated as being paid to a partner under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in § 1.1441–5(b)(2)(i)(A).

(iii) *Simple trusts.* An amount of U.S. source FDAP income that is also a withholdable payment is treated as being paid to a beneficiary of a simple trust under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in § 1.1441–5(b)(2)(ii).

(iv) *Complex trusts and estates.* An amount of U.S. source FDAP income that is also a withholdable payment is treated as being paid to a beneficiary of a complex trust or estate under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in § 1.1441–5(b)(2)(iii).

(v) *Grantor trusts.* If an amount of U.S. source FDAP income that is also a withholdable payment is paid to a grantor trust, a person treated as an owner of all or a portion of such trust is treated as having been paid such income by the trust at the time it is received by or credited to the trust or portion thereof.

(vi) *Special rule for an NWP or NWT.* In the case of a partnership, simple trust, or complex trust that is an NWP or NWT, the rules described in paragraphs (a)(5)(ii) and (iii) of this section shall not apply, and U.S. source FDAP income that is also a withholdable payment is treated as being paid to the partner or beneficiary at the time the income is paid to the partnership or trust, respectively.

(vii) [Reserved]. For further guidance, see § 1.1473–1(a)(5)(vii).

(6) [Reserved]. For further guidance, see § 1.1473–1(a)(6).

(7) [Reserved]. For further guidance, see § 1.1473–1(a)(7).

(b) [Reserved]. For further guidance, see § 1.1473–1(b).

(1) [Reserved]. For further guidance, see § 1.1473–1(b)(1) through (b)(1)(iii)(B).

(2) [Reserved]. For further guidance, see § 1.1473–1(b)(2).

(i) through (iv) [Reserved]. For further guidance, see § 1.1473–1(b)(2)(i) through (iv).

(v) *Interests owned or held by a related person.* For purposes of determining whether a specified U.S. person is a substantial U.S. owner in a foreign entity described in paragraphs

(b)(2)(i) through (iv) of this section, if a specified U.S. person owns or holds, directly or indirectly, any interest in the foreign entity, that interest must be aggregated with any such interest in the foreign entity owned or held, directly or indirectly, by a related person. For purposes of the preceding sentence, a related person is a person or spouse of a person described in § 1.267(c)–1(a)(4), determined by reference to such specified U.S. person.

(3) through (7) [Reserved]. For further guidance, see § 1.1473–1(b)(3) through (7).

(c) through (f) [Reserved]. For further guidance, see § 1.1473–1(c) through (f).

(g) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 18.** Section 1.1474–1 is amended:

■ 1. By removing paragraphs (d)(1)(ii)(A)(*1*)(*ix*), (d)(3)(iii), (d)(4)(ii)(C), and (i)(1)(iv) through (v).

■ 2. By redesignating paragraphs (d)(1)(ii)(A)(*1*)(*x*) through (*xii*) as (d)(1)(ii)(A)(*1*)(*ix*) through (*xi*), and paragraphs (d)(3)(iv) through (x) as (d)(3)(iii) through (ix).

■ 3. By revising paragraphs (d)(1)(i), (d)(1)(ii)(A)(*1*)(*viii*) through (*ix*), (d)(1)(ii)(B)(*1*)(*i*), (d)(1)(ii)(B)(*1*)(*vi*) through (*vii*), (d)(1)(ii)(B)(*1*)(*ix*), (d)(2)(i), (d)(4)(i)(B), (d)(4)(i)(E), (d)(4)(ii)(B), (d)(4)(iii), (i)(1) introductory text, (i)(1)(i) through (iii), (i)(2) introductory text, and (i)(2)(iii).

The additions and revisions read as follows:

**§ 1.1474–1 Liability for withheld tax and withholding agent reporting.**

* * * * *

(d) * * *

(1) * * *

(i) [Reserved]. For further guidance, see § 1.1474–1T(d)(1)(i).

(ii) * * *

(A) * * *

(*1*) * * *

(*viii*) [Reserved]. For further guidance, see § 1.1474–1T(d)(1)(ii)(A)(*1*)(*viii*).

(*ix*) [Reserved]. For further guidance, see § 1.1474–1T(d)(1)(ii)(A)(*1*)(*ix*).

* * * * *

(B) * * *

(*1*) * * *

(*i*) [Reserved]. For further guidance, see § 1.1474–1T(d)(1)(ii)(B)(*1*)(*i*).

* * * * *

(*vi*) [Reserved]. For further guidance, see § 1.1474–1T(d)(1)(ii)(B)(*1*)(*vi*).

(*vii*) [Reserved]. For further guidance, see § 1.1474–1T(d)(1)(ii)(B)(*1*)(*vii*).

* * * * *

(*ix*) [Reserved]. For further guidance, see § 1.1474–1T(d)(1)(ii)(B)(*1*)(*ix*).

* * * * *

(2) * * *

(i) [Reserved]. For further guidance, see § 1.1474–1T(d)(2)(i).

(A) [Reserved]. For further guidance, see § 1.1474–1T(d)(2)(i)(A).

(B) [Reserved]. For further guidance, see § 1.1474–1T(d)(2)(i)(B).

(C) [Reserved]. For further guidance, see § 1.1474–1T(d)(2)(i)(C).

* * * * *

(4) * * *

(i) * * *

(B) [Reserved]. For further guidance, see § 1.1474–1T(d)(4)(i)(B).

* * * * *

(E) [Reserved]. For further guidance, see § 1.1474–1T(d)(4)(i)(E).

(ii) * * *

(B) [Reserved]. For further guidance, see § 1.1474–1T(d)(4)(ii)(B).

(C) [Reserved]. For further guidance, see § 1.1474–1T(d)(4)(ii)(C).

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1474–1T(d)(4)(iii) through (d)(4)(iii)(C).

* * * * *

(i) * * *

(1) [Reserved]. For further guidance, see § 1.1474–1T(i)(1).

(i) [Reserved]. For further guidance, see § 1.1474–1T(i)(1)(i).

(ii) [Reserved]. For further guidance, see § 1.1474–1T(i)(1)(ii).

(iii) [Reserved]. For further guidance, see § 1.1474–1T(i)(1)(iii) through (i)(1)(iii)(E).

(2) [Reserved]. For further guidance, see § 1.1474–1T(i)(2).

* * * * *

(iii) [Reserved]. For further guidance, see § 1.1474–1T(i)(2)(iii).

* * * * *

■ **Par. 19.** Section 1.1474–1T is added to read as follows:

**§ 1.1474–1T Liability for withheld tax and withholding agent reporting (temporary).**

(a) through (c) [Reserved]. For further guidance, see § 1.1474–1(a) through (c)(3).

(d) [Reserved]. For further guidance, see § 1.1474–1(d).

(1) [Reserved]. For further guidance, see § 1.1474–1(d)(1).

(i) *In general.* Except as otherwise provided in paragraph (d)(4) of this section or in the instructions to Form 1042–S, every withholding agent must file an information return on Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' (or such other form as the IRS may prescribe) to report to the IRS chapter 4 reportable amounts as described in paragraph (d)(2)(i) of this section that were paid to a recipient during the preceding calendar year. Except as otherwise provided in paragraphs (d)(4)(ii)(B) (certain unknown recipients) and (d)(4)(i)(B) and (d)(4)(iii)(A) of this section (describing payees includable in reporting pools of a participating FFI or registered deemed-compliant FFI), a separate Form 1042–S must be filed with the IRS for each recipient of an amount subject to reporting under paragraph (d)(2)(i) of this section and for each separate type of payment made to a single recipient in accordance with paragraph (d)(4)(i) of this section. The Form 1042–S shall be prepared in such manner as the form and its accompanying instructions prescribe. One copy of the Form 1042–S shall be filed with the IRS on or before March 15 of the calendar year following the year in which the amount subject to reporting was paid, with a transmittal form as provided in the instructions to the form. Withholding certificates, certifications, documentary evidence, or other statements or documentation provided to a withholding agent are not required to be attached to the form. A copy of the Form 1042–S must be furnished to the recipient for whom the form is prepared (or any other person, as required under this paragraph or the instructions to the form) and to any intermediary or flow-through entity described in paragraph (d)(3)(vii) of this section on or before March 15 of the calendar year following the year in which the amount subject to reporting was paid. The withholding agent must retain a copy of each Form 1042–S for the period of limitations on assessment and collection applicable to the tax reportable on the Form 1042 to which the Form 1042–S relates (determined as set forth in paragraph (c)(1) of this section). See paragraph (d)(4)(iii) of this section for the additional reporting requirements of participating FFIs and deemed-compliant FFIs.

(ii) [Reserved]. For further guidance, see § 1.1474–1(d)(1)(ii).

(A) [Reserved]. For further guidance, see § 1.1474–1(d)(1)(ii)(A).

(*1*) [Reserved]. For further guidance, see § 1.1474–1(d)(1)(ii)(A)(*1*).

(*i*) through (*vii*) [Reserved]. For further guidance, see § 1.1474–1(d)(1)(ii)(A)(*1*)(*i*) through (*vii*).

(*viii*) An excepted NFFE and passive NFFE that also is not a flow-through entity and that is not acting as an agent or intermediary with respect to the payment;

(*ix*) A foreign person that is a partner or beneficiary in a flow-through entity that is a NFFE (looking through a partner or beneficiary that is a foreign intermediary or flow-through entity);

(*x*) through (*xi*) [Reserved]. For further guidance, see § 1.1474–1(d)(1)(ii)(A)(*1*)(*x*) through (*xi*).

(*2*) through (*3*) [Reserved]. For further guidance, see § 1.1474–1(d)(1)(ii)(A)(*2*) through (*3*).

(B) [Reserved]. For further guidance, see § 1.1474–1(d)(1)(ii)(B).

(*1*) [Reserved]. For further guidance, see § 1.1474–1(d)(1)(ii)(B)(*1*).

(*i*) A certified deemed-compliant FFI that is an NQI, NWP, or NWT and that fails to provide its withholding agent with sufficient information to allocate the payment to its account holders and payees;

(*ii*) through (*v*) [Reserved]. For further guidance, see § 1.1474–1(d)(1)(ii)(B)(*1*)(*ii*) through (*v*).

(*vi*) An account holder or payee of a nonparticipating FFI except to the extent described in paragraph (d)(1)(ii)(A)(*1*)(*x*) of this section for an exempt beneficial owner;

(*vii*) Except as provided in paragraph (d)(1)(ii)(A)(*1*) of this section, an entity that is disregarded under § 301.7701–2(c)(2) as an entity separate from its owner;

(*viii*) [Reserved]. For further guidance, see § 1.1474–1(d)(1)(ii)(B)(*1*)(*viii*).

(*ix*) A passive NFFE or an excepted NFFE that is a flow-through entity or acts as an intermediary;

(*2*) through (*3*) [Reserved]. For further guidance, see § 1.1474–1(d)(1)(ii)(B)(*2*) through (*3*).

(2) [Reserved]. For further guidance, see § 1.1474–1(d)(2).

(i) *In general.* Subject to paragraph (d)(2)(iii) of this section, the term *chapter 4 reportable amount* means each of the following amounts reportable on a Form 1042–S for purposes of chapter 4—

(A) An amount of a withholdable payment that is subject to withholding under chapter 4 paid after June 30, 2014;

(B) An amount of a withholdable payment of U.S. source FDAP income that is also reportable on Form 1042–S under § 1.1461–1(c)(2)(i); or

(C) A foreign passthru payment subject to withholding under chapter 4.

(ii) through (iii) [Reserved]. For further guidance, see § 1.1474–1(d)(2)(ii) through (iii).

(3) [Reserved]. For further guidance, see § 1.1474–1(d)(3) through (d)(3)(x).

(4) [Reserved]. For further guidance, see § 1.1474–1(d)(4).

(i) [Reserved]. For further guidance, see § 1.1474–1(d)(4)(i).

(A) [Reserved]. For further guidance, see § 1.1474–1(d)(4)(i)(A).

(B) *Payments to participating FFIs, deemed-compliant FFIs, and certain QIs.* Except as otherwise provided in this paragraph (d)(4)(i)(B), a U.S. withholding agent that makes a payment of a chapter 4 reportable amount to a participating FFI or deemed-compliant FFI that is an NQI, NWP, or NWT must complete a Form 1042–S treating such FFI as the recipient. With respect to a payment of U.S. source FDAP income made to a participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT or QI that elects to be withheld upon under section 1471(b)(3) and from whom the withholding agent receives an FFI withholding statement allocating the payment (or portion of the payment) to a chapter 4 withholding rate pool, a U.S. withholding agent must complete a separate Form 1042–S issued to the participating FFI, registered deemed-compliant FFI, or QI (as applicable) as the recipient with respect to each such pool identified on an FFI withholding statement, described in § 1.1471–3(c)(3)(iii)(B)(*2*). If, however, a participating FFI, deemed-compliant FFI, or QI (as applicable) has made an election under § 1.1471–4(b)(3)(iii), for the portion of the payment that the FFI allocates to each recalcitrant account holder that is subject to backup withholding under section 3406, the withholding agent must report on Form 1099 the amount of the payment and tax withheld in accordance with the form's requirements and accompanying instructions. See § 1.1471–2(a)(2)(i) for the requirement of a withholding agent to withhold on payments of U.S. source FDAP income made to a participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT. See also § 1.1471–2(a)(2)(iii) in the case of payments made to a QI. See § 1.1461–1(c)(4)(A) for the extent to which reporting is required under that section for U.S. source FDAP income that is reportable on Form 1042–S under chapter 3 and not subject to withholding under chapter 4, in which case the U.S. withholding agent must report in the manner described under § 1.1461–1(c)(4)(ii) and paragraph (d)(4)(ii)(A) of this section. See paragraph (d)(4)(ii)(A) of this section for reporting rules applicable if participating FFIs or deemed-compliant FFIs provide specific payee information for reporting to the recipient of the payment for Form 1042–S reporting purposes. See paragraph (d)(4)(iii) of this section for the residual reporting responsibilities of an NQI, NWP, or NWT that is an FFI.

(C) through (D) [Reserved]. For further guidance, see § 1.1474–1(d)(4)(i)(C) through (d)(4)(i)(D)(*3*).

(E) *Amounts paid to NFFEs.* A U.S. withholding agent that makes payments of chapter 4 reportable amounts to an excepted or passive NFFE shall complete Forms 1042–S treating the NFFE as the recipient, except when the NFFE is a flow-through entity or acting as an intermediary and the partner or beneficiary is treated as the payee. In cases in which the chapter 4 reportable amount is also an amount of U.S. source FDAP income reportable on Form 1042–S (described in § 1.1441–2(a)), see also § 1.1461–1(c)(4)(A) for the extent to which reporting is required with respect to the partners, beneficiaries, or owners of such entities.

(ii) [Reserved]. For further guidance, see § 1.1474–1(d)(4)(ii).

(A) [Reserved]. For further guidance, see § 1.1474–1(d)(4)(ii)(A).

(B) *Nonparticipating FFI that is a flow-through entity or intermediary.* If a withholding agent makes a payment of a chapter 4 reportable amount to a nonparticipating FFI that it is required to treat as an intermediary with regard to a payment or as a flow-through entity under rules described in § 1.1471–3(c)(3)(iii), and except as otherwise provided in paragraph (d)(1)(ii)(A)(*1*)(*x*) of this section (relating to an exempt beneficial owner), the withholding agent must report the recipient of the payment as an unknown recipient and report the nonparticipating FFI as provided in paragraph (d)(4)(ii)(A) of this section for an entity not treated as a recipient.

(C) *Disregarded entities.* If a U.S. withholding agent makes a payment to a disregarded entity and receives a valid withholding certificate or other documentary evidence from the person that is the single owner of such disregarded entity, the withholding agent must file a Form 1042–S treating the single owner as the recipient in accordance with the instructions to the Form 1042–S.

(iii) *Reporting by participating FFIs and deemed-compliant FFIs (including QIs, WPs, and WTs)*—(A) *In general.* Except as otherwise provided in paragraph (d)(4)(iii)(B) (relating to NQIs, NWPs, NWTs, and FFIs electing under section 1471(b)(3)) and § 1.1471–4(d)(2)(ii)(F) (relating to transitional payee-specific reporting for payments to nonparticipating FFIs), a participating FFI or deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) that makes a payment that is a chapter 4 reportable amount to a recalcitrant account holder or nonparticipating FFI must complete a Form 1042–S to report such payments. A participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) may report in pools consisting of its recalcitrant account

holders and payees that are nonparticipating FFIs. With respect to recalcitrant account holders, the FFI may report in pools consisting of recalcitrant account holders within a particular status described in § 1.1471–4(d)(6) and within a particular income code. Except as otherwise provided in § 1.1471–4(d)(2)(ii)(F), with respect to payees that are nonparticipating FFIs, the FFI may report in pools consisting of one or more nonparticipating FFIs that fall within a particular income code and within a particular status code described in the instructions to Form 1042–S. Alternatively, a participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) may (and a certified deemed-compliant FFI is required to) perform payee-specific reporting to report a chapter 4 reportable amount paid to a recalcitrant account holder or a nonparticipating FFI when withholding was applied (or should have applied) to the payment.

(B) *Special reporting requirements of participating FFIs, deemed-compliant FFIs, and FFIs that make an election under section 1471(b)(3).* Except as otherwise provided in § 1.1471–4(d)(2)(ii)(F), a participating FFI or deemed-compliant FFI that is an NQI, NWP, NWT (including a U.S. branch of a participating FFI that is not treated as a U.S. person), or an FFI that has made an election under section 1471(b)(3) and has provided sufficient information to its withholding agent to withhold and report the payment is not required to report the payment on Form 1042–S as described in paragraph (d)(4)(iii)(A) of this section if the payment is made to a nonparticipating FFI or recalcitrant account holder and its withholding agent has withheld the correct amount of tax on such payment and correctly reported the payment on a Form 1042–S. Such FFI is required to report a payment, however, when the FFI knows, or has reason to know, that less than the required amount has been withheld by the withholding agent on the payment or the withholding agent has not correctly reported the payment on Form 1042–S. In such case, the FFI must report on Form 1042–S to the extent required under paragraph (d)(4)(iii)(A) of this section. See, however, § 1.1471–4(d)(6) for the requirement to report certain aggregate information regarding accounts held by recalcitrant account holders on Form 8966, ''FATCA Report,'' regardless of whether withholdable payments are made to such accounts.

(C) *Reporting by a U.S. branch of a participating FFI or registered deemed-compliant FFI treated as a U.S. person.* A U.S. branch of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person must report amounts paid to recipients on Forms 1042–S in the same manner as a U.S. withholding agent under paragraph (d)(4)(i) of this section.

(iv) through (vi) [Reserved]. For further guidance, see § 1.1474–1(d)(4)(iv) through (vi).

(e) through (h) [Reserved]. For further guidance, see § 1.1474–1(e) through (h).

(i) [Reserved]. For further guidance, see § 1.1474–1(i).

(1) *Reporting by certain withholding agents with respect to owner-documented FFIs.*

(i) Beginning on July 1, 2014, if a withholding agent (other than an FFI reporting accounts held by owner-documented FFIs under § 1.1471–4(d)) makes a withholdable payment to an entity account holder or payee of an obligation and the withholding agent treats the entity as an owner-documented FFI under § 1.1471–3(d)(6), the withholding agent is required to report for July 1 through December 31, 2014, with respect to each specified U.S. person that has a direct or indirect debt or equity interest in such entity the information described in paragraph (i)(1)(iii) of this section.

(ii) Beginning in calendar year 2015, if a withholding agent (other than an FFI reporting accounts held by owner-documented FFIs under § 1.1471–4(d)) makes during a calendar year a payment of a chapter 4 reportable amount to an entity account holder or payee of an obligation and the withholding agent treats the entity as an owner-documented FFI under § 1.1471–3(d)(6), the withholding agent is required to report for such calendar year with respect to each specified U.S. person that has a direct or indirect debt or equity interest in such entity the information described in paragraph (i)(1)(iii) of this section.

(iii) The information that a withholding agent (other than an FFI reporting accounts held by owner-documented FFIs under § 1.1471–4(d)) is required to report under paragraphs (i)(1)(i) and (i)(1)(ii) of this section must be made on Form 8966 (or such other form as the IRS may prescribe) and filed on or before March 31 of the calendar year following the year in which the withholdable payment was made. The report must contain the following information—

(A) The name of the owner-documented FFI;

(B) The name, address, and TIN of each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(*1*) and (*2*);

(C) For the period from July 1 through December 31, 2014, the total of all payments made to the owner-documented FFI and with respect to payments made after the 2014 calendar year the total of all payments made to the owner-documented FFI during the calendar year;

(D) The account balance or value of the account held by the owner-documented FFI; and

(E) Any other information required on Form 8966 and its accompanying instructions provided for purposes of such reporting.

(2) *Reporting by certain withholding agents with respect to U.S. owned foreign entities that are NFFEs.* Beginning on July 1, 2014, in addition to the reporting on Form 1042–S required under paragraph (d)(4)(i)(E) of this section, a withholding agent (other than an FFI reporting accounts held by NFFEs under § 1.1471–4(d)) that receives information about any substantial U.S. owners of a NFFE that is not an excepted NFFE as defined in § 1.1472–1(c) shall file a report with the IRS for the period from July 1 through December 31, 2014, and in each subsequent calendar year with respect to any substantial U.S. owners of such NFFE. Such report must be made on Form 8966 (or such other form as the IRS may prescribe) and filed on or before March 31 of the calendar year following the year in which the withholdable payment was made. The IRS shall grant an automatic 90-day extension of time in which to file Form 8966. Form 8809, ''Request for Extension of Time to File Information Returns,'' (or such other form as the IRS may prescribe) must be used to request such extension of time and must be filed no later than the due date of Form 8966. Under certain hardship conditions, the IRS may grant an additional 90-day extension. A request for extension due to hardship must contain a statement of the reasons for requesting the extension and such other information as the form or instructions may require. The report must contain the following information—

(i) through (ii) [Reserved]. For further guidance, see § 1.1474–1(i)(2)(i) through (ii).

(iii) For the period from July 1, 2014 through December 31, 2014, the total of all payments made to the NFFE and, with respect to payments made after the 2014 calendar year, the total of all payments made to the NFFE during the calendar year; and

(iv) [Reserved]. For further guidance, see § 1.1474–1(i)(2)(iv).

(3) [Reserved]. For further guidance, see § 1.1474–1(i)(3).

(j) [Reserved]. For further guidance, see § 1.1474–1(j).

(k) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 20.** Section 1.1474–6 is amended by revising paragraph (b)(1), by redesignating paragraph (f) as (g), and by adding new paragraph (f) to read as follows:

**§ 1.1474–6 Coordination of chapter 4 with other withholding provisions.**

* * * * *

(b) * * *

(1) [Reserved]. For further guidance, see § 1.1474–6T(b)(1).

* * * * *

(f) [Reserved]. For further guidance, see § 1.1474–6T(f).

* * * * *

■ **Par. 21.** Section 1.1474–6T is added to read as follows:

**§ 1.1474–6T Coordination of chapter 4 with other withholding provisions (temporary).**

(a) [Reserved]. For further guidance, see § 1.1474–6(a).

(b) [Reserved]. For further guidance, see § 1.1474–6(b).

(1) *In general.* In the case of a withholdable payment that is both subject to withholding under chapter 4 and is an amount subject to withholding under § 1.1441–2(a), a withholding agent may credit the withholding applied under chapter 4 against its liability for any tax due under sections 1441, 1442, or 1443. See § 1.1474–1(c) and (d) for the income tax return and information return reporting requirements that apply in the case of a payment that is a withholdable payment subject to withholding under chapter 4 that is also an amount subject to withholding under § 1.1441–2(a).

(2) through (3) [Reserved]. For further guidance, see § 1.1474–6(b)(2) through (3).

(c) through (e) [Reserved]. For further guidance, see § 1.1474–6(c) through (e).

(f) *Coordination with section 3406.* A participating FFI that makes a withholdable payment that is also a reportable payment (as defined in the relevant sections of chapter 61) to a recalcitrant account holder that is a U.S. non-exempt recipient is not required to withhold under section 3406 if it withholds on the payment at a 30-percent rate in accordance with its withholding obligations under chapter 4. See, however, § 1.1471–4(b)(3)(iii) for the election to withhold on recalcitrant account holders that are non-exempt U.S. recipients under section 3406 instead of withholding under chapter 4.

(g) [Reserved]. For further guidance, see § 1.1474–6(g).

(h) *Expiration date.* The applicability of this section expires on February 28, 2017.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: February 14, 2014.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

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Part IV

## Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities; Proposed Rule

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[REG–130967–13]**

**RIN 1545–BL72**

## Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities

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

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

**SUMMARY:** In this issue of the **Federal Register**, the IRS and the Department of the Treasury (Treasury Department) are issuing final and temporary regulations that provide guidance under chapter 4 of Subtitle A (sections 1471 through 1474) of the Internal Revenue Code of 1986 (Code). These regulations address reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities. The text of the temporary regulations published in the **Federal Register** also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written and/or electronic comments must be received by May 5, 2014. Outlines of topics to be discussed at the public hearing scheduled for June 24, 2014, at 10 a.m. must be received by May 5, 2014.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–130967–13), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (REG–130967–13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–130967–13). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Tara Ferris, Nancy Lee, Michael Kaercher, or Kamela Nelan at (202) 317–6942; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor, at (202) 317–5179 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

Temporary regulations in this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) under chapter 4 of Subtitle A of the Code. The temporary regulations set forth rules relating to information reporting by FFIs with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities. The temporary regulations revise and refine final regulations (TD 9610) under chapter 4 that were published in the **Federal Register** (78 FR 5874) on January 28, 2013, as corrected on September 10, 2013 (78 FR 55202). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these 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, as supplemented by Executive Order 13653. Therefore, a regulatory assessment is not required. It has also 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 the collection of information in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small business entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Although the Treasury Department and the IRS anticipate that a substantial number of domestic small business entities will be affected by the collection of information in this notice of proposed rulemaking, the Treasury Department and the IRS believe that the economic impact to these entities resulting from the information collection requirements will not be significant.

The domestic small business entities that are subject to chapter 4 and the collection of information in this notice of proposed rulemaking are those domestic business entities that are payors of certain U.S. source income that are presently subject to the information collection and reporting rules under chapter 3. These domestic small business entities are required to be familiar with chapter 3's information collection and reporting rules and forms in order to determine a payee's U.S. withholding status and, based on that status, withhold and remit the proper amount of tax on payments of U.S. source FDAP income. Small domestic business entities that are payors of U.S. source income have developed and implemented internal reporting and information collection systems under which the business entity satisfies its chapter 3 payee identification, withholding, and tax remittance requirements.

The IRS intends to revise the present chapter 3 reporting forms, with the revised forms being used by a payor of U.S. source income to satisfy the payor's obligations under chapters 3 and 4. As a result, the information collection requirements of this notice of proposed rulemaking build on reporting and information collection systems familiar to and currently used by payors of U.S. source FDAP income that are domestic small business entities. Because the information collection and reporting requirements of chapter 4 and this notice of proposed rulemaking build on existing chapter 3 information collection and reporting systems of domestic small business entities making payments of U.S. source income to foreign persons, the information collection requirements of this notice of proposed rulemaking impose little additional burden on those domestic entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses. The IRS invites the public to comment on this certification.

### 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) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on all aspects of the proposed regulations. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 24, 2014, beginning at 10 a.m. in the 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** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments, an outline of the topics to be discussed, and the time to be devoted to each topic. Submit a signed original and eight (8) copies or an electronic copy of the topics outline by May 5, 2014. 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 Tara Ferris, Nancy Lee, Michael Kaercher, and Kamela Nelan of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

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

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 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. * * *

Section 1.1471–1 is also issued under 26 U.S.C. 1471.

Section 1.1471–2 is also issued under 26 U.S.C. 1471.

Section 1.1471–3 is also issued under 26 U.S.C. 1471.

Section 1.1471–4 is also issued under 26 U.S.C. 1471.

Section 1.1471–5 is also issued under 26 U.S.C. 1471.

Section 1.1471–6 is also issued under 26 U.S.C. 1471.

Section 1.1472–1 is also issued under 26 U.S.C. 1472.

Section 1.1471–3 is also issued under 26 U.S.C. 1473.

Section 1.1474–1 is also issued under 26 U.S.C. 1474.

Section 1.1474–6 is also issued under 26 U.S.C. 1474.

■ **Par. 2.** Section 1.1471–1 is amended by:

■ 1. Removing paragraph (b)(81).

■ 2. Redesignating paragraphs (b)(115) through (b)(142) as (b)(124) through (b)(151), paragraphs (b)(108) through (b)(114) as (b)(116) through (b)(122), paragraph (b)(107) as (b)(114), paragraphs (b)(82) through (b)(106) as (b)(88) through (b)(112), paragraphs (b)(75) through (b)(80) as (b)(82) through (b)(87), paragraphs (b)(62) through (b)(74) as (b)(68) through (b)(80), paragraphs (b)(39) through (b)(61) as (b)(44) through (b)(66), paragraphs (b)(28) through (b)(38) as (b)(32) through (b)(42), paragraphs (b)(18) through (b)(27) as (b)(21) through (b)(30), paragraphs (b)(9) through (b)(17) as (b)(11) through (b)(19), and paragraphs (b)(7) and (b)(8) as (b)(8) and (b)(9).

■ 3. Adding new paragraphs (b)(7), (b)(10), (b)(20), (b)(31), (b)(43), (b)(67), (b)(81), (b)(113), (b)(115), and (b)(123).

■ 4. Revising paragraphs (b)(23), (b)(35), (b)(41), (b)(48), (b)(50), (b)(76), (b)(77), (b)(83), (b)(88), (b)(91), (b)(98), (b)(100), (b)(104)(i), (b)(104)(ii)(A) through (C), (b)(105), (b)(124), (b)(125), (b)(128), (b)(135) and (b)(141).

The revisions and additions read as follows:

**§ 1.1471–1 Scope of chapter 4 and definitions.**

* * * * *

(b) * * *

(7) [The text of proposed § 1.1471–1(b)(7) is the same as the text of § 1.1471–1T(b)(7) published elsewhere in this issue of the **Federal Register**].

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(10) [The text of proposed § 1.1471–1(b)(10) is the same as the text of § 1.1471–1T(b)(10) published elsewhere in this issue of the **Federal Register**].

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(20) [The text of proposed § 1.1471–1(b)(20) is the same as the text of § 1.1471–1T(b)(20) published elsewhere in this issue of the **Federal Register**].

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(23) [The text of the proposed amendment to § 1.1471–1(b)(23) is the same as the text of § 1.1471–1T(b)(23) published elsewhere in this issue of the **Federal Register**].

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(31) [The text of proposed § 1.1471–1(b)(31) is the same as the text of § 1.1471–1T(b)(31) published elsewhere in this issue of the **Federal Register**].

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(35) [The text of the proposed amendment to § 1.1471–1(b)(35) is the same as the text of § 1.1471–1T(b)(35) published elsewhere in this issue of the **Federal Register**].

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(41) [The text of the proposed amendment to § 1.1471–1(b)(41) is the same as the text of § 1.1471–1T(b)(41) published elsewhere in this issue of the **Federal Register**].

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(43) [The text of proposed § 1.1471–1(b)(43) is the same as the text of § 1.1471–1T(b)(43) published elsewhere in this issue of the **Federal Register**].

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(48) [The text of the proposed amendment to § 1.1471–1(b)(48) is the same as the text of § 1.1471–1T(b)(48) published elsewhere in this issue of the **Federal Register**].

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(50) [The text of the proposed amendment to § 1.1471–1(b)(50) is the same as the text of § 1.1471–1T(b)(50) published elsewhere in this issue of the **Federal Register**].

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(67) [The text of proposed § 1.1471–1(b)(67) is the same as the text of § 1.1471–1T(b)(67) published elsewhere in this issue of the **Federal Register**].

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(76) [The text of the proposed amendment to § 1.1471–1(b)(76) is the same as the text of § 1.1471–1T(b)(76) published elsewhere in this issue of the **Federal Register**].

(77) [The text of the proposed amendment to § 1.1471–1(b)(77) is the same as the text of § 1.1471–1T(b)(77) published elsewhere in this issue of the **Federal Register**].

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(81) [The text of proposed § 1.1471–1(b)(81) is the same as the text of § 1.1471–1T(b)(81) published elsewhere in this issue of the **Federal Register**].

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(83) [The text of the proposed amendment to § 1.1471–1(b)(83) is the same as the text of § 1.1471–1T(b)(83) published elsewhere in this issue of the **Federal Register**].

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(88) [The text of the proposed amendment to § 1.1471–1(b)(88) is the same as the text of § 1.1471–1T(b)(88) published elsewhere in this issue of the **Federal Register**].

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(91) [The text of the proposed amendment to § 1.1471–1(b)(91) is the same as the text of § 1.1471–1T(b)(91) published elsewhere in this issue of the **Federal Register**].

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(98) [The text of the proposed amendment to § 1.1471–1(b)(98) is the same as the text of § 1.1471–1T(b)(98) published elsewhere in this issue of the **Federal Register**].

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(100) [The text of the proposed amendment to § 1.1471–1(b)(100) is the same as the text of § 1.1471–1T(b)(100) published elsewhere in this issue of the **Federal Register**].

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(104) * * * (i) [The text of the proposed amendment to § 1.1471–1(b)(104)(i) is the same as the text of § 1.1471–1T(b)(104)(i) published elsewhere in this issue of the **Federal Register**].

(ii) * * *

(A) [The text of the proposed amendment to § 1.1471–1(b)(104)(ii)(A) is the same as the text of § 1.1471–1T(b)(104)(ii)(A) published elsewhere in this issue of the **Federal Register**].

(B) [The text of the proposed amendment to § 1.1471–1(b)(104)(ii)(B) is the same as the text of § 1.1471–1T(b)(104)(ii)(B) published elsewhere in this issue of the **Federal Register**].

(C) [The text of the proposed amendment to § 1.1471–1(b)(104)(ii)(C) is the same as the text of § 1.1471–1T(b)(104)(ii)(C) published elsewhere in this issue of the **Federal Register**].

(105) [The text of the proposed amendment to § 1.1471–1(b)(105) is the same as the text of § 1.1471–1T(b)(105) published elsewhere in this issue of the **Federal Register**].

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(113) [The text of proposed § 1.1471–1(b)(113) is the same as the text of § 1.1471–1T(b)(113) published elsewhere in this issue of the **Federal Register**].

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(115) [The text of proposed § 1.1471–1(b)(115) is the same as the text of § 1.1471–1T(b)(115) published elsewhere in this issue of the **Federal Register**].

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(123) [The text of proposed § 1.1471–1(b)(123) is the same as the text of § 1.1471–1T(b)(123) published elsewhere in this issue of the **Federal Register**].

(124) [The text of the proposed amendment to § 1.1471–1(b)(124) is the same as the text of § 1.1471–1T(b)(124) published elsewhere in this issue of the **Federal Register**].

(125) [The text of the proposed amendment to § 1.1471–1(b)(125) is the same as the text of § 1.1471–1T(b)(125) published elsewhere in this issue of the **Federal Register**].

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(128) [The text of the proposed amendment to § 1.1471–1(b)(128) is the same as the text of § 1.1471–1T(b)(128) published elsewhere in this issue of the **Federal Register**].

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(135) [The text of the proposed amendment to § 1.1471–1(b)(135) is the same as the text of § 1.1471–1T(b)(135) published elsewhere in this issue of the **Federal Register**].

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(141) [The text of the proposed amendment to § 1.1471–1(b)(141) is the same as the text of § 1.1471–1T(b)(141) published elsewhere in this issue of the **Federal Register**].

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■ **Par. 3.** In § 1.1471–2,

■ a. Revise paragraphs (a)(1), (a)(2)(i), (a)(2)(ii) introductory text, (a)(2)(iii)(A), and (a)(2)(v).

■ b. Remove the heading of paragraph (a)(4)(ii), and add introductory text to paragraph (a)(4)(ii).

■ c. Revise paragraphs (a)(4)(ii)(A), (a)(4)(ii)(B), (b)(2)(i)(A)(*1*), (b)(2)(ii)(A)(*4*), (b)(2)(ii)(B)(*2*), (b)(2)(iv), and (b)(4)(ii).

The revisions read as follows:

**§ 1.1471–2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.**

(a) * * *

(1) [The text of the proposed amendment to § 1.1471–2(a)(1) is the same as the text of § 1.1471–2T(a)(1) published elsewhere in this issue of the **Federal Register**].

(2) * * *

(i) [The text of the proposed amendment to § 1.1471–2(a)(2)(i) is the same as the text of § 1.1471–2T(a)(2)(i) published elsewhere in this issue of the **Federal Register**].

(ii) [The text of the proposed amendment to § 1.1471–2(a)(2)(ii) introductory text is the same as the text of § 1.1471–2T(a)(2)(ii) published elsewhere in this issue of the **Federal Register**].

(iii) * * *

(A) [The text of the proposed amendment to § 1.1471–2(a)(2)(iii)(A) is the same as the text of § 1.1471–2T(a)(2)(iii)(A) published elsewhere in this issue of the **Federal Register**].

* * * * *

(v) [The text of the proposed amendment to § 1.1471–2(a)(2)(v) is the same as the text of § 1.1471–2T(a)(2)(v) published elsewhere in this issue of the **Federal Register**].

* * * * *

(4) * * *

(ii) [The text of the proposed amendment to § 1.1471–2(a)(4)(ii) is the same as the text of § 1.1471–2T(a)(4)(ii) published elsewhere in this issue of the **Federal Register**].

(A) [The text of the proposed amendment to § 1.1471–2(a)(4)(ii)(A) is the same as the text of § 1.1471–2T(a)(4)(ii)(A) published elsewhere in this issue of the **Federal Register**].

(B) [The text of the proposed amendment to § 1.1471–2(a)(4)(ii)(B) is the same as the text of § 1.1471–2T(a)(4)(ii)(B) published elsewhere in this issue of the **Federal Register**].

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) * * *

(*1*) [The text of the proposed amendment to § 1.1471–2(b)(2)(i)(A)(*1*) is the same as the text of § 1.1471–2T(b)(2)(i)(A)(*1*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(ii) * * *

(A) * * *

(*4*) [The text of the proposed amendment to § 1.1471–2(b)(2)(ii)(A)(*4*) is the same as the text of § 1.1471–2T(b)(2)(ii)(A)(*4*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(B) * * *

(*2*) [The text of the proposed amendment to § 1.1471–2(b)(2)(ii)(B)(*2*) is the same as the text of § 1.1471–2T(b)(2)(ii)(B)(*2*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(iv) [The text of the proposed amendment to § 1.1471–2(b)(2)(iv) is the same as the text of § 1.1471–2T(b)(2)(iv) published elsewhere in this issue of the **Federal Register**].

* * * * *

(4) * * *

(ii) [The text of the proposed amendment to § 1.1471–2(b)(4)(ii) is the same as the text of § 1.1471–2T(b)(4)(ii) published elsewhere in this issue of the **Federal Register**].

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■ **Par. 4.** Section 1.1471–3 is amended by:

■ 1. By adding paragraphs (c)(6)(ii)(B)(*7*), (c)(8)(v), (d)(5)(iii), and (d)(11)(x) through (xii).

■ 2. By revising paragraphs (a)(3)(iii), (a)(3)(v) through (vi), (b)(3), (c)(3)(ii)(C) through (D), (c)(3)(iii)(A) introductory text, (c)(3)(iii)(A)(*5*), (c)(3)(iii)(B)(*1*) through (*4*), (c)(5)(ii)(B), (c)(6)(ii)(B)(*3*), (c)(6)(ii)(B)(*5*) through (*6*), (c)(6)(ii)(C)(*3*) through (*5*), (c)(6)(ii)(E)(*3*), (c)(6)(iv), (c)(6)(v)(A) through (B), (c)(9)(ii)(B), (c)(9)(v), (d)(1), (d)(2)(i), (d)(2)(iii), (d)(4)(i) and (ii), (d)(4)(iii) introductory

text, (d)(4)(iii)(A)(*1*), (d)(4)(iv)(A), (d)(4)(iv)(C) through (D), (d)(4)(v), (d)(5)(i) through (ii), (d)(6)(vii)(A)(*1*), (d)(11)(viii)(A) introductory text, (d)(11)(viii)(C), (d)(12)(iii)(A) through (B), (e)(2) through (3), (e)(4) introductory text, (e)(4)(i) through (iv), (e)(4)(v) introductory text, (e)(4)(v)(B)(*1*) through (*2*), (e)(4)(vi)(B), (e)(4)(vii)(B), (e)(4)(viii)(A)(*4*), and (f)(1) through (9).

The revisions and additions read as follows:

**§ 1.1471–3 Identification of payee.**

(a) * * *

(3) * * *

(iii) [The text of the proposed amendment to § 1.1471–3(a)(3)(iii) is the same as the text of § 1.1471–3T(a)(3)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(v) [The text of the proposed amendment to § 1.1471–3(a)(3)(v) is the same as the text of § 1.1471–3T(a)(3)(v) published elsewhere in this issue of the **Federal Register**].

(vi) [The text of the proposed amendment to § 1.1471–3(a)(3)(vi) is the same as the text of § 1.1471–3T(a)(3)(vi) published elsewhere in this issue of the **Federal Register**].

* * * * *

(b) * * *

(3) [The text of the proposed amendment to § 1.1471–3(b)(3) is the same as the text of § 1.1471–3T(b)(3) published elsewhere in this issue of the **Federal Register**].

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(C) [The text of the proposed amendment to § 1.1471–3(c)(3)(ii)(C) is the same as the text of § 1.1471–3T(c)(3)(ii)(C) published elsewhere in this issue of the **Federal Register**].

(D) [The text of the proposed amendment to § 1.1471–3(c)(3)(ii)(D) is the same as the text of § 1.1471–3T(c)(3)(ii)(D) published elsewhere in this issue of the **Federal Register**].

* * * * *

(iii) * * *

(A) [The text of the proposed amendment to § 1.1471–3(c)(3)(iii)(A) introductory text is the same as the text of § 1.1471–3T(c)(3)(iii)(A) published elsewhere in this issue of the **Federal Register**].

* * * * *

(*5*) [The text of the proposed amendment to § 1.1471–3(c)(3)(iii)(A)(*5*) is the same as the text of § 1.1471–3T(c)(3)(iii)(A)(*5*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(B) * * *

(*1*) [The text of the proposed amendment to § 1.1471–3(c)(3)(iii)(B)(*1*) is the same as the text of § 1.1471–3T(c)(3)(iii)(B)(*1*) published elsewhere in this issue of the **Federal Register**].

(*2*) [The text of the proposed amendment to § 1.1471–3(c)(3)(iii)(B)(*2*) is the same as the text of § 1.1471–3T(c)(3)(iii)(B)(*2*) published elsewhere in this issue of the **Federal Register**].

(*3*) [The text of the proposed amendment to § 1.1471–3(c)(3)(iii)(B)(*3*) is the same as the text of § 1.1471–3T(c)(3)(iii)(B)(*3*) published elsewhere in this issue of the **Federal Register**].

(*4*) [The text of the proposed amendment to § 1.1471–3(c)(3)(iii)(B)(*4*) is the same as the text of § 1.1471–3T(c)(3)(iii)(B)(*4*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(5) * * *

(ii) * * *

(B) [The text of the proposed amendment to § 1.1471–3(c)(5)(ii)(B) is the same as the text of § 1.1471–3T(c)(5)(ii)(B) published elsewhere in this issue of the **Federal Register**].

* * * * *

(6) * * *

(ii) * * *

(B) * * *

(*3*) [The text of the proposed amendment to § 1.1471–3(c)(6)(ii)(B)(*3*) is the same as the text of § 1.1471–3T(c)(6)(ii)(B)(*3*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(*5*) [The text of the proposed amendment to § 1.1471–3(c)(6)(ii)(B)(*5*) is the same as the text of § 1.1471–3T(c)(6)(ii)(B)(*5*) published elsewhere in this issue of the **Federal Register**].

(*6*) [The text of the proposed amendment to § 1.1471–3(c)(6)(ii)(B)(*6*) is the same as the text of § 1.1471–3T(c)(6)(ii)(B)(*6*) published elsewhere in this issue of the **Federal Register**].

(*7*) [The text of proposed § 1.1471–3(c)(6)(ii)(B)(*7*) is the same as the text of § 1.1471–3T(c)(6)(ii)(B)(*7*) published elsewhere in this issue of the **Federal Register**].

(C) * * *

(*3*) [The text of the proposed amendment to § 1.1471–3(c)(6)(ii)(C)(*3*) is the same as the text of § 1.1471–3T(c)(6)(ii)(C)(*3*) published elsewhere in this issue of the **Federal Register**].

(*4*) [The text of the proposed amendment to § 1.1471–3(c)(6)(ii)(C)(*4*) is the same as the text of § 1.1471–3T(c)(6)(ii)(C)(*4*) published elsewhere in this issue of the **Federal Register**].

(*5*) [The text of the proposed amendment to § 1.1471–3(c)(6)(ii)(C)(*5*) is the same as the text of § 1.1471–3T(c)(6)(ii)(C)(*5*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(E) * * *

(*3*) [The text of the proposed amendment to § 1.1471–3(c)(6)(ii)(E)(*3*) is the same as the text of § 1.1471–3T(c)(6)(ii)(E)(*3*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(iv) [The text of the proposed amendment to § 1.1471–3(c)(6)(iv) is the same as the text of § 1.1471–3T(c)(6)(iv) published elsewhere in this issue of the **Federal Register**].

(v) * * *

(A) [The text of the proposed amendment to § 1.1471–3(c)(6)(v)(A) is the same as the text of § 1.1471–3T(c)(6)(v)(A) published elsewhere in this issue of the **Federal Register**].

(B) [The text of the proposed amendment to § 1.1471–3(c)(6)(v)(B) is the same as the text of § 1.1471–3T(c)(6)(v)(B) published elsewhere in this issue of the **Federal Register**].

* * * * *

(8) * * *

(v) [The text of proposed § 1.1471–3(c)(8)(v) is the same as the text of § 1.1471–3T(c)(8)(v) published elsewhere in this issue of the **Federal Register**].

(9) * * *

(ii) * * *

(B) [The text of the proposed amendment to § 1.1471–3(c)(9)(ii)(B) is the same as the text of § 1.1471–3T(c)(9)(ii)(B) published elsewhere in this issue of the **Federal Register**].

* * * * *

(v) [The text of the proposed amendment to § 1.1471–3(c)(9)(v) is the same as the text of § 1.1471–3T(c)(9)(v) published elsewhere in this issue of the **Federal Register**].

(d) * * *

(1) [The text of the proposed amendment to § 1.1471–3(d)(1) is the same as the text of § 1.1471–3T(d)(1) published elsewhere in this issue of the **Federal Register**].

(2) * * *

(i) [The text of the proposed amendment to § 1.1471–3(d)(2)(i) is the same as the text of § 1.1471–3T(d)(2)(i) published elsewhere in this issue of the **Federal Register**].

* * * * *

(iii) [The text of the proposed amendment to § 1.1471–3(d)(2)(iii) is the same as the text of § 1.1471–3T(d)(2)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(4) * * *

(i) [The text of the proposed amendment to § 1.1471–3(d)(4)(i) is the

same as the text of § 1.1471–3T(d)(4)(i) published elsewhere in this issue of the **Federal Register**].

(ii) [The text of the proposed amendment to § 1.1471–3(d)(4)(ii) is the same as the text of § 1.1471–3T(d)(4)(ii) published elsewhere in this issue of the **Federal Register**].

(iii) [The text of the proposed amendment to § 1.1471–3(d)(4)(iii) introductory text is the same as the text of § 1.1471–3T(d)(4)(iii) published elsewhere in this issue of the **Federal Register**].

(A) * * *

(*1*) [The text of the proposed amendment to § 1.1471–3(d)(4)(iii)(A)(*1*) is the same as the text of § 1.1471–3T(d)(4)(iii)(A)(*1*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(iv) * * *

(A) [The text of the proposed amendment to § 1.1471–3(d)(4)(iv)(A) is the same as the text of § 1.1471–3T(d)(4)(iv)(A) published elsewhere in this issue of the **Federal Register**].

* * * * *

(C) [The text of the proposed amendment to § 1.1471–3(d)(4)(iv)(C) is the same as the text of § 1.1471–3T(d)(4)(iv)(C) published elsewhere in this issue of the **Federal Register**].

(D) [The text of the proposed amendment to § 1.1471–3(d)(4)(iv)(D) is the same as the text of § 1.1471–3T(d)(4)(iv)(D) published elsewhere in this issue of the **Federal Register**].

(v) [The text of the proposed amendment to § 1.1471–3(d)(4)(v) is the same as the text of § 1.1471–3T(d)(4)(v) published elsewhere in this issue of the **Federal Register**].

(5) * * *

(i) [The text of the proposed amendment to § 1.1471–3(d)(5)(i) is the same as the text of § 1.1471–3T(d)(5)(i) published elsewhere in this issue of the **Federal Register**].

(ii) [The text of the proposed amendment to § 1.1471–3(d)(5)(ii) is the same as the text of § 1.1471–3T(d)(5)(ii)(A) published elsewhere in this issue of the **Federal Register**].

(iii) [The text of proposed § 1.1471–3(d)(5)(iii) is the same as the text of § 1.1471–3T(d)(5)(iii) published elsewhere in this issue of the **Federal Register**].

(6) * * *

(vii) * * *

(A) * * *

(*1*) [The text of the proposed amendment to § 1.1471–3(d)(6)(vii)(A)(*1*) is the same as the text of § 1.1471–3T(d)(6)(vii)(A)(*1*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(11) * * *

(viii) * * *

(A) [The text of the proposed amendment to § 1.1471–3(d)(11)(viii)(A) introductory text is the same as the text of § 1.1471–3T(d)(11)(viii)(A) published elsewhere in this issue of the **Federal Register**].

* * * * *

(C) [The text of the proposed amendment to § 1.1471–3(d)(11)(viii)(C) is the same as the text of § 1.1471–3T(d)(11)(vii)(C) published elsewhere in this issue of the **Federal Register**].

* * * * *

(x) [The text of proposed § 1.1471–3(d)(11)(x) is the same as the text of § 1.1471–3T(d)(11)(x) published elsewhere in this issue of the **Federal Register**].

(xi) [The text of proposed § 1.1471–3(d)(11)(xi) is the same as the text of § 1.1471–3T(d)(11)(xi) published elsewhere in this issue of the **Federal Register**].

(xii) [The text of proposed § 1.1471–3(d)(11)(xii) is the same as the text of § 1.1471–3T(d)(11)(xii) published elsewhere in this issue of the **Federal Register**].

(12) * * *

(iii) * * *

(A) [The text of the proposed amendment to § 1.1471–3(d)(12)(iii)(A) is the same as the text of § 1.1471–3T(d)(12)(iii)(A) published elsewhere in this issue of the **Federal Register**].

(B) [The text of the proposed amendment to § 1.1471–3(d)(12)(iii)(B) is the same as the text of § 1.1471–3T(d)(12)(iii)(B) published elsewhere in this issue of the **Federal Register**].

(e) * * *

(2) [The text of the proposed amendment to § 1.1471–3(e)(2) is the same as the text of § 1.1471–3T(e)(2) published elsewhere in this issue of the **Federal Register**].

(3) [The text of proposed § 1.1471–3(e)(3) is the same as the text of § 1.1471–3T(e)(3) through (e)(3)(iv) published elsewhere in this issue of the **Federal Register**].

(4) [The text of the proposed amendment to § 1.1471–3(e)(4) introductory text is the same as the text of § 1.1471–3T(e)(4) introductory text published elsewhere in this issue of the **Federal Register**].

(i) through (iv) [The text of the proposed amendment to § 1.1471–3(e)(4)(i) through (iv) is the same as the text of § 1.1471–3T(e)(4)(i) through (iv)(B)(*2*) published elsewhere in this issue of the **Federal Register**].

(v) [The text of the proposed amendment to § 1.1471–3(e)(4)(v) introductory text is the same as the text of § 1.1471–3T(e)(4)(v) published elsewhere in this issue of the **Federal Register**].

* * * * *

(B) * * *

(*1*) [The text of the proposed amendment to § 1.1471–3(e)(4)(v)(B)(*1*) is the same as the text of § 1.1471–3T(e)(4)(v)(B)(*1*) published elsewhere in this issue of the **Federal Register**].

(*2*) [The text of the proposed amendment to § 1.1471–3(e)(4)(v)(B)(*2*) is the same as the text of § 1.1471–3T(e)(4)(v)(B)(*2*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(vi) * * *

(B) [The text of the proposed amendment to § 1.1471–3(e)(4)(vi)(B) is the same as the text of § 1.1471–3T(e)(4)(vi)(B) published elsewhere in this issue of the **Federal Register**].

(vii) * * *

(B) [The text of the proposed amendment to § 1.1471–3(e)(4)(vii)(B) is the same as the text of § 1.1471–3T(e)(4)(vii)(B) published elsewhere in this issue of the **Federal Register**].

(viii) * * *

(A) * * *

(*4*) [The text of the proposed amendment to § 1.1471–3(e)(4)(viii)(A)(*4*) is the same as the text of § 1.1471–3T(e)(4)(viii)(A)(*4*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(f) * * *

(1) through (9) [The text of the proposed amendment to § 1.1471–3(f)(1) through (9) is the same as the text of § 1.1471–3T(f)(1) through (f)(9)(ii) published elsewhere in this issue of the **Federal Register**].

* * * * *

■ **Par. 5.** Section 1.1471–4 is amended by:

■ 1. Removing paragraph (d)(3)(v).

■ 2. Redesignating paragraphs (d)(3)(vi) through (viii) as paragraphs (d)(3)(v) through (vii) and paragraph (d)(6)(vi) as paragraph (d)(6)(vii).

■ 3. Adding paragraphs (b)(3)(i) through (iii), (d)(2)(ii)(F), (d)(2)(iii)(C), and (d)(6)(vi).

■ 4. Revising paragraphs (a)(3), (b)(1) through (3), (b)(6), (c)(5)(iv)(B)(*2*)(*vi*), (c)(5)(iv)(E), (d)(1), (d)(2)(i), (d)(2)(ii)(A), (d)(2)(ii)(B)(*2*), (d)(2)(ii)(E), (d)(2)(iii)(A), (d)(2)(iii)(B) introductory text, (d)(3)(ii)(E), (d)(3)(iii)(F), (d)(5)(v) through (vi), (d)(7)(i), (d)(7)(ii)(A), (d)(7)(iii), (d)(7)(iv)(A) through (B), (d)(8), (d)(9) *Example 3, Example 5,* and *Example 7,* (e)(1), (e)(2)(ii), (f)(4)(i) through (ii), (g)(1) introductory text, (g)(1)(ii), and (g)(2).

■ 5. By removing the heading of paragraph (d)(7) and adding introductory text to paragraph (d)(7).

The additions and revisions read as follows:

**§ 1.1471–4 FFI agreement.**

(a) * * *

(3) [The text of the proposed amendment to § 1.1471–4(a)(3) is the same as the text of § 1.1471–4T(a)(3) published elsewhere in this issue of the **Federal Register**].

* * * * *

(b) * * *

(1) [The text of the proposed amendment to § 1.1471–4(b)(1) is the same as the text of § 1.1471–4T(b)(1) published elsewhere in this issue of the **Federal Register**].

(2) [The text of the proposed amendment to § 1.1471–4(b)(2) is the same as the text of § 1.1471–4T(b)(2) published elsewhere in this issue of the **Federal Register**].

(3) [The text of the proposed amendment to § 1.1471–4(b)(3) is the same as the text of § 1.1471–4T(b)(3) published elsewhere in this issue of the **Federal Register**].

(i) [The text of proposed § 1.1471–4(b)(3)(i) is the same as the text of § 1.1471–4T(b)(3)(i) published elsewhere in this issue of the **Federal Register**].

(ii) [The text of proposed § 1.1471–4(b)(3)(ii) is the same as the text of § 1.1471–4T(b)(3)(ii) published elsewhere in this issue of the **Federal Register**].

(iii) [The text of proposed § 1.1471–4(b)(3)(iii) is the same as the text of § 1.1471–4T(b)(3)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(6) [The text of the proposed amendment to § 1.1471–4(b)(6) is the same as the text of § 1.1471–4T(b)(6) published elsewhere in this issue of the **Federal Register**].

* * * * *

(c) * * *

(5) * * *

(iv) * * *

(B) * * *

(*2*) * * *

(*vi*) [The text of the proposed amendment to § 1.1471–4(c)(5)(iv)(B)(*2*)(*vi*) is the same as the text of § 1.1471–4T(c)(5)(iv)(B)(*2*)(*vi*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(E) [The text of the proposed amendment to § 1.1471–4(c)(5)(iv)(E) is the same as the text of § 1.1471–4T(c)(5)(iv)(E) published elsewhere in this issue of the **Federal Register**].

* * * * *

(d) * * *

(1) [The text of the proposed amendment to § 1.1471–4(d)(1) is the same as the text of § 1.1471–4T(d)(1) published elsewhere in this issue of the **Federal Register**].

(2) * * *

(i) [The text of the proposed amendment to § 1.1471–4(d)(2)(i) is the same as the text of § 1.1471–4T(d)(2)(i) published elsewhere in this issue of the **Federal Register**].

(ii) * * *

(A) [The text of the proposed amendment to § 1.1471–4(d)(2)(ii)(A) is the same as the text of § 1.1471–4T(d)(2)(ii)(A) published elsewhere in this issue of the **Federal Register**].

(B) * * *

(*2*) [The text of the proposed amendment to § 1.1471–4(d)(2)(ii)(B)(*2*) is the same as the text of § 1.1471–4T(d)(2)(ii)(B)(*2*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(E) [The text of the proposed amendment to § 1.1471–4(d)(2)(ii)(E) is the same as the text of § 1.1471–4T(d)(2)(ii)(E) published elsewhere in this issue of the **Federal Register**].

(F) [The text of proposed § 1.1471–4(d)(2)(ii)(F) is the same as the text of § 1.1471–4T(d)(2)(ii)(F) published elsewhere in this issue of the **Federal Register**].

(iii) * * *

(A) [The text of the proposed amendment to § 1.1471–4(d)(2)(iii)(A) is the same as the text of § 1.1471–4T(d)(2)(iii)(A) published elsewhere in this issue of the **Federal Register**].

(B) [The text of the proposed amendment to § 1.1471–4(d)(2)(iii)(B) introductory text is the same as the text of § 1.1471–4T(d)(2)(iii)(B) published elsewhere in this issue of the **Federal Register**].

* * * * *

(C) [The text of proposed § 1.1471–4(d)(2)(iii)(C) is the same as the text of § 1.1471–4T(d)(2)(iii)(C) published elsewhere in this issue of the **Federal Register**].

(3) * * *

(ii) * * *

(E) [The text of the proposed amendment to § 1.1471–4(d)(3)(ii)(E) is the same as the text of § 1.1471–4T(d)(3)(ii)(E) published elsewhere in this issue of the **Federal Register**].

(iii) * * *

(F) [The text of the proposed amendment to § 1.1471–4(d)(3)(iii)(F) is the same as the text of § 1.1471–4T(d)(3)(iii)(F) published elsewhere in this issue of the **Federal Register**].

* * * * *

(5) * * *

(v) [The text of the proposed amendment to § 1.1471–4(d)(5)(v) is the same as the text of § 1.1471–4T(d)(5)(v) published elsewhere in this issue of the **Federal Register**].

(vi) [The text of the proposed amendment to § 1.1471–4(d)(5)(vi) is the same as the text of § 1.1471–4T(d)(5)(vi) published elsewhere in this issue of the **Federal Register**].

* * * * *

(6) * * *

(vi) [The text of proposed § 1.1471–4(d)(6)(vi) is the same as the text of § 1.1471–4T(d)(6)(vi) published elsewhere in this issue of the **Federal Register**].

* * * * *

(7) [The text of the proposed amendment to § 1.1471–4(d)(7) introductory text is the same as the text of § 1.1471–4T(d)(7) introductory text published elsewhere in this issue of the **Federal Register**].

(i) [The text of the proposed amendment to § 1.1471–4(d)(7)(i) is the same as the text of § 1.1471–4T(d)(7)(i) published elsewhere in this issue of the **Federal Register**].

(ii) * * *

(A) [The text of the proposed amendment to § 1.1471–4(d)(7)(ii)(A) is the same as the text of § 1.1471–4T(d)(7)(ii)(A) published elsewhere in this issue of the **Federal Register**].

* * * * *

(iii) [The text of the proposed amendment to § 1.1471–4(d)(7)(iii) is the same as the text of § 1.1471–4T(d)(7)(iii) published elsewhere in this issue of the **Federal Register**].

(iv) * * *

(A) [The text of the proposed amendment to § 1.1471–4(d)(7)(iv)(A) is the same as the text of § 1.1471–4T(d)(7)(iv)(A) published elsewhere in this issue of the **Federal Register**].

(B) [The text of the proposed amendment to § 1.1471–4(d)(7)(iv)(B) is the same as the text of § 1.1471–4T(d)(7)(iv)(B) published elsewhere in this issue of the **Federal Register**].

(8) [The text of the proposed amendment to § 1.1471–4(d)(8) is the same as the text of § 1.1471–4T(d)(8) published elsewhere in this issue of the **Federal Register**].

(9) * * *

*Example 3.* [The text of the proposed amendment to Example 3 of § 1.1471–4(d)(9) is the same as the text of Example 3 of § 1.1471–4T(d)(9) published elsewhere in this issue of the **Federal Register**].

* * * * *

*Example 5.* [The text of the proposed amendment to Example 5 of § 1.1471–4(d)(9) is the same as the text of Example 5 of § 1.1471–4T(d)(9) published elsewhere in this issue of the **Federal Register**].

* * * * *

*Example 7.* [The text of the proposed amendment to Example 7 of § 1.1471–4(d)(9) is the same as the text of Example 7 of § 1.1471–4T(d)(9) published elsewhere in this issue of the **Federal Register**].

(e) * * *

(1) [The text of the proposed amendment to § 1.1471–4(e)(1) is the same as the text of § 1.1471–4T(e)(1) published elsewhere in this issue of the **Federal Register**].

(2) * * *

(ii) [The text of the proposed amendment to § 1.1471–4(e)(2)(ii) is the same as the text of § 1.1471–4T(e)(2)(ii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(f) * * *

(4) * * *

(i) [The text of the proposed amendment to § 1.1471–4(f)(4)(i) is the same as the text of § 1.1471–4T(f)(4)(i) published elsewhere in this issue of the **Federal Register**].

(ii) [The text of the proposed amendment to § 1.1471–4(f)(4)(ii) is the same as the text of § 1.1471–4T(f)(4)(ii) published elsewhere in this issue of the **Federal Register**].

(g) * * *

(1) [The text of the proposed amendment to § 1.1471–4(g)(1) introductory text is the same as the text of § 1.1471–4T(g)(1) introductory text published elsewhere in this issue of the **Federal Register**].

* * * * *

(ii) [The text of the proposed amendment to § 1.1471–4(g)(1)(ii) is the same as the text of § 1.1471–4T(g)(1)(ii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(2) [The text of the proposed amendment to § 1.1471–4(g)(2) is the same as the text of § 1.1471–4T(g)(2) published elsewhere in this issue of the **Federal Register**].

* * * * *

■ **Par. 6.** Section 1.1471–5 is amended by:

■ 1. By removing paragraphs (a)(3)(ii) (b)(3)(v)(B)(*3*), and (b)(3)(vi)(B)(*3*).

■ 2. By redesignating paragraphs (a)(3)(iii) through (a)(3)(vi) as paragraphs (a)(3)(ii) through (a)(3)(v) and paragraph (j) as paragraph (l).

■ 3. By adding paragraphs (f)(1)(i)(F)(*3*)(*vii*), (f)(1)(i)(F)(*3*)(*viii*), (f)(2)(v), (j), and (k).

■ 4. By revising paragraphs (a)(3)(i), (a)(4)(i), (b)(1)(iii)(B)(*2*), (b)(3)(iv), (b)(3)(v)(A), (b)(3)(v)(B)(*1*) through (*2*), (b)(3)(vi), (c), (e)(1)(v)(A), (e)(3)(ii), (e)(4)(v) *Example 7* through *Example 8,* (e)(5)(i)(A)(*3*), (e)(5)(i)(B) introductory text, (e)(5)(i)(B)(*1*), (e)(5)(i)(C), (e)(5)(i)(D)(*1*)(*iv*) through (*v*), (e)(5)(iv)(B), (f)(1)(i)(A)(*6*), (f)(1)(i)(B)(*1*), (f)(1)(i)(B)(*3*), (f)(1)(i)(C)(*2*), (f)(1)(i)(D)(*4*) through (*6*), (f)(1)(i)(D)(*7*) introductory text, (f)(1)(i)(E), (f)(1)(i)(F)(*1*)(*ii*), (f)(1)(i)(F)(*3*)(*v*) through (*vi*), (f)(1)(i)(F)(*5*), (f)(1)(ii)(B), (f)(2) introductory text, (f)(2)(i)(B), (f)(2)(iii) through (iv), (f)(4)(i), (g)(3)(i)(D), and (i).

The additions and revisions read as follows:

**§ 1.1471–5 Definitions applicable to section 1471.**

(a) * * *

(3) * * *

(i) [The text of the proposed amendment to § 1.1471–5(a)(3)(i) is the same as the text of § 1.1471–5T(a)(3)(i) published elsewhere in this issue of the **Federal Register**].

* * * * *

(4) * * *

(i) [The text of the proposed amendment to § 1.1471–5(a)(4)(i) is the same as the text of § 1.1471–5T(a)(4)(i) published elsewhere in this issue of the **Federal Register**].

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(B) * * *

(*2*) [The text of the proposed amendment to § 1.1471–5(b)(1)(iii)(B)(*2*) is the same as the text of § 1.1471–5T(b)(1)(iii)(B)(*2*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(3) * * *

(iv) [The text of the proposed amendment to § 1.1471–5(b)(3)(iv) is the same as the text of § 1.1471–5T(b)(3)(iv) published elsewhere in this issue of the **Federal Register**].

(v) * * *

(A) [The text of the proposed amendment to § 1.1471–5(b)(3)(v)(A) is the same as the text of § 1.1471–5T(b)(3)(v)(A) published elsewhere in this issue of the **Federal Register**].

(B) * * *

(*1*) [The text of the proposed amendment to § 1.1471–5(b)(3)(v)(B)(*1*) is the same as the text of § 1.1471–5T(b)(3)(v)(B)(*1*) published elsewhere in this issue of the **Federal Register**].

(*2*) [The text of the proposed amendment to § 1.1471–5(b)(3)(v)(B)(*2*) is the same as the text of § 1.1471–5T(b)(3)(v)(B)(*2*) published elsewhere in this issue of the **Federal Register**].

(vi) [The text of the proposed amendment to § 1.1471–5(b)(3)(vi) is the same as the text of § 1.1471–5T(b)(3)(vi) through (b)(3)(vi)(B)(*2*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(c) [The text of the proposed amendment to § 1.1471–5(c) is the same as the text of § 1.1471–5T(c) published elsewhere in this issue of the **Federal Register**].

* * * * *

(e) * * *

(1) * * *

(v) * * *

(A) [The text of the proposed amendment to § 1.1471–5(e)(1)(v)(A) is the same as the text of § 1.1471–5T(e)(1)(v)(A) published elsewhere in this issue of the **Federal Register**].

* * * * *

(3) * * *

(ii) [The text of the proposed amendment to § 1.1471–5(e)(3)(ii) is the same as the text of § 1.1471–5T(e)(3)(ii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(4) * * *

(v) * * *

*Example 7.* [The text of the proposed amendment to *Example 7*of § 1.1471–5(e)(4)(v) is the same as the text of *Example 7* of § 1.1471–5T(e)(4)(v) published elsewhere in this issue of the **Federal Register**].

*Example 8.* [The text of the proposed amendment to *Example 8* of § 1.1471–5(e)(4)(v) is the same as the text of *Example 8* of § 1.1471–5T(e)(4)(v) published elsewhere in this issue of the **Federal Register**].

* * * * *

(5) * * *

(i) * * *

(A) * * *

(*3*) [The text of the proposed amendment to § 1.1471–5(e)(5)(i)(A)(*3*) is the same as the text of § 1.1471–5T(e)(5)(i)(A)(*3*) published elsewhere in this issue of the **Federal Register**].

(B) [The text of the proposed amendment to § 1.1471–5(e)(5)(i)(B) introductory text is the same as the text of § 1.1471–5T(e)(5)(i)(B) published elsewhere in this issue of the **Federal Register**].

(*1*) [The text of the proposed amendment to § 1.1471–5(e)(5)(i)(B)(*1*) is the same as the text of § 1.1471–5T(e)(5)(i)(B)(*1*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(C) [The text of the proposed amendment to § 1.1471–5(e)(5)(i)(C) is the same as the text of § 1.1471–

5T(e)(5)(i)(C) published elsewhere in this issue of the **Federal Register**].

(D) * * *

(*1*) * * *

(*iv*) [The text of the proposed amendment to § 1.1471–5(e)(5)(i)(D)(*1*)(*iv*) is the same as the text of § 1.1471–5T(e)(5)(i)(D)(*1*)(*iv*) published elsewhere in this issue of the **Federal Register**].

(*v*) [The text of the proposed amendment to § 1.1471–5(e)(5)(i)(D)(*1*)(*v*) is the same as the text of § 1.1471–5T(e)(5)(i)(D)(*1*)(*v*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(iv) * * *

(B) [The text of the proposed amendment to § 1.1471–5(e)(5)(iv)(B) is the same as the text of § 1.1471–5T(e)(5)(iv)(B) published elsewhere in this issue of the **Federal Register**].

* * * * *

(f) * * *

(1) * * *

(i) * * *

(A) * * *

(*6*) [The text of the proposed amendment to § 1.1471–5(f)(1)(i)(A)(*6*) is the same as the text of § 1.1471–5T(f)(1)(i)(A)(*6*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(B) * * *

(*1*) [The text of the proposed amendment to § 1.1471–5(f)(1)(i)(B)(*1*) is the same as the text of § 1.1471–5T(f)(1)(i)(B)(*1*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(*3*) [The text of the proposed amendment to § 1.1471–5(f)(1)(i)(B)(*3*) is the same as the text of § 1.1471–5T(f)(1)(i)(B)(*3*) published elsewhere in this issue of the **Federal Register**].

(C) * * *

(*2*) [The text of the proposed amendment to § 1.1471–5(f)(1)(i)(C)(*2*) is the same as the text of § 1.1471–5T(f)(1)(i)(C)(*2*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(D) * * *

(*4*) [The text of the proposed amendment to § 1.1471–5(f)(1)(i)(D)(*4*) is the same as the text of § 1.1471–5T(f)(1)(i)(D)(*4*) published elsewhere in this issue of the **Federal Register**].

(*5*) [The text of the proposed amendment to § 1.1471–5(f)(1)(i)(D)(*5*) is the same as the text of § 1.1471–5T(f)(1)(i)(D)(*5*) published elsewhere in this issue of the **Federal Register**].

(*6*) [The text of the proposed amendment to § 1.1471–5(f)(1)(i)(D)(*6*) is the same as the text of § 1.1471–5T(f)(1)(i)(D)(*6*) published elsewhere in this issue of the **Federal Register**].

(*7*) [The text of the proposed amendment to § 1.1471–5(f)(1)(i)(D)(*7*) introductory text is the same as the text of § 1.1471–5T(f)(1)(i)(D)(*7*) introductory text published elsewhere in this issue of the **Federal Register**].

* * * * *

(E) [The text of the proposed amendment to § 1.1471–5(f)(1)(i)(E) is the same as the text of § 1.1471–5T(f)(1)(i)(E) through (f)(1)(i)(E)(*2*) published elsewhere in this issue of the **Federal Register**].

(F) * * *

(*1*) * * *

(*ii*) [The text of the proposed amendment to § 1.1471–5(f)(1)(i)(F)(*1*)(*ii*) is the same as the text of § 1.1471–5T(f)(1)(i)(E)(*1*)(*ii*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(*3*) * * *

(*v*) [The text of the proposed amendment to § 1.1471–5(f)(1)(i)(F)(*3*)(*v*) is the same as the text of § 1.1471–5T(f)(1)(i)(F)(*3*)(*v*) published elsewhere in this issue of the **Federal Register**].

(*vi*) [The text of proposed § 1.1471–5(f)(1)(i)(F)(*3*)(*vi*) is the same as the text of § 1.1471–5T(f)(1)(i)(F)(*3*)(*vi*) published elsewhere in this issue of the **Federal Register**].

(*vii*) [The text of proposed § 1.1471–5(f)(1)(i)(F)(*3*)(*vii*) is the same as the text of § 1.1471–5T(f)(1)(i)(F)(*3*)(*vii*) published elsewhere in this issue of the **Federal Register**].

(viii) [The text of proposed § 1.1471–5(f)(1)(i)(F)(*3*)(*viii*) is the same as the text of § 1.1471–5T(f)(1)(i)(F)(*3*)(*viii*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(*5*) [The text of the proposed amendment to § 1.1471–5(f)(1)(i)(F)(*5*) is the same as the text of § 1.1471–5T(f)(1)(i)(F)(*5*) published elsewhere in this issue of the **Federal Register**].

(ii) * * *

(B) [The text of the proposed amendment to § 1.1471–5(f)(1)(ii)(B) is the same as the text of § 1.1471–5T(f)(1)(ii)(B) published elsewhere in this issue of the **Federal Register**].

* * * * *

(2) [The text of the proposed amendment to § 1.1471–5(f)(2) introductory text is the same as the text of § 1.1471–5T(f)(2) published elsewhere in this issue of the **Federal Register**].

(i) * * *

(B) [The text of the proposed amendment to § 1.1471–5(f)(2)(i)(B) is the same as the text of § 1.1471–5T(f)(2)(i)(B) published elsewhere in this issue of the **Federal Register**].

* * * * *

(iii) [The text of the proposed amendment to § 1.1471–5(f)(2)(iii) is the same as the text of § 1.1471–5T(f)(2)(iii) through (f)(2)(iii)(E) published elsewhere in this issue of the **Federal Register**].

(iv) [The text of the proposed amendment to § 1.1471–5(f)(2)(iv) is the same as the text of § 1.1471–5T(f)(2)(iv) through (f)(2)(iv)(F) published elsewhere in this issue of the **Federal Register**].

(v) [The text of proposed § 1.1471–5(f)(2)(v) is the same as the text of § 1.1471–5T(f)(2)(v) published elsewhere in this issue of the **Federal Register**].

* * * * *

(4) * * *

(i) [The text of the proposed amendment to § 1.1471–5(f)(4)(i) is the same as the text of § 1.1471–5T(f)(4)(i) published elsewhere in this issue of the **Federal Register**].

* * * * *

(g) * * *

(3) * * *

(i) * * *

(D) [The text of the proposed amendment to § 1.1471–5(g)(3)(i)(D) is the same as the text of § 1.1471–5T(g)(3)(i)(D) published elsewhere in this issue of the **Federal Register**].

* * * * *

(i) [The text of proposed § 1.1471–5(i) is the same as the text of § 1.1471–5T(i) through (i)(10) published elsewhere in this issue of the **Federal Register**].

(j) [The text of proposed § 1.1471–5(j) is the same as the text of § 1.1471–5T(j) published elsewhere in this issue of the **Federal Register**].

(k) [The text of proposed § 1.1471–5(k) is the same as the text of § 1.1471–5T(k) published elsewhere in this issue of the **Federal Register**].

* * * * *

■ **Par. 7.** Section 1.1471–6 is amending by revising paragraphs (d)(1), (d)(4), (f)(2)(iii)(B) through (C), (f)(3)(ii) through (iii), (f)(5) through (6), (g), and (h)(2) to read as follows:

**§ 1.1471–6 Payments beneficially owned by exempt beneficial owners.**

* * * * *

(d) * * *

(1) [The text of the proposed amendment to § 1.1471–6(d)(1) is the same as the text of § 1.1471–6T(d)(1) published elsewhere in this issue of the **Federal Register**].

* * * * *

(4) [The text of the proposed amendment to § 1.1471–6(d)(4) is the

same as the text of § 1.1471–6T(d)(4) published elsewhere in this issue of the **Federal Register**].

* * * * *

(f) * * *

(2) * * *

(iii) * * *

(B) [The text of the proposed amendment to § 1.1471–6(f)(2)(iii)(B) is the same as the text of § 1.1471–6T(f)(2)(iii)(B) published elsewhere in this issue of the **Federal Register**].

(C) [The text of the proposed amendment to § 1.1471–6(f)(2)(iii)(C) is the same as the text of § 1.1471–6T(f)(2)(iii)(C) published elsewhere in this issue of the **Federal Register**].

* * * * *

(3) * * *

(ii) [The text of the proposed amendment to § 1.1471–6(f)(3)(ii) is the same as the text of § 1.1471–6T(f)(3)(ii) published elsewhere in this issue of the **Federal Register**].

(iii) [The text of the proposed amendment to § 1.1471–6(f)(3)(iii) is the same as the text of § 1.1471–6T(f)(3)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(5) [The text of the proposed amendment to § 1.1471–6(f)(5) is the same as the text of § 1.1471–6T(f)(5) published elsewhere in this issue of the **Federal Register**].

(6) [The text of the proposed amendment to § 1.1471–6(f)(6) is the same as the text of § 1.1471–6T(f)(6) published elsewhere in this issue of the **Federal Register**].

* * * * *

(g) [The text of the proposed amendment to § 1.1471–6(g) is the same as the text of § 1.1471–6T(g) published elsewhere in this issue of the **Federal Register**].

(h) * * *

(2) [The text of the proposed amendment to § 1.1471–6(h)(2) is the same as the text of § 1.1471–6T(h)(2) introductory text through (h)(2)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

■ **Par. 8.** Section 1.1472–1 is amended by:

■ 1. By redesignating paragraph (f) as paragraph (h).

■ 2. By adding paragraphs (c)(1)(vi) through (vii), (c)(3) through (5), (f), and (g).

■ 3. By revising paragraphs (b)(1) introductory text, (b)(2), (c)(1) introductory text, (c)(1)(i) introductory text, (c)(1)(ii) through (iii), (c)(1)(iv) introductory text, (c)(1)(iv)(C), (c)(1)(v), (c)(2), and (d)(1) through (2).

The additions and revisions read as follows:

**§ 1.1472–1 Withholding on NFFEs.**

* * * * *

(b) * * *

(1) [The text of the proposed amendment to § 1.1472–1(b)(1) is the same as the text of § 1.1472–1T(b)(1) published elsewhere in this issue of the **Federal Register**].

* * * * *

(2) [The text of the proposed amendment to § 1.1472–1(b)(2) is the same as the text of § 1.1472–1T(b)(2) published elsewhere in this issue of the **Federal Register**].

(c) * * *

(1) [The text of the proposed amendment to § 1.1472–1(c)(1) is the same as the text of § 1.1472–1T(c)(1) published elsewhere in this issue of the **Federal Register**].

(i) [The text of the proposed amendment to § 1.1472–1(c)(1)(i) introductory text is the same as the text of § 1.1472–1T(c)(1)(i) published elsewhere in this issue of the **Federal Register**].

(ii) [The text of the proposed amendment to § 1.1472–1(c)(1)(ii) is the same as the text of § 1.1472–1T(c)(1)(ii) published elsewhere in this issue of the **Federal Register**].

(iii) [The text of the proposed amendment to § 1.1472–1(c)(1)(iii) is the same as the text of § 1.1472–1T(c)(1)(iii) published elsewhere in this issue of the **Federal Register**].

(iv) [The text of the proposed amendment to § 1.1472–1(c)(1)(iv) introductory text is the same as the text of § 1.1472–1T(c)(1)(iv) published elsewhere in this issue of the **Federal Register**].

* * * * *

(C) [The text of the proposed amendment to § 1.1472–1(c)(1)(iv)(C) is the same as the text of § 1.1472–1T(c)(1)(iv)(C) published elsewhere in this issue of the **Federal Register**].

(v) [The text of the proposed amendment to § 1.1472–1(c)(1)(v) is the same as the text of § 1.1472–1T(c)(1)(v) published elsewhere in this issue of the **Federal Register**].

(vi) [The text of proposed § 1.1472–1(c)(1)(vi) is the same as the text of § 1.1472–1T(c)(1)(vi) published elsewhere in this issue of the **Federal Register**].

(vii) [The text of proposed § 1.1472–1(c)(1)(vii) is the same as the text of § 1.1472–1T(c)(1)(vii) published elsewhere in this issue of the **Federal Register**].

(2) [The text of the proposed amendment to § 1.1472–1(c)(2) is the same as the text of § 1.1472–1T(c)(2) published elsewhere in this issue of the **Federal Register**].

(3) [The text of proposed § 1.1472–1(c)(3) is the same as the text of § 1.1472–1T(c)(3) published elsewhere in this issue of the **Federal Register**].

(4) [The text of proposed § 1.1472–1(c)(4) is the same as the text of § 1.1472–1T(c)(4) published elsewhere in this issue of the **Federal Register**].

(5) [The text of proposed § 1.1472–1(c)(5) is the same as the text of § 1.1472–1T(c)(5) published elsewhere in this issue of the **Federal Register**].

(d) * * *

(1) [The text of the proposed amendment to § 1.1472–1(d)(1) is the same as the text of § 1.1472–1T(d)(1) published elsewhere in this issue of the **Federal Register**].

(2) [The text of the proposed amendment to § 1.1472–1(d)(2) is the same as the text of § 1.1472–1T(d)(2) published elsewhere in this issue of the **Federal Register**].

* * * * *

(f) [The text of proposed § 1.1472–1(f) is the same as the text of § 1.1472–1T(f) published elsewhere in this issue of the **Federal Register**].

(g) [The text of proposed § 1.1472–1(g) is the same as the text of § 1.1472–1T(g) published elsewhere in this issue of the **Federal Register**].

* * * * *

■ **Par. 9.** Section 1.1473–1 is amended by:

■ 1. Adding new paragraph (a)(4)(vii).

■ 2. Revising paragraphs (a)(2)(vi), (a)(3)(iii)(B)(*4*), (a)(4)(vi), (a)(5)(i) through (vi), and (b)(2)(v).

The addition and revisions read as follows:

**§ 1.1473–1 Section 1473 definitions.**

(a) * * *

(2) * * *

(vi) [The text of the proposed amendment to § 1.1473–1(a)(2)(vi) is the same as the text of § 1.1473–1T(a)(2)(vi) published elsewhere in this issue of the **Federal Register**].

* * * * *

(3) * * *

(iii) * * *

(B) * * *

(*4*) [The text of the proposed amendment to § 1.1473–1(a)(3)(iii)(B)(*4*) is the same as the text of § 1.1473–1T(a)(3)(iii)(B)(*4*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(4) * * *

(vi) [The text of the proposed amendment to § 1.1473–1(a)(4)(vi) is the same as the text of § 1.1473–1T(a)(4)(vi) published elsewhere in this issue of the **Federal Register**].

(vii) [The text of proposed § 1.1473–1(a)(4)(vii) is the same as the text of

§ 1.1473–1T(a)(4)(vii) published elsewhere in this issue of the **Federal Register**].

(5) * * *

(i) [The text of the proposed amendment to § 1.1473–1(a)(5)(i) is the same as the text of § 1.1473–1T(a)(5)(i) published elsewhere in this issue of the **Federal Register**].

(ii) [The text of the proposed amendment to § 1.1473–1(a)(5)(ii) is the same as the text of § 1.1473–1T(a)(5)(ii) published elsewhere in this issue of the **Federal Register**].

(iii) [The text of the proposed amendment to § 1.1473–1(a)(5)(iii) is the same as the text of § 1.1473–1T(a)(5)(iii) published elsewhere in this issue of the **Federal Register**].

(iv) [The text of the proposed amendment to § 1.1473–1(a)(5)(iv) is the same as the text of § 1.1473–1T(a)(5)(iv) published elsewhere in this issue of the **Federal Register**].

(v) [The text of the proposed amendment to § 1.1473–1(a)(5)(v) is the same as the text of § 1.1473–1T(a)(5)(v) published elsewhere in this issue of the **Federal Register**].

(vi) [The text of the proposed amendment to § 1.1473–1(a)(5)(vi) is the same as the text of § 1.1473–1T(a)(5)(vi) published elsewhere in this issue of the **Federal Register**].

* * * * *

(b) * * *

(2) * * *

(v) [The text of the proposed amendment to § 1.1473–1(b)(2)(v) is the same as the text of § 1.1473–1T(b)(2)(v) published elsewhere in this issue of the **Federal Register**].

* * * * *

■ **Par. 10.** Section 1.1474–1 is amended:

■ 1. By removing paragraphs (d)(1)(ii)(A)(*1*)(*ix*), (d)(3)(iii), and (i)(1)(iv) through (v).

■ 2. By redesignating paragraphs (d)(1)(ii)(A)(*1*)(*x*) through (*xii*) as (d)(1)(ii)(A)(*1*)(*ix*) through (*xi*), and paragraphs (d)(3)(iv) through (x) as (d)(3)(iii) through (ix).

■ 3. By revising paragraphs (d)(1)(i), (d)(1)(ii)(A)(*1*)(*viii*) through (*ix*), (d)(1)(ii)(B)(*1*)(*i*), (d)(1)(ii)(B)(*1*)(*vi*) through (*vii*), (d)(1)(ii)(B)(*1*)(*ix*), (d)(2)(i), (d)(4)(i)(B), (d)(4)(i)(E), (d)(4)(ii)(B), (d)(4)(iii), (i)(1) introductory text, (i)(1)(i) through (iii), (i)(2) introductory text, and (i)(2)(iii).

The additions and revisions read as follows:

**§ 1.1474–1 Liability for withheld tax and withholding agent reporting.**

* * * * *

(d) * * *

(1) * * *

(i) [The text of the proposed amendment to § 1.1474–1(d)(1)(i) is the same as the text of § 1.1474–1T(d)(1)(i) published elsewhere in this issue of the **Federal Register**].

(ii) * * *

(A) * * *

(*1*) * * *

(*viii*) [The text of the proposed amendment to § 1.1474–1(d)(1)(ii)(A)(*1*)(*viii*) is the same as the text of § 1.1474–1T(d)(1)(ii)(A)(*1*)(*viii*) published elsewhere in this issue of the **Federal Register**].

(*ix*) [The text of the proposed amendment to § 1.1474–1(d)(1)(ii)(A)(*1*)(*ix*) is the same as the text of § 1.1474–1T(d)(1)(ii)(A)(*1*)(*ix*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(B) * * *

(*1*) * * *

(*i*) [The text of the proposed amendment to § 1.1474–1(d)(1)(ii)(B)(*1*)(*i*) is the same as the text of § 1.1474–1T(d)(1)(ii)(B)(*1*)(*i*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(*vi*) [The text of the proposed amendment to § 1.1474–1(d)(1)(ii)(B)(*1*)(*vi*) is the same as the text of § 1.1474–1T(d)(1)(ii)(B)(*1*)(*vi*) published elsewhere in this issue of the **Federal Register**].

(*vii*) [The text of the proposed amendment to § 1.1474–1(d)(1)(ii)(B)(*1*)(*vii*) is the same as the text of § 1.1474–1T(d)(1)(ii)(B)(*1*)(*vii*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(*ix*) [The text of the proposed amendment to § 1.1474–1(d)(1)(ii)(B)(*1*)(*ix*) is the same as the text of § 1.1474–1T(d)(1)(ii)(B)(*1*)(*ix*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(2) * * *

(i) [The text of the proposed amendment to § 1.1474–1(d)(2)(i) is the same as the text of § 1.1474–1T(d)(2)(i) through (d)(2)(i)(C) published elsewhere in this issue of the **Federal Register**].

* * * * *

(4) * * *

(i) * * *

(B) [The text of the proposed amendment to § 1.1474–1(d)(4)(i)(B) is the same as the text of § 1.1474–1T(d)(4)(i)(B) published elsewhere in this issue of the **Federal Register**].

* * * * *

(E) [The text of the proposed amendment to § 1.1474–1(d)(4)(i)(E) is the same as the text of § 1.1474–1T(d)(4)(i)(E) published elsewhere in this issue of the **Federal Register**].

(ii) * * *

(B) [The text of the proposed amendment to § 1.1474–1(d)(4)(ii)(B) is the same as the text of § 1.1474–1T(d)(4)(ii)(B) published elsewhere in this issue of the **Federal Register**].

(C) [The text of the proposed amendment to § 1.1474–1(d)(4)(ii)(C) is the same as the text of § 1.1474–1T(d)(4)(ii)(C) published elsewhere in this issue of the **Federal Register**].

(iii) * * *

[The text of the proposed amendment to § 1.1474–1(d)(4)(iii) is the same as the text of § 1.1474–1T(d)(4)(iii) through (d)(4)(iii)(C) published elsewhere in this issue of the **Federal Register**].

* * * * *

(i) * * *

(1) [The text of the proposed amendment to § 1.1474–1(i)(1) introductory text is the same as the text of § 1.1474–1T(i)(1) published elsewhere in this issue of the **Federal Register**].

(i) [The text of the proposed amendment to § 1.1474–1(i)(1)(i) is the same as the text of § 1.1474–1T(i)(1)(i) published elsewhere in this issue of the **Federal Register**].

(ii) [The text of the proposed amendment to § 1.1474–1(i)(1)(ii) is the same as the text of § 1.1474–1T(i)(1)(ii) published elsewhere in this issue of the **Federal Register**].

(iii) [The text of the proposed amendment to § 1.1474–1(i)(1)(iii) is the same as the text of § 1.1474–1T(i)(1)(iii) published elsewhere in this issue of the **Federal Register**].

(2) [The text of the proposed amendment to § 1.1474–1(i)(2) introductory text is the same as the text of § 1.1474–1T(i)(2) published elsewhere in this issue of the **Federal Register**].

* * * * *

(iii) [The text of the proposed amendment to § 1.1474–1(i)(2)(iii) is the same as the text of § 1.1474–1T(i)(2)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

■ **Par. 11.** Section 1.1474–6 is amended by:

■ 1. Revising paragraph (b)(1).

■ 2. Redesignating paragraph (f) as paragraph (g).

■ 3. Adding new paragraph (f).

The revision and addition read as follows:

**§ 1.1474–6 Coordination of chapter 4 with other withholding provisions.**

* * * * *

(b) * * *

(1) [The text of the proposed amendment to § 1.1474–6(b)(1) is the

same as the text of § 1.1474–6T(b)(1) published elsewhere in this issue of the **Federal Register**].

* * * * *

(f) [The text of proposed § 1.1474–6(f) is the same as the text of § 1.1474–6T(f) published elsewhere in this issue of the **Federal Register**].

* * * * *

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2014–03960 Filed 2–28–14; 4:15 pm]

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# FEDERAL REGISTER

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Part V

## Department of the Treasury

Internal Revenue Service

26 CFR Parts 1, 31, and 301

Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Revision of Information Reporting and Backup Withholding Regulations; Proposed Rule

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1, 31, and 301**

**[REG–134361–12]**

**RIN 1545–BL17**

## Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Revision of Information Reporting and Backup Withholding Regulations

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

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

**SUMMARY:** In this issue of the **Federal Register**, the IRS is issuing temporary regulations (TD 9658) that provide revise certain provisions of the final regulations regarding withholding of tax on certain U.S. source income paid to foreign persons, information reporting and backup withholding with respect to payments made to certain U.S. persons, portfolio interest treatment for nonresident alien individuals and foreign corporations, and requirements for certain claims for refund or credit of income tax made by foreign persons. The text of the temporary regulations published in the **Federal Register** also serves as the text of these proposed regulations. This document also provides notice of public hearing on these proposed regulations.

**DATES:** Written and/or electronic comments must be received by May 5, 2014. Outlines of topics to be discussed at the public hearing scheduled for June 24, 2014 at 10 a.m. must be received by May 5, 2014.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–134361–12), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (REG–134361–12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–134361–12). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** John Sweeney, (202) 622–3840 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

Temporary regulations in this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to sections 871, 1441, 1461, 6041, 6042, 6045, and 6049 of the Internal Revenue Code (Code), the Employment Tax Regulations (26 CFR part 31) under section 3406 of the Code, and the Procedure and Administration Regulations (26 CFR part 301) under section 6402 of the Code. The temporary regulations set forth rules relating to the coordination of withholding and reporting requirements under chapter 4 of the Code with withholding and reporting requirements under chapter 3, reporting requirements under chapter 61, and backup withholding requirements under section 3406. The temporary regulations also provide guidance regarding claims for credit or refund of chapter 4 withholding under § 301.6402–3(e). The temporary regulations also amend § 1.871–14 to reflect certain changes to the procedures for interest to qualify as portfolio interest. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these 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, as supplemented by Executive Order 13653. Therefore, a regulatory assessment is not required. It has also 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 the collection of information in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6)

The domestic small business entities that are subject to the collections of information in this notice of proposed rulemaking are those domestic business entities that are payors of certain U.S. source income to foreign persons. These domestic small business entities are subject to comprehensive rules under chapter 3 to identify the proper treatment of payee for purposes of that chapter's information reporting and tax withholding purposes. The domestic small business entities subject to the collections of information in this notice of proposed rulemaking are also subject to comprehensive information reporting and tax withholding rules under chapters 4 and 61 with respect to payments of certain U.S. source income subject to information reporting and tax reporting under chapter 3. These payors are also subject to information and reporting rules under section 3406.

Payors of payments that are subject to the information reporting and withholding regimes under chapters 3, 4, and 61, and section 3406 play an important role in U.S. tax compliance by providing information about payments made to, and income earned by, U.S. and foreign taxpayers. This notice of proposed rulemaking coordinates the information collection and reporting requirements of chapters 3 and 61 and section 3406 applicable to domestic small business entities that are payors of certain U.S. source income with the information collection and reporting requirements of chapter 4 that are applicable to those same domestic small business entities. This notice of proposed rulemaking establishes a more integrated set of information reporting and tax withholding rules applicable to a domestic small business entity making a payment of U.S. source income that is otherwise the case.

The integrated set of information reporting and withholding rules set out in this notice of proposed rulemaking that will apply to domestic small business entities paying U.S. source income to foreign persons reduce burdens otherwise placed on these entities, including removing duplicative reporting obligations that would otherwise apply. In addition, this notice of proposed rulemaking conforms the due diligence, withholding, and reporting rules under chapters 3, 4, and 61, and section 3406 to the extent appropriate in light of the separate objectives of each chapter or section, thereby reducing burdens that would otherwise apply to domestic small business entities making payments of U.S. source income to foreign persons.

Although the Treasury Department and the IRS anticipate that a substantial number of domestic small entities will be affected by the collection of information in this notice of proposed rulemaking, the Treasury Department and the IRS believe that the economic impact to these entities resulting from the information collection requirements will not be significant. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment on its impact on small businesses. The Internal Revenue Service invites the public to comment on this certification.

**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) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on all aspects of the proposed regulations. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 24, 2014, beginning at 10 a.m. in the 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** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments, an outline of the topics to be discussed, and the time to be devoted to each topic. Submit a signed original and eight (8) copies or an electronic copy of the topics outline by May 5, 2014. 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 John Sweeney, Joshua Rabon, Subin Seth, and Nancy Lee of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 31*

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

*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, 31, 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 1.871–14 is amended by revising paragraphs (b), (c)(2) introductory text, (c)(2)(i) through (iv), (c)(3)(i), (c)(4), (e)(1), and (i) to read as follows:

**§ 1.871–14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.**

* * * * *

(b) [The text of the proposed amendment to § 1.871–14(b) is the same as the text of § 1.871–14T(b) published elsewhere in this issue of the **Federal Register**.]

(c) * * *

(2) [The text of the proposed amendment to § 1.871–14(c)(2) is the same as the text of § 1.871–14T(c)(2) published elsewhere in this issue of the **Federal Register**.]

(i) through (iv) [The text of the proposed amendment to § 1.871–14(c)(2)(i) through (iv) is the same as the text of § 1.871–14T(c)(2)(i) through (iv) published elsewhere in this issue of the **Federal Register**.]

(3) * * *

(i) [The text of the proposed amendment to § 1.871–14(c)(3)(i) is the same as the text of § 1.871–14T(c)(3)(i) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(4) [The text of the proposed amendment to § 1.871–14(c)(4) is the same as the text of § 1.871–14T(c)(4) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(e) * * *

(1) [The text of the proposed amendment to § 1.871–14(e)(1) is the same as the text of § 1.871–14T(e)(1) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(i) [The text of the proposed amendment to § 1.871–14(i) is the same as the text of § 1.871–14T(i) published elsewhere in this issue of the **Federal Register**.]

■ **Par. 3.** Section 1.1441–1 is amended by:

■ 1. Revising paragraphs (a), (b)(1), (b)(2)(i), (b)(2)(iii)(A), (b)(2)(iv)(A), and (b)(2)(iv)(B)(*2*) and (*3*).

■ 2. Adding paragraph (b)(2)(iv)(B)(*4*).

■ 3. Revising paragraphs (b)(2)(iv)(C) and (E), (b)(2)(vi), (b)(2)(vii)(B)(*1*) and (*2*), (b)(2)(vii)(C)(*1*) and (*2*), (b)(2)(vii)(D)(*1*) and (*2*), (b)(2)(vii)(E)(*1*) and (*2*), (b)(2)(vii)(F), (b)(3)(i), (b)(3)(ii)(A) through (C), (b)(3)(iii) introductory text, (b)(3)(iii)(A), (b)(3)(iii)(D), (b)(3)(iv) introductory text, (B)(3)(iv)(A), (b)(3)(v)(B), (b)(3)(vi), (b)(3)(vii), (b)(3)(ix)(A), (b)(3)(x), (b)(4) introductory text, and (b)(4)(i).

■ 4. Adding paragraph (b)(5)(ix).

■ 5. Revising paragraphs (b)(6), (b)(7)(i) introductory text, (b)(7)(i)(A) through (C), (b)(7)(ii), (b)(7)(iv), (b)(7)(v), (c) introductory text, (c)(2), (c)(5), (c)(10), (c)(12), (c)(16), (c)(17), (c)(25), and (c)(28) through (30)

■ 6. Adding paragraphs (c)(31 through (56).

■ 7. Revising paragraphs (d)(4), (e)(1)(ii)(A)(*2*) and (*3*), (e)(2)(ii), (e)(3)(ii) introductory text, (e)(3)(ii)(A), and (e)(3)(ii)(C) and (D).

■ 8. Adding paragraph (e)(3)(ii)(E)

■ 9. Revising paragraphs (e)(3)(iii) introductory text, (e)(3)(iii)(A), and (e)(3)(iii)(C) and (D).

■ 10. Adding paragraph (e)(3)(iii)(E).

■ 11. Revising paragraphs (e)(3)(iv)(A) through (C), (e)(3)(iv)(D)(*1*) through (*6*), (e)(3)(iv)(E), (e)(3)(v), (e)(4) introductory text, (e)(4)(i), (e)(4)(ii)(A), (e)(4)(ii)(B)(*1*) through (*6*), and (e)(4)(ii)(B)(*8*).

■ 12. Adding paragraphs (e)(4)(ii)(B)(*9*) through (*12*).

■ 13. Revising paragraphs (e)(4)(ii)(C), (e)(4)(ii)(D), (e)(4)(iii), (e)(4)(iv)(A), (e)(4)(iv)(C), (e)(4)(v), (e)(4)(vi), (e)(4)(vii) introductory text, (e)(4)(vii)(A), (e)(4)(vii)(F), and (e)(4)(vii)(H).

■ 14. Adding paragraph (e)(4)(vii)(I).

■ 15. Revising paragraph (e)(4)(viii)(B).

■ 16. Adding paragraph (e)(4)(viii)(C).

■ 17. Revising paragraphs (e)(4)(ix) and (e)(5).

■ 18. Adding paragraph (f)(3).

The revisions and additions read as follows:

**§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.**

(a) [The text of the proposed amendment to § 1.1441–1(a) is the same as the text of § 1.1441–1T(a) published elsewhere in this issue of the **Federal Register**.]

(b) * * *

(1) [The text of the proposed amendment to § 1.1441–1(b)(1) is the same as the text of § 1.1441–1T(b)(1) published elsewhere in this issue of the **Federal Register**.]

(2) * * *

(i) [The text of the proposed amendment to § 1.1441–1(b)(2)(i) is the same as the text of § 1.1441–1T(b)(2)(i) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(iii) * * *

(A) [The text of the proposed amendment to § 1.1441–1(b)(2)(iii)(A) is the same as the text of § 1.1441–1T(b)(2)(iii)(A) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(iv) * * *

(A) [The text of the proposed amendment to § 1.1441–1(b)(2)(iv)(A) is the same as the text of § 1.1441–1T(b)(2)(iv)(A) published elsewhere in this issue of the **Federal Register**.]

(B) * * *

(*2*) through (*4*) [The text of the proposed amendment to § 1.1441–1(b)(2)(iv)(B)(*2*) through (*4*) is the same as the text of § 1.1441–1T(b)(2)(iv)(B)(*2*) through (*4*) published elsewhere in this issue of the **Federal Register**.]

(C) [The text of the proposed amendment to § 1.1441–1(b)(2)(iv)(C) is the same as the text of § 1.1441–1T(b)(2)(iv)(C) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(E) [The text of the proposed amendment to § 1.1441–1(b)(2)(iv)(E) is the same as the text of § 1.1441–1T(b)(2)(iv)(E) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(vi) [The text of the proposed amendment to § 1.1441–1(b)(2)(vi) is the same as the text of § 1.1441–1T(b)(2)(vi) published elsewhere in this issue of the **Federal Register**.]

(vii) * * *

(B) * * *

(*1*) and (*2*) [The text of the proposed amendment to § 1.1441–1(b)(2)(vii)(B)(*2*) is the same as the text of § 1.1441–1T(b)(2)(vii)(B)(*2*) published elsewhere in this issue of the **Federal Register**.]

(C) * * *

(*1*) and (*2*) [The text of the proposed amendment to § 1.1441–1(b)(2)(vii)(C)(*1*) and (*2*) is the same as the text of § 1.1441–1T(b)(2)(vii)(C)(*1*) and (*2*) published elsewhere in this issue of the **Federal Register**.]

(D) * * *

(*1*) and (*2*) [The text of the proposed amendment to § 1.1441–1(b)(2)(vii)(D)(*1*) and (*2*) is the same as the text of § 1.1441–1T(b)(2)(vii)(D)(*1*) and (*2*) published elsewhere in this issue of the **Federal Register**.]

(E) * * *

(*1*) and (*2*) [The text of the proposed amendment to § 1.1441–1(b)(2)(vii)(E)(*1*) and (*2*) is the same as the text of § 1.1441–1T(b)(2)(vii)(E)(*1*) and (*2*) published elsewhere in this issue of the **Federal Register**.]

(F) [The text of the proposed amendment to § 1.1441–1(b)(2)(vii)(F) is the same as the text of § 1.1441–1T(b)(2)(vii(F) published elsewhere in this issue of the **Federal Register**.]

(3) * * *

(i) [The text of the proposed amendment to § 1.1441–1(b)(3)(i) is the same as the text of § 1.1441–1T(b)(3)(i) published elsewhere in this issue of the **Federal Register**.]

(ii) * * *

(A) through (C) [The text of the proposed amendment to § 1.1441–1(b)(3)(ii)(A) through (C) is the same as the text of § 1.1441–1T(b)(3)(ii)(A) through (C) published elsewhere in this issue of the **Federal Register**.]

(iii) [The text of the proposed amendment to § 1.1441–1(b)(3)(iii) is the same as the text of § 1.1441–1T(b)(3)(iii) published elsewhere in this issue of the **Federal Register**.]

(A) [The text of the proposed amendment to § 1.1441–1(b)(3)(iii)(A) is the same as the text of § 1.1441–1T(b)(3)(iii)(A) published elsewhere in this issue of the **Federal Register**.]

(*1*) [The text of the proposed amendment to § 1.1441–1(b)(3)(iii)(A)(*1*) is the same as the text of § 1.1441–1T(b)(3)(iii)(A)(*1*) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(*iii*) through (*v*) [The text of the proposed amendment to § 1.1441–1(b)(3)(iii)(A)(*1*)(*iii*) through (*v*) is the same as the text of § 1.1441–1T(b)(3)(iii)(A)(*1*)(*iii*) through (*v*) published elsewhere in this issue of the **Federal Register**.]

(*2*) [The text of the proposed amendment to § 1.1441–1(b)(3)(iii)(A)(*2*) is the same as the text of § 1.1441–1T(b)(3)(iii)(A)(*2*) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(D) [The text of the proposed amendment to § 1.1441–1(b)(3)(iii)(D) is the same as the text of § 1.1441–1T(b)(3)(iii)(D) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(iv) [The text of the proposed amendment to § 1.1441–1(b)(3)(iv) is the same as the text of § 1.1441–1T(b)(3)(iv) published elsewhere in this issue of the **Federal Register**.]

(A) [The text of the proposed amendment to § 1.1441–1(b)(3)(iv)(A) is the same as the text of § 1.1441–1T(b)(3)(iv)(A) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(v) * * *

(B) [The text of the proposed amendment to § 1.1441–1(b)(3)(v)(B) is the same as the text of § 1.1441–1T(b)(3)(v)(B) published elsewhere in this issue of the **Federal Register**.]

(vi) [The text of the proposed amendment to § 1.1441–1(b)(3)(vi) is the same as the text of § 1.1441–1T(b)(3)(vi) published elsewhere in this issue of the **Federal Register**.]

(vii) [The text of the proposed amendment to § 1.1441–1(b)(3)(vii) is the same as the text of § 1.1441–1T(b)(3)(vii) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(ix) * * *

(A) [The text of the proposed amendment to § 1.1441–1(b)(3)(ix)(A) is the same as the text of § 1.1441–1T(b)(3)(ix)(A) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(x) [The text of the proposed amendment to § 1.1441–1(b)(3)(x) is the same as the text of § 1.1441–1T(b)(3)(x) published elsewhere in this issue of the **Federal Register**.]

(4) [The text of the proposed amendment to § 1.1441–1(b)(4) is the same as the text of § 1.1441–1T(b)(4) published elsewhere in this issue of the **Federal Register**.]

(i) [The text of the proposed amendment to § 1.1441–1(b)(4)(i) is the same as the text of § 1.1441–1T(b)(4)(i) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(5) * * *

(ix) [The text of the proposed amendment to § 1.1441–1(b)(5)(ix) is the same as the text of § 1.1441–1T(b)(5)(ix) published elsewhere in this issue of the **Federal Register**.]

(6) [The text of the proposed amendment to § 1.1441–1(b)(6) is the same as the text of § 1.1441–1T(b)(6) published elsewhere in this issue of the **Federal Register**.]

(7) * * *

(i) [The text of the proposed amendment to § 1.1441–1(b)(7)(i) is the

same as the text of § 1.1441–1T(b)(7)(i) published elsewhere in this issue of the **Federal Register**.]

(A) through (C) [The text of the proposed amendment to § 1.1441–1(b)(7)(i)(A) through (C) is the same as the text of § 1.1441–1T(b)(7)(i)(A) through (C) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(ii) [The text of the proposed amendment to § 1.1441–1(b)(7)(ii) is the same as the text of § 1.1441–1T(b)(7)(ii) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(iv) and (v) [The text of the proposed amendment to § 1.1441–1(b)(7)(iv) and (v) is the same as the text of § 1.1441–1T(b)(7)(iv) and (v) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(c) [The text of the proposed amendment to § 1.1441–1(c) is the same as the text of § 1.1441–1T(c) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(2) [The text of the proposed amendment to § 1.1441–1(c)(2) is the same as the text of § 1.1441–1T(c)(2) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(5) [The text of the proposed amendment to § 1.1441–1(c)(5) is the same as the text of § 1.1441–1T(c)(5) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(10) [The text of the proposed amendment to § 1.1441–1(c)(10) is the same as the text of § 1.1441–1T(c)(10) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(12) [The text of the proposed amendment to § 1.1441–1(c)(12) is the same as the text of § 1.1441–1T(c)(12) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(16) and (17) [The text of the proposed amendment to § 1.1441–1(c)(16) and (17) is the same as the text of § 1.1441–1T(c)(16) and (17) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(25) [The text of the proposed amendment to § 1.1441–1(c)(25) is the same as the text of § 1.1441–1T(c)(25) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(28) through (56) [The text of the proposed amendment to § 1.1441–1(c)(28) through (56) is the same as the text of § 1.1441–1T(c)(28) through (56) published elsewhere in this issue of the **Federal Register**.]

(d) * * *

(4) [The text of the proposed amendment to § 1.1441–1(d)(4) is the same as the text of § 1.1441–1T(d)(4) published elsewhere in this issue of the **Federal Register**.]

(e) * * *

(1) * * *

(ii) * * *

(A) * * *

(*2*) and (*3*) [The text of the proposed amendment to § 1.1441–1(e)(1)(ii)(A)(*2*) and (*3*) is the same as the text of § 1.1441–1T(e)(1)(ii)(A)(*2*) and (*3*) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(2) * * *

(ii) [The text of the proposed amendment to § 1.1441–1(e)(2)(ii) is the same as the text of § 1.1441–1T(e)(2)(ii) published elsewhere in this issue of the **Federal Register**.]

(3) * * *

(ii) [The text of the proposed amendment to § 1.1441–1(e)(3)(ii) is the same as the text of § 1.1441–1T(e)(3)(ii) published elsewhere in this issue of the **Federal Register**.]

(A) [The text of the proposed amendment to § 1.1441–1(e)(3)(ii)(A) is the same as the text of § 1.1441–1T(e)(3)(ii)(A) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(C) through (E) [The text of the proposed amendment to § 1.1441–1(e)(3)(ii)(C)) is the same as the text of § 1.1441–1T(e)(3)(ii)(C)) published elsewhere in this issue of the **Federal Register**.]

(iii) [The text of the proposed amendment to § 1.1441–1(e)(3)(iii) is the same as the text of § 1.1441–1T(e)(3)(iii) published elsewhere in this issue of the **Federal Register**.]

(A) [The text of the proposed amendment to § 1.1441–1(e)(3)(iii)(A) is the same as the text of § 1.1441–1T(e)(3)(iii)(A) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(C) through (E) [The text of the proposed amendment to § 1.1441–1(e)(3)(iii)(C) through (E) is the same as the text of § 1.1441–1T(e)(3)(iii)(C) through (E) published elsewhere in this issue of the **Federal Register**.]

(iv) * * *

(A) through (C) [The text of the proposed amendment to § 1.1441–1(e)(3)(iv)(A) through (C) is the same as the text of § 1.1441–1T(e)(3)(iv)(A) through (C) published elsewhere in this issue of the **Federal Register**.]

(D) * * *

(*1*) [The text of the proposed amendment to § 1.1441–1(e)(3)(iv)(D)(*1*) is the same as the text of § 1.1441–1T(e)(3)(iv)(D)(*1*) published elsewhere in this issue of the **Federal Register**.]

(*2*) [The text of the proposed amendment to § 1.1441–1(e)(3)(iv)(D)(*2*) is the same as the text of § 1.1441–1T(e)(3)(iv)(D)(*2*) published elsewhere in this issue of the **Federal Register**.]

(*i*) and (*ii*) [The text of the proposed amendment to § 1.1441–1(e)(3)(iv)(D)(*2*)(*i*) and (*ii*) is the same as the text of § 1.1441–1T(e)(3)(iv)(D)(*2*)(*i*) and (*ii*) published elsewhere in this issue of the **Federal Register**.]

(*3*) through (*6*) [The text of the proposed amendment to § 1.1441–1(e)(3)(iv)(D)(*3*) through (*6*) is the same as the text of § 1.1441–1T(e)(3)(iv)(D)(*3*) through (*6*) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(E) [The text of the proposed amendment to § 1.1441–1(e)(3)(iv)(E) is the same as the text of § 1.1441–1T(e)(3)(iv)(E) published elsewhere in this issue of the **Federal Register**.]

(v) [The text of the proposed amendment to § 1.1441–1(e)(3)(v) is the same as the text of § 1.1441–1T(e)(3)(v) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(4) [The text of the proposed amendment to § 1.1441–1(e)(4) is the same as the text of § 1.1441–1T(e)(4) published elsewhere in this issue of the **Federal Register**.]

(i) [The text of the proposed amendment to § 1.1441–1(e)(4)(i) is the same as the text of § 1.1441–1T(e)(4)(i) published elsewhere in this issue of the **Federal Register**.]

(ii) * * *

(A) [The text of the proposed amendment to § 1.1441–1(e)(4)(ii)(A) is the same as the text of § 1.1441–1T(e)(4)(ii)(A) published elsewhere in this issue of the **Federal Register**.]

(B) [The text of the proposed amendment to § 1.1441–1(e)(4)(ii)(B) is the same as the text of § 1.1441–1T(e)(4)(ii)(B) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(*8*) through (*12*) [The text of the proposed amendment to § 1.1441–1() is the same as the text of § 1.1441–1T() published elsewhere in this issue of the **Federal Register**.]

(C) [The text of the proposed amendment to § 1.1441–1(e)(4)(ii)(C) is the same as the text of § 1.1441–1T(e)(4)(ii)(C) published elsewhere in this issue of the **Federal Register**.]

(D) [The text of the proposed amendment to § 1.1441–1(e)(4)(ii)(D) is

the same as the text of § 1.1441–1T(e)(4)(ii)(D) published elsewhere in this issue of the **Federal Register**.]

(*1*) through (*3*) [The text of the proposed amendment to § 1.1441–1(e)(4)(ii)(D)(*1*) through (*3*).) is the same as the text of § 1.1441–1T(e)(4)(ii)(D)(*1*) through (*3*).) published elsewhere in this issue of the **Federal Register**.]

(iii) [The text of the proposed amendment to § 1.1441–1(e)(4)(iii) is the same as the text of § 1.1441–1T(e)(4)(iii) published elsewhere in this issue of the **Federal Register**.]

(iv) * * *

(A) [The text of the proposed amendment to § 1.1441–1(e)(4)(iv)(A) is the same as the text of § 1.1441–1T(e)(4)(iv)(A) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(C) [The text of the proposed amendment to § 1.1441–1(e)(4)(iv)(C) is the same as the text of § 1.1441–1T(e)(4)(iv)(C) published elsewhere in this issue of the **Federal Register**.]

(v) through (vii) [The text of the proposed amendment to § 1.1441–1(e)(4)(v) through (vii) is the same as the text of § 1.1441–1T(e)(4)(v) through (vii) published elsewhere in this issue of the **Federal Register**.]

(A) [The text of the proposed amendment to § 1.1441–1(e)(4)(vii)(A) is the same as the text of § 1.1441–1T(e)(4)(vii)(A) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(F) [The text of the proposed amendment to § 1.1441–1(e)(4)(vii)(F) is the same as the text of § 1.1441–1T(e)(4)(vii)(F) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(H) through (I) [The text of the proposed amendment to § 1.1441–1(e)(4)(vii)(H) through (I) is the same as the text of § 1.1441–1T(e)(4)(vii)(H) through (I) published elsewhere in this issue of the **Federal Register**.]

(viii) * * *

(B) and (C) [The text of the proposed amendment to § 1.1441–1(e)(4)(viii)(B) and (C) is the same as the text of § 1.1441–1T(e)(4)(viii)(B) and (C) published elsewhere in this issue of the **Federal Register**.]

(ix) [The text of the proposed amendment to § 1.1441–1(e)(4)(ix) is the same as the text of § 1.1441–1T(e)(4)(ix) published elsewhere in this issue of the **Federal Register**.]

(5) [The text of the proposed amendment to § 1.1441–1(e)(4)(5) is the same as the text of § 1.1441–1T(e)(5) published elsewhere in this issue of the **Federal Register**.]

(f) [The text of the proposed amendment to § 1.1441–1(f) is the same as the text of § 1.1441–1T(f) published elsewhere in this issue of the **Federal Register**.]

■ **Par. 4.** Section 1.1441–3 is amended by revising paragraphs (a), (c)(4)(i), and (d), and adding paragraph (j) to read as follows:

**§ 1.1441–3 Determination of amounts to be withheld.**

(a) [The text of the proposed amendment to § 1.1441–3(a) is the same as the text of § 1.1441–3T(a) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(c) * * *

(4) * * *

(i) [The text of the proposed amendment to § 1.1441–3(c)(4)(i) is the same as the text of § 1.1441–3T(c)(4)(i) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(d) * * *

* * * * *

(j) [The text of the proposed amendment to § 1.1441–3(j) is the same as the text of § 1.1441–3T(j) published elsewhere in this issue of the **Federal Register**.]

■ **Par. 5.** Section 1.1441–4 is amended by revising paragraphs (a)(2)(ii), (b)(2)(i), (b)(2)(iii), (b)(2)(v), and (b)(3), and adding paragraphs (g)(3) and (h) to read as follows:

**§ 1.1441–4 Exemptions from withholding for certain effectively connected income and other amounts.**

(a) * * *

(2) * * *

(ii) [The text of the proposed amendment to § 1.1441–4(a)(2)(ii) is the same as the text of § 1.1441–4T(a)(2)(ii)(A) through (B) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(b) * * *

(2) * * *

(i) [The text of the proposed amendment to § 1.1441–4(b)(2)(i) is the same as the text of § 1.1441–4T(b)(2)(i) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(iii) [The text of the proposed amendment to § 1.1441–4(b)(2)(iii) is the same as the text of § 1.1441–4T(b)(2)(iii) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(v) [The text of the proposed amendment to § 1.1441–4(b)(2)(iv) is the same as the text of § 1.1441–4T(b)(2)(iv) published elsewhere in this issue of the **Federal Register**.]

(3) [The text of the proposed amendment to § 1.1441–4(b)(3) is the same as the text of § 1.1441–4T(b)(3) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(g) * * *

(3) [The text of the proposed amendment to § 1.1441–4(g)(3) is the same as the text of § 1.1441–4T(g)(3) published elsewhere in this issue of the **Federal Register**.]

(h) [The text of the proposed amendment to § 1.1441–4(h) is the same as the text of § 1.1441–4T(g)(3) published elsewhere in this issue of the **Federal Register**.]

■ **Par. 6.** Section 1.1441–5 is amended by:

■ 1. Revising paragraph (b)(2)(iii).

■ 2. Adding paragraph (b)(2)(vi).

■ 3. Revising (c)(1)(i) introductory text, (c)(1)(i)(C), and (c)(1)(iv).

■ 4. Adding paragraph (c)(1)(v).

■ 5. Revising paragraphs (c)(2)(i) through (iii), (c)(2)(iv)(A) and (B), (c)(3)(i) and (ii), (c)(3)(iii)(A), (c)(3)(iv) and (v), and (d)(2) through (4).

■ 6. Adding paragraph (e)(3)(iii).

■ 7. Revising paragraphs (e)(5)(i) and (ii), (e)(5)(iii)(A), (e)(5)(iv) and (v), (e)(6)(ii), and (f).

■ 8. Adding paragraph (g)(3).

■ The revisions and additions read as follows:

**§ 1.1441–5 Withholding on payments to partnerships, trusts, and estates.**

* * * * *

(b) * * *

(2) * * *

(iii) [The text of the proposed amendment to § 1.1441–5(b)(2)(iii) is the same as the text of § 1.1441–5T(b)(2)(iii) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(vi) [The text of the proposed amendment to § 1.1441–5(b)(2)(vi) is the same as the text of § 1.1441–5T(b)(2)(vi) published elsewhere in this issue of the **Federal Register**.]

(c) * * *

(1) * * *

(i) [The text of the proposed amendment to § 1.1441–5(c)(1)(i) is the same as the text of § 1.1441–5T(c)(1)(i) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(C) [The text of the proposed amendment to § 1.1441–5(c)(1)(i)(C) is the same as the text of § 1.1441–5T(c)(1)(i)(C) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(iv) and (v) [The text of the proposed amendment to § 1.1441–5(c)(1)(iv) and

(v) is the same as the text of § 1.1441–5T(c)(1)(iv) and (v) published elsewhere in this issue of the **Federal Register**.]

(2) * * *

(i) through (iii) [The text of the proposed amendment to § 1.1441–5(c)(2)(i) through (iii) is the same as the text of § 1.1441–5T(c)(2)(i) through (iii) published elsewhere in this issue of the **Federal Register**.]

(iv) * * *

(A) and (B) [The text of the proposed amendment to § 1.1441–5(c)(2)(iv)(A) and (B) is the same as the text of § 1.1441–5T(c)(2)(iv)(A) and (B) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(3) * * *

(i) and (ii) [The text of the proposed amendment to § 1.1441–5(c)(3)(i) and (ii) is the same as the text of § 1.1441–5T(c)(3)(i) and (ii) published elsewhere in this issue of the **Federal Register**.]

(iii) * * *

(A) [The text of the proposed amendment to § 1.1441–5(c)(3)(iii)(A) is the same as the text of § 1.1441–5T(c)(3)(iii)(A) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(iv) and (v) [The text of the proposed amendment to § 1.1441–5(c)(3)(iv) and (v) is the same as the text of § 1.1441–5T(c)(3)(iv) and (v) published elsewhere in this issue of the **Federal Register**.]

(d) * * *

(2) through (4) [The text of the proposed amendment to § 1.1441–5(d)(2) through (4) is the same as the text of § 1.1441–5T(d)(2) through (4) published elsewhere in this issue of the **Federal Register**.]

(e) * * *

(3) * * *

(iii) [The text of the proposed amendment to § 1.1441–5(e)(3)(iii) is the same as the text of § 1.1441–5T(e)(3)(iii) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(5) * * *

(i) and (ii) [The text of the proposed amendment to § 1.1441–5(e)(5)(i) and (ii) is the same as the text of § 1.1441–5T(e)(5)(i) and (ii) published elsewhere in this issue of the **Federal Register**.]

(iii) * * *

(A) [The text of the proposed amendment to § 1.1441–5(e)(5)(iii)(A) is the same as the text of § 1.1441–5T(e)(5)(iii)(A) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(iv) and (v) [The text of the proposed amendment to § 1.1441–5(e)(5)(iv) and (v) is the same as the text of § 1.1441–5T(e)(5)(iv) and (v) published elsewhere in this issue of the **Federal Register**.]

(6) * * *

(ii) [The text of the proposed amendment to § 1.1441–5(e)(6)(ii) is the same as the text of § 1.1441–5T(e)(6)(ii) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(f) [The text of the proposed amendment to § 1.1441–5(f) is the same as the text of § 1.1441–5T(f) published elsewhere in this issue of the **Federal Register**.]

(g) * * *

(3) [The text of the proposed amendment to § 1.1441–5(g)(3) is the same as the text of § 1.1441–5T(g) published elsewhere in this issue of the **Federal Register**.]

■ **Par. 7.** Section 1.1441–6 is amended by revising paragraphs (a), (b)(1), (b)(2)(i), (b)(2)(iv), and (c)(1), and adding paragraph (i)(3) to read as follows:

**§ 1.1441–6 Claim of reduced withholding under an income tax treaty.**

(a) [The text of the proposed amendment to § 1.1441–6(a) is the same as the text of § 1.1441–6T(a) published elsewhere in this issue of the **Federal Register**.]

(b) * * *

(1) [The text of the proposed amendment to § 1.1441–6(b)(1) is the same as the text of § 1.1441–6T(b)(1) published elsewhere in this issue of the **Federal Register**.]

(2) * * *

(i) [The text of the proposed amendment to § 1.1441–6(b)(2)(i) is the same as the text of § 1.1441–6T(b)(2)(i) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(iv) [The text of the proposed amendment to § 1.1441–6(b)(2)(iv) is the same as the text of § 1.1441–6T(b)(2)(iv) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(c) * * *

(1) [The text of the proposed amendment to § 1.1441–6(c)(1) is the same as the text of § 1.1441–5T(c)(1) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(i) * * *

(3) [The text of the proposed amendment to § 1.1441–6(h) is the same as the text of § 1.1441–6T(h) published elsewhere in this issue of the **Federal Register**.]

■ **Par. 8.** Section 1.1441–7 is amended by revising paragraphs (b), (c), and (f)(2)(ii), and adding paragraph (h) to read as follows:

**§ 1.1441–7 General provisions relating to withholding agents.**

* * * * *

(b) [The text of the proposed amendment to § 1.1441–7(b) is the same as the text of § 1.1441–7T(b) published elsewhere in this issue of the **Federal Register**.]

(c) [The text of the proposed amendment to § 1.1441–7(c) is the same as the text of § 1.1441–7T(c) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(f) * * *

(2) * * *

(ii) [The text of the proposed amendment to § 1.1441–7(f)(2)(ii) is the same as the text of § 1.1441–7T(f)(2)(ii) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(h) [The text of the proposed amendment to § 1.1441–7(g) is the same as the text of § 1.1441–7T(h) published elsewhere in this issue of the **Federal Register**.]

■ **Par. 9.** Section 1.1461–1 is amended by revising paragraphs (b)(1), (c)(1)(i), (c)(1)(ii), (c)(2)(ii)(E), (c)(2)(ii)(H), (c)(2)(ii)(I), (c)(3)(i), (c)(3)(iii), (c)(4)(i), (c)(4)(ii)(A), (c)(4)(iv) and (v), (c)(5), and (i) to read as follows:

**§ 1.1461–1 Payments and returns of tax withheld.**

* * * * *

(b) * * *

(1) [The text of the proposed amendment to § 1.1461–1(b)(1) is the same as the text of § 1.1461–1T(b)(1) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(c) * * *

(1) * * *

(i) [The text of the proposed amendment to § 1.1461–1(c)(1)(i) is the same as the text of § 1.1461–1T(c)(1)(i) published elsewhere in this issue of the **Federal Register**.]

(ii) [The text of the proposed amendment to § 1.1461–1(c)(1)(ii) is the same as the text of § 1.1461–1T(c)(1)(ii) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(E) [The text of the proposed amendment to § 1.1461–1(c)(2)(ii)(E) is the same as the text of § 1.1461–1T(c)(2)(ii)(E) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(H) and (I) [The text of the proposed amendment to § 1.1461–1(c)(2)(ii)(H) and (I) is the same as the text of § 1.1461–1T(c)(2)(ii)(H) and (I)

published elsewhere in this issue of the **Federal Register**.]

* * * * *

(3) * * *

(i) [The text of the proposed amendment to § 1.1461–1(c)(3)(i) is the same as the text of § 1.1461–1T(c)(3)(i) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(iii) [The text of the proposed amendment to § 1.1461–1(c)(3)(iii) is the same as the text of § 1.1461–1T(c)(3)(iii) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(4) * * *

(i) [The text of the proposed amendment to § 1.1461–1(c)(4)(i) is the same as the text of § 1.1461–1T(c)(4)(i) published elsewhere in this issue of the **Federal Register**.]

(ii) * * *

(A) [The text of the proposed amendment to § 1.1461–1(c)(4)(ii)(A) is the same as the text of § 1.1461–1T(c)(4)(ii)(A) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(iv) [The text of the proposed amendment to § 1.1461–1(c)(4)(iv) through (v) is the same as the text of § 1.1461–1T(c)(4)(iv) through (v) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(5) [The text of the proposed amendment to § 1.1461–1(c)(5) is the same as the text of § 1.1461–1T(c)(5) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(i) [The text of the proposed amendment to § 1.1461–1(i) is the same as the text of § 1.1461–1T(i) published elsewhere in this issue of the **Federal Register**.]

■ **Par. 10.** Section 1.1461–2 is amended by revising paragraphs (a)(2)(i), (a)(4), and (d) to read as follows:

**§ 1.1461–2 Adjustments for overwithholding or underwithholding of tax.**

(a) * * *

(2) * * *

(i) * * *

* * * * *

(4) [The text of the proposed amendment to § 1.1461–2(a)(4) is the same as the text of § 1.1461–2T(a)(4) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(d) [The text of the proposed amendment to § 1.1461–2(d) is the same as the text of § 1.1461–2T(a)(4) published elsewhere in this issue of the **Federal Register**.]

■ **Par. 11.** Section 1.6041–1 is amended by revising paragraphs (d)(5)(i) and (ii) and (j) to read as follows:

**§ 1.6041–1 Return of information as to payments of $600 or more.**

* * * * *

(d) * * *

(5) * * *

(i) [The text of the proposed amendment to § 1.6041–1(d)(5)(i) is the same as the text of § 1.6041–1T(d)(5)(i) published elsewhere in this issue of the **Federal Register**.]

(ii) [The text of the proposed amendment to § 1.6041–1(d)(5)(ii) is the same as the text of § 1.6041–1T(d)(5)(ii) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(j) [The text of the proposed amendment to § 1.6041–1(j) is the same as the text of § 1.6041–1T(j) published elsewhere in this issue of the **Federal Register**.]

■ **Par. 12.** Section 1.6041–4 is amended by revising paragraphs (a)(1) through (3), adding paragraph (a)(7), and revising paragraphs (b) and (d) to read as follows:

**§ 1.6041–4 Foreign-related items and other exceptions.**

(a) * * *

(1) through (3) [The text of the proposed amendment to § 1.6041–4(a)(1) through (3) is the same as the text of § 1.6041–4T(a)(1) through (3) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(7) [The text of the proposed amendment to § 1.6041–4(a)(7) is the same as the text of § 1.6041–4T(a)(7) published elsewhere in this issue of the **Federal Register**.]

(b) [The text of the proposed amendment to § 1.6041–4(b) is the same as the text of § 1.6041–4T(b) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(d) [The text of the proposed amendment to § 1.6041–4(d) is the same as the text of § 1.6041–4T(d) published elsewhere in this issue of the **Federal Register**.]

■ **Par. 13.** Section 1.6042–2 is amended by revising paragraph (a)(1)(i) and adding paragraph (f) to read as follows:

**§ 1.6042–2 Returns of information as to dividends paid.**

(a) * * *

(1) * * *

(i) [The text of the proposed amendment to § 1.6042–2(a)(1)(i) is the same as the text of § 1.6042–2T(a)(1)(i) through (a)(1)(i)(B)(*4*) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(f) [The text of the proposed amendment to § 1.6042–2(f) is the same as the text of § 1.6042–2T(f) published elsewhere in this issue of the **Federal Register**.]

■ **Par. 14.** Section 1.6042–3 is amended by revising paragraphs b)(1)(iii), (b)(1)(iv), (b)(1)(vi), (b)(3), and (b)(5) to read as follows:

**§ 1.6042–3 Dividends subject to reporting.**

* * * * *

(b) * * *

(1) * * *

(iii) [The text of the proposed amendment to § 1.6042–3(b)(1)(iii) is the same as the text of § 1.6042–3T(b)(1)(iii) published elsewhere in this issue of the **Federal Register**.]

(iv) [The text of the proposed amendment to § 1.6042–3(b)(1)(iv) is the same as the text of § 1.6042–3T(b)(1)(iv) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(vi) [The text of the proposed amendment to § 1.6042–3(b)(1)(vi) is the same as the text of § 1.6042–3T(b)(1)(vi) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(3) [The text of the proposed amendment to § 1.6042–3(b)(3) is the same as the text of § 1.6042–3T(b)(3) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(5) [The text of the proposed amendment to § 1.6042–3(b)(5) is the same as the text of § 1.6042–3T(b)(5) published elsewhere in this issue of the **Federal Register**.]

* * * * *

■ **Par. 15.** Section 1.6045–1 is amended by revising paragraph (c)(3)(ii), adding paragraphs (c)(3)(xiv) and (xv), and revising paragraphs (g)(1)(i), (g)(3)(iv), (g)(4), and (g)(5)(ii) to read as follows:

**§ 1.6045–1 Returns of information of brokers and barter exchanges.**

* * * * *

(c) * * *

(3) * * *

(ii) [The text of the proposed amendment to § 1.6045–1(c)(3)(ii) is the same as the text of § 1.6045–1T(c)(3)(ii) through (c)(3)(ii)(B) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(xiv) [The text of the proposed amendment to § 1.6045–1(c)(3)(xiv) is the same as the text of § 1.6045–1T(c)(3)(xiv) through (c)(3)(xiv)(D)

published elsewhere in this issue of the **Federal Register**.]

(xv) [The text of the proposed amendment to § 1.6045–1(c)(3)(xv) is the same as the text of § 1.6045–1T(c)(3)(xv) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(g) * * *

(1) * * *

(i) [The text of the proposed amendment to § 1.6045–1(g)(1)(i) is the same as the text of § 1.6045–1T(g)(1)(i) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(3) * * *

(iv) [The text of the proposed amendment to § 1.6045–1(g)(3)(iv) is the same as the text of § 1.6045–1T(g)(3)(iv) published elsewhere in this issue of the **Federal Register**.]

(4) [The text of the proposed amendment to § 1.6045–1(g)(4) is the same as the text of § 1.6045–1T(g)(4) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(5) * * *

(ii) [The text of the proposed amendment to § 1.6045–1(g)(5)(ii) is the same as the text of § 1.6045–1T(g)(5)(ii) published elsewhere in this issue of the **Federal Register**.]

* * * * *

■ **Par. 16.** Section 1.6049–4 is amended by:

■ 1. Revising paragraph (b)(1)

■ 2. Adding paragraph (c)(4).

■ 3. Revising paragraphs (f)(3) and (f)(4)(ii).

■ 4. Adding paragraphs (f)(5) through (16), and (h).

■ The revisions and additions read as follows:

**§ 1.6049–4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.**

* * * * *

(b) * * *

(1) [The text of the proposed amendment to § 1.6049–4(b)(1) is the same as the text of § 1.6049–4T(b)(1) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(c) * * *

(4) [The text of the proposed amendment to § 1.6049–4(c)(4) is the same as the text of § 1.6049–4T(c)(4) through (c)(4)(iv) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(f) * * *

(3) [The text of the proposed amendment to § 1.6049–4(f)(3) is the same as the text of § 1.6049–4T(f)(3) published elsewhere in this issue of the **Federal Register**.]

(4) * * *

(ii) [The text of the proposed amendment to § 1.6049–4(f)(4)(ii) is the same as the text of § 1.6049–4T(f)(4)(ii) published elsewhere in this issue of the **Federal Register**.]

(5) through (16) [The text of the proposed amendment to § 1.6049–4(f)(5) through (16) is the same as the text of § 1.6049–4T(f)(5) through (f)(16)(iv) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(h) [The text of the proposed amendment to § 1.6049–4(h) is the same as the text of § 1.6049–4T(h) published elsewhere in this issue of the **Federal Register**.]

■ **Par. 17.** Section 1.6049–5 is amended by revising paragraphs b)(6) through (b)(8), (b)(10)(i) through (b)(11)(ii)(A), (b)(12), (b)(14) and (15), (c)(1) through (4), (c)(5)(i)(F), (c)(6), (d)(1), (d)(2) (d)(3)(i) through (d)(3)(iii)(A), and (d)(4), (e), and (g) to read as follows:

**§ 1.6049–5 Interest and original issue discount subject to reporting after December 31, 1982.**

* * * * *

(b) * * *

(6) [The text of the proposed amendment to § 1.6049–5(b)(6) is the same as the text of § 1.6049–5T(b)(6) published elsewhere in this issue of the **Federal Register**.]

(7) [The text of the proposed amendment to § 1.6049–5(b)(7) is the same as the text of § 1.6049–5T(b)(7) published elsewhere in this issue of the **Federal Register**.]

(8) [The text of the proposed amendment to § 1.6049–5(b)(8) is the same as the text of § 1.6049–5T(b)(8) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(10)(i) [The text of the proposed amendment to § 1.6049–5(b)(10)(i) is the same as the text of § 1.6049–5T(b)(10)(i) published elsewhere in this issue of the **Federal Register**.]

(ii) [The text of the proposed amendment to § 1.6049–5(b)(10)(ii) is the same as the text of § 1.6049–5T(b)(10)(ii) published elsewhere in this issue of the **Federal Register**.]

(11) [The text of the proposed amendment to § 1.6049–5(b)(11) is the same as the text of § 1.6049–5T(b)(11) published elsewhere in this issue of the **Federal Register**.]

(i) [The text of the proposed amendment to § 1.6049–5(b)(11)(i) is the same as the text of § 1.6049–5T(b)(11)(i) published elsewhere in this issue of the **Federal Register**.]

(ii)(A) [The text of the proposed amendment to § 1.6049–5(b)(11)(ii)(A) is the same as the text of § 1.6049–5T(b)(11)(ii)(A) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(12) [The text of the proposed amendment to § 1.6049–5(b)(12) is the same as the text of § 1.6049–5T(b)(12) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(14) [The text of the proposed amendment to § 1.6049–5(b)(14) is the same as the text of § 1.6049–5T(b)(14) published elsewhere in this issue of the **Federal Register**.]

(15) [The text of the proposed amendment to § 1.6049–5(b)(15) is the same as the text of § 1.6049–5T(b)(15) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(c) * * *

(1) [The text of the proposed amendment to § 1.6049–5(c)(1) is the same as the text of § 1.6049–5T(c)(1) through (c)(1)(iv) published elsewhere in this issue of the **Federal Register**.]

(2) [The text of the proposed amendment to § 1.6049–5(c)(2) is the same as the text of § 1.6049–5T(c)(2) published elsewhere in this issue of the **Federal Register**.]

(3) [The text of the proposed amendment to § 1.6049–5(c)(3) is the same as the text of § 1.6049–5T(c)(3) published elsewhere in this issue of the **Federal Register**.]

(4) [The text of the proposed amendment to § 1.6049–5(c)(4) is the same as the text of § 1.6049–5T(c)(4) through (c)(4)(iv) published elsewhere in this issue of the **Federal Register**.]

(5) * * *

(i) * * *

(F) [The text of the proposed amendment to § 1.6049–5(c)(5)(i)(F) is the same as the text of § 1.6049–5T(c)(5)(i)(F) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(6) [The text of the proposed amendment to § 1.6049–5(c)(6) is the same as the text of § 1.6049–5T(c)(6) published elsewhere in this issue of the **Federal Register**.]

(d) * * *

(1) [The text of the proposed amendment to § 1.6049–5(d)(1) is the same as the text of § 1.6049–5T(d)(1) published elsewhere in this issue of the **Federal Register**.]

(2) * * *

(i) [The text of the proposed amendment to § 1.6049–5(d)(2)(i) is the

same as the text of § 1.6049–5T(d)(2)(i) published elsewhere in this issue of the **Federal Register**.]

(ii) [The text of the proposed amendment to § 1.6049–5(d)(2)(ii) is the same as the text of § 1.6049–5T(d)(2)(ii) published elsewhere in this issue of the **Federal Register**.]

(iii) [The text of the proposed amendment to § 1.6049–5(d)(2)(iii) is the same as the text of § 1.6049–5T(d)(2)(iii) published elsewhere in this issue of the **Federal Register**.]

(3) * * *

(i) [The text of the proposed amendment to § 1.6049–5(d)(3)(i) is the same as the text of § 1.6049–5T(d)(3)(i) published elsewhere in this issue of the **Federal Register**.]

(ii) [The text of the proposed amendment to § 1.6049–5(d)(3)(ii) is the same as the text of § 1.6049–5T(d)(3)(ii) published elsewhere in this issue of the **Federal Register**.]

(iii) [The text of the proposed amendment to § 1.6049–5(d)(3)(iii) is the same as the text of § 1.6049–5T(d)(3)(iii) published elsewhere in this issue of the **Federal Register**.]

(A) [The text of the proposed amendment to § 1.6049–5(d)(3)(iii)(A) is the same as the text of § 1.6049–5T(d)(3)(iii)(A) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(4) [The text of the proposed amendment to § 1.6049–5(d)(4) is the same as the text of § 1.6049–5T(d)(4) published elsewhere in this issue of the **Federal Register**.]

(e) * * *

(1) [The text of the proposed amendment to § 1.6049–5(e)(1) is the same as the text of § 1.6049–5T(e)(1) published elsewhere in this issue of the **Federal Register**.]

(2) [The text of the proposed amendment to § 1.6049–5(e)(2) is the same as the text of § 1.6049–5T(e)(2) published elsewhere in this issue of the **Federal Register**.]

(3) [The text of the proposed amendment to § 1.6049–5(e)(3) is the same as the text of § 1.6049–5T(e)(3) published elsewhere in this issue of the **Federal Register**.]

(4) [The text of the proposed amendment to § 1.6049–5(e)(4) is the same as the text of § 1.6049–5T(e)(4) published elsewhere in this issue of the **Federal Register**.]

(5) [The text of the proposed amendment to § 1.6049–5(e)(5) is the same as the text of § 1.6049–5T(e)(5) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(g) * * *

(2) [The text of the proposed amendment to § 1.6049–5(g)(2) is the same as the text of § 1.6049–5T(g)(2) published elsewhere in this issue of the **Federal Register**.]

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

■ **Par. 18.** The authority citation for part 31 continues to read in part as follows:

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

■ **Par. 19.** Section 31.3406(g)–1 is amended by revising paragraph (e) to read as follows:

### § 31.3406(g)–1 Exception for payments to certain payees and certain other payments.

* * * * *

(e) [The text of the proposed amendment to § 31.3406(g)–1(e) is the same as the text of § 31.3406(g)–1T(e) published elsewhere in this issue of the **Federal Register**.]

* * * * *

■ **Par. 20.** Section 31.3406(h)–2 is amended by revising paragraph (a)(3)(i) and adding paragraph (i) to read as follows:

### § 31.3406(h)–2 Special rules.

(a) * * *

(3) * * *

(i) [The text of the proposed amendment to § 31.3406(h)–2(a)(3)(i) is the same as the text of § 31.3406(h)–2T(a)(3)(i) published elsewhere in this issue of the **Federal Register**.]

* * * * *

## PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 21.** The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

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

■ **Par. 22.** Section 301.6402–3 is amended by revising paragraphs (e) and (f) to read as follows:

### § 301.6402–3 Special rules applicable to income tax.

* * * * *

(e) [The text of the proposed amendment to § 301.6402–3(e) is the same as the text of § 301.6402–3T(e) published elsewhere in this issue of the **Federal Register**.]

(f) [The text of the proposed amendment to § 301.6402–3(f) is the same as the text of § 301.6402–3T(f) published elsewhere in this issue of the **Federal Register**.]

* * * * *

**John Dalyrmple.**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2014–03990 Filed 2–28–14; 4:15 pm]

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Part VI

## Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2014 and 2015 Harvest Specifications for Groundfish; Final Rule

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 130925836–4174–02]**

**RIN 0648–XC895**

# Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2014 and 2015 Harvest Specifications for Groundfish

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; harvest specifications and closures.

**SUMMARY:** NMFS announces final 2014 and 2015 harvest specifications, apportionments, and Pacific halibut prohibited species catch limits for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits for groundfish during the 2014 and 2015 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the GOA. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

**DATES:** Harvest specifications and closures effective at 1200 hrs, Alaska local time (A.l.t.), March 6, 2014, through 2400 hrs, A.l.t., December 31, 2015.

**ADDRESSES:** Electronic copies of the Final Alaska Groundfish Harvest Specifications Environmental Impact Statement (EIS), Record of Decision (ROD), Supplementary Information Report (SIR) to the EIS, and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from *http://alaskafisheries.noaa.gov.* The final 2013 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the GOA, dated November 2013, is available from the North Pacific Fishery Management Council (Council) at 605 West 4th Avenue, Suite 306, Anchorage, AK 99510–2252, phone 907–271–2809, or from the Council's Web site at *http://www.npfmc.org.*

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the GOA groundfish fisheries in the exclusive economic zone (EEZ) of the GOA under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600, 679, and 680.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify the total allowable catch (TAC) for each target species, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt). Section 679.20(c)(1) further requires NMFS to publish and solicit public comment on proposed annual TACs, Pacific halibut prohibited species catch (PSC) limits, and seasonal allowances of pollock and Pacific cod. Upon consideration of public comment received under § 679.20(c)(1), NMFS must publish notice of final harvest specifications for up to two fishing years as annual target TAC, per § 679.20(c)(3)(ii). The final harvest specifications set forth in Tables 1 through 36 of this document reflect the outcome of this process, as required at § 679.20(c).

The proposed 2014 and 2015 harvest specifications for groundfish of the GOA and Pacific halibut PSC limits were published in the **Federal Register** on December 10, 2013 (78 FR 74079). Comments were invited and accepted through January 9, 2014. NMFS did not receive any comments on the proposed harvest specifications. In December 2013, NMFS consulted with the Council regarding the 2014 and 2015 harvest specifications. After considering public testimony, as well as biological and economic data that were available at the Council's December 2013 meeting, NMFS is implementing the final 2014 and 2015 harvest specifications, as recommended by the Council. For 2014, the sum of the TAC amounts is 499,274 mt. For 2015, the sum of the TAC amounts is 511,599 mt.

## Other Actions Affecting the 2014 and 2015 Harvest Specifications

### Combining Central and Western GOA Other Rockfish Acceptable Biological Catches (ABCs) and TACs

At its November 2013 meeting, the Council's GOA Groundfish Plan Team (Plan Team) recommended combining the Western and Central GOA ''other rockfish'' ABCs and TACs. The ''other rockfish'' category in these areas include ''other rockfish'' (19 species) and demersal shelf rockfish (7 species). The Plan Team recommended combining these ABCs and TACs based on the challenges associated with conducting a comprehensive assessment of all of the species in the ''other rockfish'' category in the Western and Central GOA. At the December 2013 Council meeting, the Scientific and Statistical Committee (SSC) and Council also recommended combining these ABCs and TACs as recommended by the Plan Team. NMFS does not anticipate any adverse management or conservation effects as a result of combing the Western and Central ''other rockfish'' ABCs and TACs. Directed fishing for ''other rockfish'' would continue to be prohibited in the Western and Central GOA.

### Amendment 97: Chinook Salmon Prohibited Species Catch Limits in the Non-Pollock Trawl Groundfish Fisheries

In June 2013, the Council took action to recommend Amendment 97 to the FMP, as well as accompanying regulations. If approved by the Secretary of Commerce (Secretary), Amendment 97 would implement measures to control Chinook salmon PSC in all non-pollock trawl groundfish fisheries in the Western and Central GOA. The pollock directed fishery is not included in the Council's recommended action, as that fishery is already subject to Chinook PSC limits (§ 679.21(h)). The Council's preferred alternative would set an initial annual limit of 7,500 Chinook salmon apportioned among the sectors of catcher/processors, catcher vessels active in the Rockfish Program, and non-Rockfish Program catcher vessels. A sector would be prohibited from directed fishing for groundfish if it caught its apportioned amount of the total Chinook PSC limit. NMFS currently is developing proposed rulemaking for this Chinook PSC action. If approved by the Secretary, the earliest these Chinook salmon PSC limits could be implemented would be 2015.

### Increase to the Western GOA Guideline Harvest Level (GHL) for Pacific Cod

The State of Alaska (State) manages separate Pacific cod fisheries in the GOA. The State's GHL fisheries are conducted independently of the Federal groundfish fisheries under direct regulation of the State. GHLs are derived from the Pacific cod ABC for each GOA management area, and the TAC for each area is the amount available after the annual GHL percentage has been deducted from the ABC. In October 2013, the Alaska Board of Fisheries, a regulatory body for the State's Department of Fish and Game, reviewed

various proposals to increase the GHL for the State's Pacific cod GHL fisheries. The Board of Fisheries adopted a proposal to increase the GHL in the South Alaska Peninsula area to 30 percent from 25 percent of the annual Pacific cod ABC. This decreases the final Western GOA Pacific cod TAC for 2014, reducing it to 22,922 mt from 24,559 mt.

**Acceptable Biological Catch (ABC) and TAC Specifications**

In December 2013, the Council, its Advisory Panel (AP), and its SSC reviewed the most recent biological and harvest information about the condition of groundfish stocks in the GOA. This information was compiled by the Council's GOA Groundfish Plan Team and was presented in the draft 2013 SAFE report for the GOA groundfish fisheries, dated November 2013 (see **ADDRESSES**). The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an overfishing level (OFL) and ABC for each species or species group. The 2013 SAFE report was made available for public review during the public comment period for the proposed harvest specifications.

In previous years, the largest changes from the proposed to the final harvest specifications have been based on recent NMFS stock surveys, which provide updated estimates of stock biomass and spatial distribution, and changes to the models used for producing stock assessments. At the November 2013 Plan Team meeting, NMFS scientists presented updated and new survey results, changes to stock assessment models, and accompanying stock assessment estimates for all groundfish species and species groups that are included in the final 2013 SAFE report. The SSC reviewed this information at the December 2013 Council meeting. Changes from the proposed to the final harvest specifications in 2014 and 2015 for newly assessed groundfish stocks are discussed below.

The final 2014 and 2015 OFLs, ABCs, and TACs are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass. The FMP specifies the formulas, or tiers, to be used to compute OFLs and ABCs. The formulas applicable to a particular stock or stock complex are determined by the level of reliable information available to fisheries scientists. This information is categorized into a successive series of six tiers to define OFL and ABC amounts, with Tier 1 representing the highest level of information quality available and Tier 6 representing the lowest level of information quality available. The Plan Team used the FMP tier structure to calculate OFL and ABC amounts for each groundfish species. The SSC adopted the final 2014 and 2015 OFLs and ABCs recommended by the Plan Team for all groundfish species. The Council adopted the SSC's OFL and ABC recommendations and the AP's TAC recommendations. The final TAC recommendations were based on the ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the sum of all TACs within the required OY range of 116,000 to 800,000 mt.

The Council recommended 2014 and 2015 TACs that are equal to ABCs for pollock, sablefish, deep-water flatfish, rex sole, Pacific ocean perch, northern rockfish, shortraker rockfish, dusky rockfish, rougheye rockfish, demersal shelf rockfish, thornyhead rockfish, ''other rockfish,'' big skates, longnose skates, other skates, sculpins, sharks, squids, and octopuses in the GOA. The Council recommended TACs for 2014 and 2015 that are less than the ABCs for Pacific cod, shallow-water flatfish in the Western GOA, arrowtooth flounder, flathead sole in the Western and Central GOA, ''other rockfish'' in the Southeast Outside district, and Atka mackerel. The Pacific cod TACs are set to accommodate the State's GHLs for Pacific cod so that the ABCs are not exceeded. The shallow-water flatfish, arrowtooth flounder, and flathead sole TACs are set to allow for increased harvest opportunities for these target species while conserving the halibut PSC limit for use in other, more fully utilized fisheries. The ''other rockfish'' TAC in the Southeast Outside District (SEO) is set to reduce the amount of discards. The Atka mackerel TAC is set to accommodate incidental catch amounts in other fisheries.

The final 2014 and 2015 harvest specifications approved by the Secretary are unchanged from those recommended by the Council and are consistent with the preferred harvest strategy alternative in the EIS (see **ADDRESSES**). NMFS finds that the Council's recommended OFLs, ABCs, and TACs are consistent with the biological condition of the groundfish stocks as described in the final 2013 SAFE report. NMFS also finds that the Council's recommendations for OFLs, ABCs, and TACs are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the OY range. NMFS reviewed the Council's recommended TAC specifications and apportionments, and approves these harvest specifications under 50 CFR 679.20(c)(3)(ii). The apportionment of TAC amounts among gear types and sectors, processing sectors, and seasons is discussed below.

Tables 1 and 2 list the final 2014 and 2015 OFLs, ABCs, TACs, and area apportionments of groundfish in the GOA. The sums of the 2014 and 2015 ABCs are 640,675 mt and 644,165 mt, respectively, which are higher in 2014 and 2015 than the 2013 ABC sum of 595,920 mt (78 FR 13162, February 26, 2013).

**Specification and Apportionment of TAC Amounts**

The ABC for the pollock stock in the combined Western, Central, and West Yakutat Regulatory Areas (W/C/WYK) has been adjusted to reflect the GHL established by the State for the Prince William Sound (PWS) pollock fishery since its inception in 1995. Based on genetic studies, fisheries scientists believe that the pollock in PWS is not a separate stock from the combined W/C/WYK population. Since 1996, the Plan Team has had a protocol of recommending that the GHL amount be deducted from the GOA-wide ABC. Accordingly, the Council recommended decreasing the W/C/WYK pollock ABC to account for the State's PWS GHL. At the November 2013 Plan Team meeting, State fisheries managers recommended setting the PWS GHL at 2.5 percent of the annual W/C/WYK pollock ABC. For 2014, this yields a PWS pollock GHL of 4,163 mt, an increase of 1,336 mt from the 2013 PWS GHL of 2,827 mt. For 2015, the PWS pollock GHL is 4,646 mt, an increase of 1,819 mt from the 2013 PWS pollock GHL.

NMFS' apportionment of groundfish species is based on the distribution of biomass among the regulatory areas over which NMFS manages the species. Additional regulations govern the apportionment of Pacific cod, pollock, and sablefish. Additional detail on the apportionment of Pacific cod, pollock, and sablefish are described below, and briefly summarized here.

The AP, SSC and Council recommended apportionment of the ABC for Pacific cod in the GOA among regulatory areas based on the three most recent NMFS summer trawl surveys. The 2014 and 2015 Pacific cod TACs are

set to accommodate the State's GHL for Pacific cod in State waters in the Central and Western Regulatory Areas, as well as in PWS. The Plan Team, SSC, AP, and Council recommended that the sum of all State and Federal water Pacific cod removals from the GOA not exceed ABC recommendations. Accordingly, the Council set the 2014 and 2015 Pacific cod TACs in the Eastern, Central, and Western Regulatory Areas to account for State GHLs. Therefore, the 2014 Pacific cod TACs are less than the ABCs by the following amounts: (1) Eastern GOA, 664 mt; (2) Central GOA, 13,275 mt; and (3) Western GOA, 9,824 mt. The 2015 Pacific cod TACs are less than the ABCs by the following amounts: (1) Eastern GOA, 631 mt; (2) Central GOA, 12,615 mt; and (3) Western GOA, 9,335 mt. These amounts reflect the sum of the State's 2014 and 2015 GHLs in these areas, which are 25 percent of the Eastern and Central, and 30 percent of the Western GOA ABCs.

NMFS establishes seasonal apportionments of the annual Pacific cod TAC in the Central and Western Regulatory Areas. Sixty percent of the annual TAC is apportioned to the A season for hook-and-line, pot, and jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10. Forty percent of the annual TAC is apportioned to the B season for hook-and-line, pot, and jig gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (§§ 679.23(d)(3) and 679.20(a)(12)). The Central and Western GOA Pacific cod TACs are allocated among various gear and operational sectors. The Pacific cod sector apportionments are discussed in detail in a subsequent section of this preamble.

NMFS establishes pollock TACs in the Western, Central, West Yakutat Regulatory Areas, and the Southeast Outside District of the GOA (see Tables 1 and 2). NMFS also establishes seasonal apportionments of the annual pollock TAC in the Western and Central Regulatory Areas of the GOA among Statistical Areas 610, 620, and 630. These apportionments are divided equally among each of the following four seasons: The A season (January 20 through March 10), the B season (March 10 through May 31), the C season (August 25 through October 1), and the D season (October 1 through November 1) (§ 679.23(d)(2)(i) through (iv), and § 679.20(a)(5)(iv)(A) and (B)). Additional detail is provided below; Tables 3 and 4 list these amounts.

The Council's recommendation for sablefish area apportionments takes into account the prohibition on the use of trawl gear in the SEO District of the Eastern Regulatory Area and makes available 5 percent of the combined Eastern Regulatory Area ABCs to trawl gear for use as incidental catch in other groundfish fisheries in the WYK District (§ 679.20(a)(4)(i)). Tables 7 and 8 list the final 2014 and 2015 allocations of sablefish TAC to hook-and-line and trawl gear in the GOA.

At its June 2012 meeting, the Council took final action to reduce halibut PSC limits in the GOA trawl and hook-and-line groundfish fisheries. Amendment 95 to the GOA FMP changed the process for setting halibut PSC limits and established halibut PSC limits in Federal regulation. These PSC limits will remain in effect until changed by a subsequent Council action to amend those regulations. A proposed rule associated with those recommendations was published on September 17, 2013 (78 FR 57106), and the Secretary approved Amendment 95 to the GOA FMP on November 27, 2013. The final rule to implement Amendment 95 was published on February 20, 2014 (79 FR 9625), and contains a comprehensive discussion of the various elements associated with the halibut PSC limit reductions.

Amendment 95 reduced the GOA halibut PSC limit for the groundfish trawl gear sector and groundfish catcher vessel (CV) hook-and-line gear sector by 15 percent. The reductions will be phased in over 3 years: 7 percent in 2014, 5 percent in 2015 (to 12 percent), and 3 percent in 2016 (for a total of 15 percent). The reduction for the catcher/processor (C/P) hook-and-line gear sector is 7 percent, which is implemented in 2014. The Council used 1,973 mt as the baseline for the halibut PSC limit reductions. This is based on a deduction of 27 mt from the 2,000 mt trawl halibut PSC limit, per halibut PSC limit reductions made in conjunction with the implementation of the Central Gulf of Alaska Rockfish Program in 2011 (76 FR 81248, December 27, 2011). In addition, Amendment 95 reduced the halibut PSC limit for the hook-and-line demersal shelf rockfish fishery in the southeast outside district of the GOA to 9 mt from 10 mt. The Council recommended that the first year of implementation should occur in 2014 and that all reductions should occur by 2016.

**Changes From the Proposed 2014 and 2015 Harvest Specifications in the GOA**

In October 2013, the Council's recommendations for the proposed 2014 and 2015 harvest specifications (78 FR 74079, December 10, 2013) were based largely on information contained in the final 2012 SAFE report for the GOA groundfish fisheries, dated November 2012 (see **ADDRESSES**). The Council proposed that the final OFLs, ABCs, and TACs established for the 2014 groundfish fisheries (78 FR 13162, February 26, 2013) be used for the proposed 2014 and 2015 harvest specifications, pending completion and review of the 2013 SAFE report at its December 2013 meeting.

As described previously, the SSC adopted the final 2014 and 2015 OFLs and ABCs recommended by the Plan Team. The Council adopted the SSC's OFL and ABC recommendations and the AP's TAC recommendations for 2014 and 2015. The final 2014 ABCs are higher than the proposed 2014 ABCs published in the proposed 2014 and 2015 harvest specifications (78 FR 74079, December 10, 2013) for pollock, Pacific cod, deep-water flatfish, Pacific ocean perch, northern rockfish, shortraker rockfish, ''other rockfish,'' dusky rockfish, rougheye rockfish, thornyhead rockfish, longnose skate, and octopuses. The final 2014 ABCs are lower than the proposed 2014 ABCs for sablefish, shallow-water flatfish, rex sole, arrowtooth flounder, flathead sole, demersal shelf rockfish, big skates, other skates, sharks, and sculpins. The final 2015 ABCs are higher than the proposed 2015 ABCs pollock, deep-water flatfish, Pacific ocean perch, northern rockfish, shortraker rockfish, ''other rockfish,'' dusky rockfish, rougheye rockfish, thornyhead rockfish, longnose skate, and octopuses. The final 2015 ABCs are lower than the proposed 2015 ABCs for Pacific cod, sablefish, shallow-water flatfish, rex sole, arrowtooth flounder, flathead sole, demersal shelf rockfish, big skates, other skates, sharks, and sculpins. For the remaining target species, Atka mackerel and squids, the Council recommended, and the Secretary approved, the final 2014 and 2015 ABCs that are the same as the proposed 2014 and 2015 ABCs.

Additional information explaining the changes between the proposed and final ABCs is included in the final 2013 SAFE report, which was not available when the Council made its proposed ABC and TAC recommendations in October 2013. At that time, the most recent stock assessment information was contained in the final 2012 SAFE report. The final 2013 SAFE report contains the best and most recent scientific information on the condition of the groundfish stocks, as previously discussed in this preamble, and is available for review (see **ADDRESSES**). The Council considered the final 2013 SAFE report in December 2013 when it made recommendations for the final

2014 and 2015 harvest specifications. In the GOA, the total final 2014 TAC amount is 499,274 mt, an increase of 17 percent from the total proposed 2014 TAC amount of 427,068 mt. The total final 2015 TAC amount is 511,599 mt, an increase of 20 percent from the total proposed 2015 TAC amount of 427,068 mt. The following table in this preamble summarizes the principle reason for the difference between the proposed and final TACs.

Based on changes to the assessment method used by the stock assessment scientists, for 2014 and 2015 the greatest TAC increase is for deep-water flatfish and the greatest decrease is for flathead sole. Based on changes in the estimates of overall biomass, the greatest TAC increases are for pollock, Pacific ocean perch, shortraker rougheye, dusky rockfish, thornyhead rockfish, other rockfish, and longnose skate. Based upon changes in the estimates of biomass by stock assessment scientists, the greatest decreases in TACs are for sablefish, shallow-water flatfish, and demersal shelf rockfish. For all other species and species groups, changes from the proposed to the final TACs are within plus or minus five percent of the proposed TACs. These TAC changes correspond to associated changes in the ABCs and TACs, as recommended by the SSC, AP, and Council.

Additionally, based upon the Council's recommended changes in setting the TACs at amounts below ABCs the greatest decreases in TACs are for shallow-water flatfish, arrowtooth flounder, flathead sole, and ''other rockfish.'' The Council believed, and NMFS concurs, that setting TACs for the three preceding flatfish species equal to ABCs would not reflect anticipated harvest levels accurately, as the Council and NMFS expect halibut PSC limits to constrain these fisheries in both 2014 and 2015.

Detailed information providing the basis for the changes described above is contained in the final 2013 SAFE report. The final TACs are based on the best scientific information available. These TACs are specified in compliance with the harvest strategy described in the proposed and final rules for the 2014 and 2015 harvest specifications. The changes in TACs between the proposed rule and this final rule are compared in the following table.

COMPARISON OF PROPOSED AND FINAL 2014 AND 2015 GOA TOTAL ALLOWABLE CATCH LIMITS

[Values are rounded to the nearest metric ton and percentage]

| Species | 2014 and 2015 proposed TAC | 2014 Final TAC | 2014 Final minus 2014 proposed TAC | Percentage difference | 2015 Final TAC | 2015 Final minus 2015 proposed TAC | Percentage difference | Principle reason for difference |
|---|---|---|---|---|---|---|---|---|
| Pollock | 111,530 | 174,976 | 63,446 | 57 | 193,809 | 82,279 | 74 | Biomass. [1] |
| Pacific cod | 63,150 | 64,738 | 1,588 | 3 | 61,519 | −1,631 | −3 | Biomass. |
| Sablefish | 11,731 | 10,572 | −1,159 | −10 | 9,554 | −2,177 | −19 | Biomass. |
| Shallow-water flatfish | 36,641 | 33,679 | −2,962 | −8 | 32,027 | −4,614 | −13 | Biomass. |
| Deep-water flatfish | 5,126 | 13,472 | 8,346 | 163 | 13,303 | 8,177 | 160 | Model. [2] |
| Rex sole | 9,242 | 9,341 | 99 | 1 | 9,155 | −87 | −1 | Biomass. |
| Arrowtooth flounder | 103,300 | 103,300 | 0 | 0 | 103,300 | 0 | 0 | Biomass. |
| Flathead sole | 30,632 | 27,746 | −2,886 | −9 | 27,726 | −2,906 | −9 | Model. |
| Pacific ocean perch | 16,133 | 19,309 | 3,176 | 20 | 19,764 | 3,631 | 23 | Biomass. |
| Northern rockfish | 4,850 | 5,322 | 472 | 10 | 5,010 | 160 | 3 | Biomass. |
| Shortraker rockfish | 1,081 | 1,323 | 242 | 22 | 1,323 | 242 | 22 | Biomass. |
| Dusky rockfish | 4,413 | 5,486 | 1,073 | 24 | 5,081 | 668 | 15 | Biomass. |
| Rougheye rockfish | 1,254 | 1,244 | −10 | −1 | 1,262 | 8 | 1 | Biomass. |
| Demersal shelf rockfish | 303 | 274 | −29 | −10 | 274 | −29 | −10 | Biomass. |
| Thornyhead rockfish | 1,665 | 1,841 | 176 | 11 | 1,841 | 176 | 11 | Biomass. |
| Other rockfish | 1,080 | 1,811 | 731 | 68 | 1,811 | 731 | 68 | N/A |
| Atka mackerel | 2,000 | 2,000 | 0 | 0 | 2,000 | 0 | 0 | N/A |
| Big skate | 3,767 | 3,762 | −5 | 0 | 3,762 | −5 | 0 | N/A |
| Longnose skate | 2,625 | 2,876 | 251 | 10 | 2,876 | 251 | 10 | N/A |
| Other skates | 2,030 | 1,989 | −41 | −2 | 1,989 | −41 | −2 | N/A |
| Sculpins | 5,884 | 5,569 | −315 | −5 | 5,569 | −315 | −5 | Biomass. |
| Sharks | 6,028 | 5,989 | −39 | −1 | 5,989 | −39 | −1 | N/A |
| Squids | 1,148 | 1,148 | 0 | 0 | 1,148 | 0 | 0 | N/A |
| Octopuses | 1,455 | 1,507 | 52 | 4 | 1,507 | 52 | 4 | N/A |
| Total | 427,068 | 499,274 | 72,206 | 17 | 511,599 | 84,531 | 19.8 | N/A |

[1] Biomass—Change in estimate of biomass.
[2] Model—Change in assessment methodology.

The final 2014 and 2015 TAC recommendations for the GOA are within the OY range established for the GOA and do not exceed the ABC for any species or species group. Tables 1 and 2 list the final OFL, ABC, and TAC amounts for GOA groundfish for 2014 and 2015, respectively.

TABLE 1—FINAL 2014 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, AND IN THE WEST YAKUTAT, SOUTHEAST OUTSIDE, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

| Species | Area [1] | OFL | ABC | TAC |
|---|---|---|---|---|
| Pollock [2] | Shumagin (610) | n/a | 36,070 | 36,070 |

TABLE 1—FINAL 2014 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, AND IN THE WEST YAKUTAT, SOUTHEAST OUTSIDE, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

| Species | Area [1] | OFL | ABC | TAC |
|---|---|---|---|---|
| | Chirikof (620) | n/a | 81,784 | 81,784 |
| | Kodiak (630) | n/a | 39,756 | 39,756 |
| | WYK (640) | n/a | 4,741 | 4,741 |
| | W/C/WYK (subtotal) | 211,998 | 162,351 | 162,351 |
| | SEO (650) | 16,833 | 12,625 | 12,625 |
| | Total | 228,831 | 174,976 | 174,976 |
| Pacific cod [3] | W | n/a | 32,745 | 22,922 |
| | C | n/a | 53,100 | 39,825 |
| | E | n/a | 2,655 | 1,991 |
| | Total | 107,300 | 88,500 | 64,738 |
| Sablefish [4] | W | n/a | 1,480 | 1,480 |
| | C | n/a | 4,681 | 4,681 |
| | WYK | n/a | 1,716 | 1,716 |
| | SEO | n/a | 2,695 | 2,695 |
| | E (WYK and SEO) (subtotal) | n/a | 4,411 | 4,411 |
| | Total | 12,500 | 10,572 | 10,572 |
| Shallow-water flatfish [5] | W | n/a | 20,376 | 13,250 |
| | C | n/a | 17,813 | 17,813 |
| | WYK | n/a | 2,039 | 2,039 |
| | SEO | n/a | 577 | 577 |
| | Total | 50,007 | 40,805 | 33,679 |
| Deep-water flatfish [6] | W | n/a | 302 | 302 |
| | C | n/a | 3,727 | 3,727 |
| | WYK | n/a | 5,532 | 5,532 |
| | SEO | n/a | 3,911 | 3,911 |
| | Total | 16,159 | 13,472 | 13,472 |
| Rex sole | W | n/a | 1,270 | 1,270 |
| | C | n/a | 6,231 | 6,231 |
| | WYK | n/a | 813 | 813 |
| | SEO | n/a | 1,027 | 1,027 |
| | Total | 12,207 | 9,341 | 9,341 |
| Arrowtooth flounder | W | n/a | 31,142 | 14,500 |
| | C | n/a | 115,612 | 75,000 |
| | WYK | n/a | 37,232 | 6,900 |
| | SEO | n/a | 11,372 | 6,900 |
| | Total | 229,248 | 195,358 | 103,300 |
| Flathead sole | W | n/a | 12,730 | 8,650 |
| | C | n/a | 24,805 | 15,400 |
| | WYK | n/a | 3,525 | 3,525 |
| | SEO | n/a | 171 | 171 |
| | Total | 50,664 | 41,231 | 27,746 |
| Pacific ocean perch [7] | W | n/a | 2,399 | 2,399 |
| | C | n/a | 12,855 | 12,855 |
| | WYK | n/a | 1,931 | 1,931 |
| | W/C/WYK subtotal | 21,016 | 17,185 | 17,185 |
| | SEO | 1,303 | 2,124 | 2,124 |
| | Total | 22,319 | 19,309 | 19,309 |
| Northern rockfish [8] | W | n/a | 1,305 | 1,305 |
| | C | n/a | 4,017 | 4,017 |
| | E | n/a | n/a | n/a |
| | Total | 6,349 | 5,322 | 5,322 |
| Shortraker rockfish [9] | W | n/a | 92 | 92 |
| | C | n/a | 397 | 397 |
| | E | n/a | 834 | 834 |
| | Total | 1,764 | 1,323 | 1,323 |
| Dusky rockfish [10] | W | n/a | 317 | 317 |
| | C | n/a | 3,584 | 3,584 |
| | WYK | n/a | 1,384 | 1,384 |
| | SEO | n/a | 201 | 201 |
| | Total | 6,708 | 5,486 | 5,486 |
| Rougheye and Blackspotted rockfish [11] | W | n/a | 82 | 82 |
| | C | n/a | 864 | 864 |
| | E | n/a | 298 | 298 |
| | Total | 1,497 | 1,244 | 1,244 |
| Demersal shelf rockfish [12] | SEO | 438 | 274 | 274 |
| Thornyhead rockfish | W | n/a | 235 | 235 |
| | C | n/a | 875 | 875 |
| | E | n/a | 731 | 731 |

TABLE 1—FINAL 2014 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, AND IN THE WEST YAKUTAT, SOUTHEAST OUTSIDE, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

| Species | Area [1] | OFL | ABC | TAC |
|---|---|---|---|---|
| | Total | 2,454 | 1,841 | 1,841 |
| Other rockfish [13 14] | W and C | n/a | 1,031 | 1,031 |
| | WYK | n/a | 580 | 580 |
| | SEO | n/a | 2,470 | 200 |
| | Total | 5,347 | 4,081 | 1,811 |
| Atka mackerel | GW | 6,200 | 4,700 | 2,000 |
| Big skate [15] | W | n/a | 589 | 589 |
| | C | n/a | 1,532 | 1,532 |
| | E | n/a | 1,641 | 1,641 |
| | Total | 5,016 | 3,762 | 3,762 |
| Longnose skate [16] | W | n/a | 107 | 107 |
| | C | n/a | 1,935 | 1,935 |
| | E | n/a | 834 | 834 |
| | Total | 3,835 | 2,876 | 2,876 |
| Other skates [17] | GW | 2,652 | 1,989 | 1,989 |
| Sculpins | GW | 7,448 | 5,569 | 5,569 |
| Sharks | GW | 7,986 | 5,989 | 5,989 |
| Squids | GW | 1,530 | 1,148 | 1,148 |
| Octopus | GW | 2,009 | 1,507 | 1,507 |
| | Total | 790,468 | 640,675 | 499,274 |

[1] Regulatory areas and districts are defined at § 679.2. (W=Western Gulf of Alaska; C=Central Gulf of Alaska; E=Eastern Gulf of Alaska; WYK=West Yakutat District; SEO=Southeast Outside District; GW=Gulf-wide).

[2] Pollock is apportioned in the Western/Central Regulatory Areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 16 percent, 62 percent, and 22 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 16 percent, 74 percent, and 10 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 36 percent, 28 percent, and 35 percent in Statistical Areas 610, 620, and 630, respectively. Table 3 lists the final 2014 seasonal apportionments. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

[3] The annual Pacific cod TAC is apportioned 60 percent to the A season and 40 percent to the B season in the Western and Central Regulatory Areas of the GOA. Pacific cod in the Eastern Regulatory Area is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Table 5 lists the final 2014 Pacific cod seasonal apportionments.

[4] Sablefish is allocated to trawl and hook-and-line gear in 2014. Table 7 lists the final 2014 allocations of sablefish TACs.

[5] "Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

[6] "Deep-water flatfish" means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

[7] "Pacific ocean perch" means *Sebastes alutus.*

[8] "Northern rockfish" means *Sebastes polyspinis.* For management purposes the 2 mt apportionment of ABC to the WYK District of the Eastern Gulf of Alaska has been included in the other rockfish species group.

[9] "Shortraker rockfish" means *Sebastes borealis.*

[10] "Dusky rockfish" means *Sebastes variabilis.*

[11] "Rougheye rockfish" means *Sebastes aleutianus* (rougheye) and *Sebastes melanostictus* (blackspotted).

[12] "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[13] "Other rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), *S. reedi* (yellowmouth), *S. entomelas* (widow), and *S. flavidus* (yellowtail). In the Eastern GOA only, other rockfish also includes northern rockfish, *S. polyspinis.*

[14] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means other rockfish and demersal shelf rockfish. The "other rockfish" species group in the SEO District only includes other rockfish.

[15] "Big skate" means *Raja binoculata.*

[16] "Longnose skate" means *Raja rhina.*

[17] "Other skates" means *Bathyraja* spp.

TABLE 2—FINAL 2015 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, AND IN THE WEST YAKUTAT, SOUTHEAST OUTSIDE, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

| Species | Area [1] | OFL | ABC | TAC |
|---|---|---|---|---|
| Pollock [2] | Shumagin (610) | n/a | 40,254 | 40,254 |
| | Chirikof (620) | n/a | 91,272 | 91,272 |
| | Kodiak (630) | n/a | 44,367 | 44,367 |
| | WYK (640) | n/a | 5,291 | 5,291 |
| | W/C/WYK (subtotal) | 248,384 | 181,184 | 181,184 |
| | SEO (650) | 16,833 | 12,625 | 12,625 |
| | Total | 265,217 | 193,809 | 193,809 |
| Pacific cod [3] | W | n/a | 31,117 | 21,782 |

TABLE 2—FINAL 2015 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, AND IN THE WEST YAKUTAT, SOUTHEAST OUTSIDE, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

| Species | Area [1] | OFL | ABC | TAC |
|---|---|---|---|---|
| | C | n/a | 50,460 | 37,845 |
| | E | n/a | 2,523 | 1,892 |
| | Total | 101,800 | 84,100 | 61,519 |
| Sablefish [4] | W | n/a | 1,338 | 1,338 |
| | C | n/a | 4,230 | 4,230 |
| | WYK | n/a | 1,551 | 1,551 |
| | SEO | n/a | 2,435 | 2,435 |
| | E (WYK and SEO) (subtotal) | n/a | 3,986 | 3,986 |
| | Total | 11,300 | 9,554 | 9,554 |
| Shallow-water flatfish [5] | W | n/a | 18,728 | 13,250 |
| | C | n/a | 16,372 | 16,372 |
| | WYK | n/a | 1,875 | 1,875 |
| | SEO | n/a | 530 | 530 |
| | Total | 46,207 | 37,505 | 32,027 |
| Deep-water flatfish [6] | W | n/a | 300 | 300 |
| | C | n/a | 3,680 | 3,680 |
| | WYK | n/a | 5,462 | 5,462 |
| | SEO | n/a | 3,861 | 3,861 |
| | Total | 15,955 | 13,303 | 13,303 |
| Rex sole | W | n/a | 1,245 | 1,245 |
| | C | n/a | 6,106 | 6,106 |
| | WYK | n/a | 796 | 796 |
| | SEO | n/a | 1,008 | 1,008 |
| | Total | 11,963 | 9,155 | 9,155 |
| Arrowtooth flounder | W | n/a | 30,217 | 14,500 |
| | C | n/a | 112,178 | 75,000 |
| | WYK | n/a | 36,126 | 6,900 |
| | SEO | n/a | 11,035 | 6,900 |
| | Total | 222,160 | 189,556 | 103,300 |
| Flathead sole | W | n/a | 12,661 | 8,650 |
| | C | n/a | 24,670 | 15,400 |
| | WYK | n/a | 3,506 | 3,506 |
| | SEO | n/a | 170 | 170 |
| | Total | 50,376 | 41,007 | 27,726 |
| Pacific ocean perch [7] | W | n/a | 2,456 | 2,456 |
| | C | n/a | 13,158 | 13,158 |
| | WYK | n/a | 1,976 | 1,976 |
| | W/C/WYK | 20,336 | 17,590 | 17,590 |
| | SEO | 2,513 | 2,174 | 2,174 |
| | Total | 22,849 | 19,764 | 19,764 |
| Northern rockfish [8] | W | n/a | 1,229 | 1,229 |
| | C | n/a | 3,781 | 3,781 |
| | E | n/a | n/a | n/a |
| | Total | 5,978 | 5,010 | 5,010 |
| Shortraker rockfish [9] | W | n/a | 92 | 92 |
| | C | n/a | 397 | 397 |
| | E | n/a | 834 | 834 |
| | Total | 1,764 | 1,323 | 1,323 |
| Dusky rockfish [10] | W | n/a | 295 | 295 |
| | C | n/a | 3,318 | 3,318 |
| | WYK | n/a | 1,277 | 1,277 |
| | SEO | n/a | 191 | 191 |
| | Total | 6,213 | 5,081 | 5,081 |
| Rougheye and Blackspotted rockfish [11] | W | n/a | 83 | 83 |
| | C | n/a | 877 | 877 |
| | E | n/a | 302 | 302 |
| | Total | 1,518 | 1,262 | 1,262 |
| Demersal shelf rockfish [12] | SEO | 438 | 274 | 274 |
| Thornyhead rockfish | W | n/a | 235 | 235 |
| | C | n/a | 875 | 875 |
| | E | n/a | 731 | 731 |
| | Total | 2,454 | 1,841 | 1,841 |
| Other rockfish [13] [14] | W | n/a | n/a | n/a |
| | C | n/a | 1,031 | 1,031 |
| | WYK | n/a | 580 | 580 |
| | SEO | n/a | 2,470 | 200 |
| | Total | 5,347 | 4,081 | 1,811 |
| Atka mackerel | GW | 6,200 | 4,700 | 2,000 |

TABLE 2—FINAL 2015 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, AND IN THE WEST YAKUTAT, SOUTHEAST OUTSIDE, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

| Species | Area [1] | OFL | ABC | TAC |
|---|---|---|---|---|
| Big skate [15] | W | n/a | 589 | 589 |
| | C | n/a | 1,532 | 1,532 |
| | E | n/a | 1,641 | 1,641 |
| | Total | 5,016 | 3,762 | 3,762 |
| Longnose skate [16] | W | n/a | 107 | 107 |
| | C | n/a | 1,935 | 1,935 |
| | E | n/a | 834 | 834 |
| | Total | 3,835 | 2,876 | 2,876 |
| Other skates [17] | GW | 2,652 | 1,989 | 1,989 |
| Sculpins | GW | 7,448 | 5,569 | 5,569 |
| Sharks | GW | 7,986 | 5,989 | 5,989 |
| Squids | GW | 1,530 | 1,148 | 1,148 |
| Octopus | GW | 2,009 | 1,507 | 1,507 |
| Total | | 808,215 | 644,165 | 511,599 |

[1] Regulatory areas and districts are defined at § 679.2. (W=Western Gulf of Alaska; C=Central Gulf of Alaska; E=Eastern Gulf of Alaska; WYK=West Yakutat District; SEO=Southeast Outside District; GW=Gulf-wide).

[2] Pollock is apportioned in the Western/Central Regulatory Areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 16 percent, 62 percent, and 22 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 16 percent, 74 percent, and 10 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 37 percent, 28 percent, and 35 percent in Statistical Areas 610, 620, and 630, respectively. Table 4 lists the final 2015 seasonal apportionments. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

[3] The annual Pacific cod TAC is apportioned 60 percent to the A season and 40 percent to the B season in the Western and Central Regulatory Areas of the GOA. Pacific cod in the Eastern Regulatory Area is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Table 6 lists the final 2015 Pacific cod seasonal apportionments.

[4] Sablefish is only allocated to trawl gear for 2015. Table 8 lists the final 2015 allocation of sablefish TACs to trawl gear.

[5] "Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

[6] "Deep-water flatfish" means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

[7] "Pacific ocean perch" means *Sebastes alutus.*

[8] "Northern rockfish" means *Sebastes polyspinis.* For management purposes the 2 mt apportionment of ABC to the WYK District of the Eastern Gulf of Alaska has been included in the other rockfish species group.

[9] "Shortraker rockfish" means *Sebastes borealis.*

[10] "Dusky rockfish" means *Sebastes variabilis.*

[11] "Rougheye rockfish" means *Sebastes aleutianus* (rougheye) and *Sebastes melanostictus* (blackspotted).

[12] "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[13] "Other rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), *S. reedi* (yellowmouth), *S. entomelas* (widow), and *S. flavidus* (yellowtail). In the Eastern GOA only, other rockfish also includes northern rockfish, *S. polyspinis.*

[14] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means other rockfish and demersal shelf rockfish. The "other rockfish" species group in the SEO District only includes other rockfish.

[15] "Big skate" means *Raja binoculata.*

[16] "Longnose skate" means *Raja rhina.*

[17] "Other skates" means *Bathyraja* spp.

## Apportionment of Reserves

Section 679.20(b)(2) requires NMFS to set aside 20 percent of each TAC for pollock, Pacific cod, flatfish, sculpins, sharks, squids, and octopuses in reserve for possible apportionment at a later date during the fishing year. For 2014 and 2015, NMFS proposed reapportionment of all the reserves in the proposed 2014 and 2015 harvest specifications published in the **Federal Register** on December 10, 2013 (78 FR 74079). NMFS did not receive any public comments on the proposed reapportionments. For the final 2014 and 2015 harvest specifications, NMFS reapportioned, as proposed, all the reserves for pollock, Pacific cod, flatfish, sculpins, sharks, squids, and octopuses. The TACs listed in Tables 1 and 2 reflect reapportionments of reserve amounts for these species and species groups.

## Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further allocated for processing by inshore and offshore components. Pursuant to § 679.20(a)(5)(iv)(B), the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal allowances of 25 percent. As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively.

Pollock TACs in the Western and Central Regulatory Areas of the GOA are apportioned among Statistical Areas 610, 620, and 630, pursuant to § 679.20(a)(5)(iv)(A). In the A and B seasons, the apportionments are in proportion to the distribution of pollock biomass based on the four most recent NMFS winter surveys. In the C and D seasons, the apportionments are in proportion to the distribution of pollock biomass based on the four most recent

NMFS summer surveys. However, for 2014 and 2015, the Council recommended, and NMFS approves, averaging the winter and summer distribution of pollock in the Central Regulatory Area for the A season instead of using the distribution based on only the winter surveys. The average is intended to reflect the migration patterns and distribution of pollock, and the performance of the fishery, in that area during the A season for the 2014 and 2015 fishing years. For the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 12 percent, 66 percent, and 22 percent in Statistical Areas 610, 620, and 630, respectively. For the B season, the apportionment is based on the relative distribution of pollock biomass at 12 percent, 79 percent, and 9 percent in Statistical Areas 610, 620, and 630, respectively. For the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 34 percent, 32 percent, and 35 percent in Statistical Areas 610, 620, and 630, respectively.

Within any fishing year, the amount by which a seasonal allowance is underharvested or overharvested may be added to, or subtracted from, subsequent seasonal allowances in a manner to be determined by the Regional Administrator (§ 679.20(a)(5)(iv)(B)). The rollover amount is limited to 20 percent of the subsequent seasonal apportionment for the statistical area. Any unharvested pollock above the 20-percent limit could be further distributed to the other statistical areas, in proportion to the estimated biomass in the subsequent season in those statistical areas (§ 679.20(a)(5)(iv)(B)). The pollock TACs in the WYK and SEO District of 4,741 mt and 12,625 mt, respectively, in 2014, and 5,291 mt and 12,625 mt, respectively, in 2015, are not allocated by season.

Section 679.20(a)(6)(i) requires the allocation of 100 percent of the pollock TAC in all regulatory areas and all seasonal allowances to vessels catching pollock for processing by the inshore component after subtraction of amounts projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. Thus, the amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount that will be taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed by § 679.20(e) and (f). At this time, these incidental catch amounts of pollock are unknown and will be determined during the fishing year during the course of fishing activities by the offshore component.

Tables 3 and 4 list the final 2014 and 2015 seasonal biomass distribution of pollock in the Western and Central Regulatory Areas, area apportionments, and seasonal allowances. The amounts of pollock for processing by the inshore and offshore components are not shown.

TABLE 3—FINAL 2014 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GOA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton and percentages are rounded to the nearest 0.01]

| Season [1] | Shumagin (Area 610) | | Chirikof (Area 620) | | Kodiak (Area 630) | | Total [2] |
|---|---|---|---|---|---|---|---|
| A (Jan 20–Mar 10) | 4,800 | (12.18%) | 25,924 | (65.79%) | 8,680 | (22.03%) | 39,402 |
| B (Mar 10–May 31) | 4,799 | (12.18%) | 30,963 | (78.58%) | 3,636 | (9.23%) | 39,402 |
| C (Aug 25–Oct 1) | 13,235 | (33.59%) | 12,448 | (31.59%) | 13,720 | (34.82%) | 39,402 |
| D (Oct 1–Nov 1) | 13,235 | (33.59%) | 12,448 | (31.59%) | 13,720 | (34.82%) | 39,402 |
| Annual Total | 36,070 | | 81,784 | | 39,756 | | 157,610 |

[1] As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.

[2] The WYK and SEO District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

TABLE 4—FINAL 2015 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GOA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton and percentages are rounded to the nearest 0.01]

| Season [1] | Shumagin (Area 610) | | Chirikof (Area 620) | | Kodiak (Area 630) | | Total [2] |
|---|---|---|---|---|---|---|---|
| A (Jan 20–Mar 10) | 5,357 | (12.18%) | 28,932 | (65.79%) | 9,687 | (22.03%) | 43,973 |
| B (Mar 10–May 31) | 5,356 | (12.18%) | 34,555 | (78.58%) | 4,059 | (9.23%) | 43,973 |
| C (Aug 25–Oct 1) | 14,771 | (33.59%) | 13,892 | (31.59%) | 15,311 | (34.82%) | 43,973 |
| D (Oct 1–Nov 1) | 14,771 | (33.59%) | 13,892 | (31.59%) | 15,311 | (34.82%) | 43,973 |
| Annual Total | 40,254 | | 91,272 | | 44,367 | | 175,893 |

[1] As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.

[2] The WYK and SEO District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

**Annual and Seasonal Apportionments of Pacific Cod TAC**

Section 679.20(a)(12)(i) requires the allocation of the Pacific cod TACs in the Western and Central Regulatory Areas of the GOA among gear and operational sectors. Section 679.20(a)(6)(ii) requires the allocation of the Pacific cod TACs in the Eastern Regulatory Area of the GOA between the inshore and offshore components. NMFS allocates the 2014 and 2015 Pacific cod TAC based on these sector allocations annually between the inshore and offshore components in the Eastern GOA; seasonally between vessels using jig gear, CVs using hook-and-line gear, C/Ps

using hook-and-line gear, CVs using trawl gear, and vessels using pot gear in the Western GOA; seasonally between vessels using jig gear, CVs less than 50 feet in length overall using hook-and-line gear, CVs equal to or greater than 50 feet in length overall using hook-and-line gear, C/Ps using hook-and-line gear, CVs using trawl gear, C/Ps using trawl gear, and vessels using pot gear in the Central GOA. The overall seasonal apportionments in the Western and Central GOA are 60 percent of the annual TAC to the A season and 40 percent of the annual TAC to the B season.

Under § 679.20(a)(12)(ii), any overage or underage of the Pacific cod allowance from the A season will be subtracted from, or added to, the subsequent B season allowance. In addition, any portion of the hook-and-line, trawl, pot, or jig sector allocations that NMFS determines is likely to go unharvested by a sector may be reapportioned to other sectors for harvest during the remainder of the fishery year.

In accordance with the FMP, the annual jig sector allocations may increase to up to 6 percent of the annual Western and Central GOA Pacific cod TACs, depending on the annual performance of the jig sector (See Table 1 of Amendment 83 to the FMP for a detailed discussion of the jig sector allocation process (76 FR 74670, December 1, 2011). Jig sector allocation increases are established for a minimum of 2 years. NMFS allocates the jig sector 2.5 percent of the annual Pacific cod TAC in the Western GOA. This includes a base allocation of 1.5 percent and an additional 1.0 percent because this sector harvested greater than 90 percent of its initial 2012 allocation in the Western GOA. NMFS also allocates the jig sector 2.0 percent of the annual Pacific cod TAC in the Central GOA. This includes a base allocation of 1.0 percent and an additional 1.0 percent because this sector harvested greater than 90 percent of its initial 2012 allocation in the Central GOA. In 2013, neither the Western nor Central GOA jig sectors harvested 90 percent of their respective 2013 Pacific cod allocations. In early 2015, NMFS will re-evaluate the annual 2013 and 2014 harvest performance of each jig sector and determine whether to maintain or decrease the jig sector allocations proposed by this action in conjunction with the 2015 and 2016 proposed harvest specifications. Tables 5 and 6 list the seasonal apportionments and allocations of the 2014 and 2015 Pacific cod TACs.

TABLE 5—FINAL 2014 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH AMOUNTS IN THE GOA; ALLOCATIONS FOR THE WESTERN GOA AND CENTRAL GOA SECTORS AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS

[Values are rounded to the nearest metric ton and percentages to the nearest 0.01. Seasonal allowances may not total precisely to annual allocation amount]

| Regulatory area and sector | Annual allocation (mt) | A Season | | B Season | |
|---|---|---|---|---|---|
| | | Sector percentage of annual non-jig TAC | Seasonal allowances (mt) | Sector percentage of annual non-jig TAC | Seasonal allowances (mt) |
| Western GOA: | | | | | |
| Jig (2.5% of TAC) | 573 | N/A | 344 | N/A | 229 |
| Hook-and-line CV | 313 | 0.70 | 156 | 0.70 | 156 |
| Hook-and-line C/P | 4,425 | 10.90 | 2,436 | 8.90 | 1,989 |
| Trawl CV | 8,582 | 27.70 | 6,191 | 10.70 | 2,391 |
| Trawl C/P | 536 | 0.90 | 201 | 1.50 | 335 |
| All Pot CV and Pot C/P | 8,492 | 19.80 | 4,425 | 18.20 | 4,067 |
| Total | 22,922 | 60.00 | 13,753 | 40.00 | 9,169 |
| Central GOA: | | | | | |
| Jig (2.0% of TAC) | 797 | N/A | 478 | N/A | 319 |
| Hook-and-line < 50 CV | 5,699 | 9.32 | 3,636 | 5.29 | 2,063 |
| Hook-and-line ≥ 50 CV | 2,617 | 5.61 | 2,189 | 1.10 | 428 |
| Hook-and-line C/P | 1,992 | 4.11 | 1,603 | 1.00 | 389 |
| Trawl CV [1] | 16,230 | 21.14 | 8,249 | 20.45 | 7,981 |
| Trawl C/P | 1,638 | 2.00 | 782 | 2.19 | 856 |
| All Pot CV and Pot C/P | 10,852 | 17.83 | 6,959 | 9.97 | 3,893 |
| Total | 39,825 | 60.00 | 23,895 | 40.00 | 15,930 |
| Eastern GOA: | | Inshore (90% of Annual TAC) | | Offshore (10% of Annual TAC) | |
| | 1,991 | 1,792 | | 199 | |

[1] Trawl vessels participating in Rockfish Program cooperatives receive 3.81 percent of the annual Central GOA TAC, which is deducted from the Trawl CV B season allowance (see Table 12).

TABLE 6—FINAL 2015 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH AMOUNTS IN THE GOA; ALLOCATIONS FOR THE WESTERN GOA AND CENTRAL GOA SECTORS AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS

[Values are rounded to the nearest metric ton and percentages to the nearest 0.01. Seasonal allowances may not total precisely to annual allocation amount.]

| Regulatory area and sector | Annual allocation (mt) | A Season | | B Season | |
|---|---|---|---|---|---|
| | | Sector percentage of annual non-jig TAC | Seasonal allowances (mt) | Sector percentage of annual non-jig TAC | Seasonal allowances (mt) |
| Western GOA: | | | | | |
| Jig (2.5% of TAC) | 545 | N/A | 327 | N/A | 218 |
| Hook-and-line CV | 297 | 0.70 | 149 | 0.70 | 149 |
| Hook-and-line C/P | 4,205 | 10.90 | 2,315 | 8.90 | 1,890 |
| Trawl CV | 8,155 | 27.70 | 5,883 | 10.70 | 2,272 |
| Trawl C/P | 510 | 0.90 | 191 | 1.50 | 319 |
| All Pot CV and Pot C/P | 8,070 | 19.80 | 4,205 | 18.20 | 3,865 |
| Total | 21,782 | 60.00 | 13,069 | 40.00 | 8,713 |
| Central GOA: | | | | | |
| Jig (2.0% of TAC) | 757 | N/A | 454 | N/A | 303 |
| Hook-and-line < 50 CV | 5,416 | 9.32 | 3,455 | 5.29 | 1,961 |
| Hook-and-line ≥ 50 CV | 2,487 | 5.61 | 2,080 | 1.10 | 407 |
| Hook-and-line C/P | 1,893 | 4.11 | 1,523 | 1.00 | 370 |
| Trawl CV [1] | 15,423 | 21.14 | 7,839 | 20.45 | 7,584 |
| Trawl C/P | 1,557 | 2.00 | 743 | 2.19 | 814 |
| All Pot CV and Pot C/P | 10,312 | 17.83 | 6,613 | 9.97 | 3,700 |
| Total | 37,845 | 60.00 | 22,707 | 40.00 | 15,138 |
| Eastern GOA | | Inshore (90% of Annual TAC) | | Offshore (10% of Annual TAC) | |
| | 1,892 | 1,703 | | 189 | |

[1] Trawl vessels participating in Rockfish Program cooperatives receive 3.81 percent of the annual Central GOA TAC, which is deducted from the Trawl CV B season allowance (see Table13).

**Allocations of the Sablefish TACs**

Section 679.20(a)(4)(i) and (ii) require allocations of sablefish TACs for each of the regulatory areas and districts to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear, and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to hook-and-line gear, and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used to support incidental catch of sablefish in directed fisheries for other target species (§ 679.20(a)(4)(i)).

In recognition of the prohibition against trawl gear in the SEO District of the Eastern Regulatory Area, the Council recommended and NMFS approves the allocation of 5 percent of the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District, making the remainder of the WYK sablefish TAC available to vessels using hook-and-line gear. NMFS allocates 100 percent of the sablefish TAC in the SEO District to vessels using hook-and-line gear. This action results in a 2014 allocation of 221 mt to trawl gear and 1,495 mt to hook-and-line gear in the WYK District, a 2014 allocation of 2,695 mt to hook-and-line gear in the SEO District, and a 2015 allocation of 199 mt to trawl gear in the WYK District. Table 7 lists the allocations of the 2014 sablefish TACs to hook-and-line and trawl gear. Table 8 lists the allocations of the 2015 sablefish TACs to trawl gear.

The Council recommended that the hook-and-line sablefish TAC be established annually to ensure that this Individual Fishery Quota (IFQ) fishery is conducted concurrently with the halibut IFQ fishery and is based on recent sablefish survey information. The Council also recommended that only a trawl sablefish TAC be established for two years so that retention of incidental catch of sablefish by trawl gear could commence in January in the second year of the groundfish harvest specifications. Since there is an annual assessment for sablefish and the final harvest specifications are expected to be published before the IFQ season begins March 8, 2014, the Council recommended that the hook-and-line sablefish TAC be set on an annual basis, rather than for two years, so that the best scientific information available could be considered in establishing the sablefish ABCs and TACs. With the exception of the trawl allocations that were provided to the Rockfish Program cooperatives, directed fishing for sablefish with trawl gear is closed during the fishing year. Also, fishing for groundfish with trawl gear is prohibited prior to January 20. Therefore, it is not likely that the sablefish allocation to trawl gear would be reached before the effective date of the final 2014 and 2015 harvest specifications.

TABLE 7—FINAL 2014 SABLEFISH TAC SPECIFICATIONS IN THE GOA AND ALLOCATIONS TO HOOK-AND-LINE AND TRAWL GEAR

[Values are rounded to the nearest metric ton]

| Area/District | TAC | Hook-and-line allocation | Trawl allocation |
|---|---|---|---|
| Western | 1,480 | 1,184 | 296 |
| Central | 4,681 | 3,745 | 936 |
| West Yakutat [1] | 1,716 | 1,495 | 221 |
| Southeast Outside | 2,695 | 2,695 | 0 |
| Total | 10,572 | 9,119 | 1,453 |

[1] The trawl allocation is based on allocating 5 percent of the combined Eastern Regulatory Area (West Yakutat and Southeast Outside combined) sablefish TAC to trawl gear in the West Yakutat District.

TABLE 8—FINAL 2015 SABLEFISH TAC SPECIFICATIONS IN THE GOA AND ALLOCATION TO TRAWL GEAR [1]

[Values are rounded to the nearest metric ton]

| Area/District | TAC | Hook-and-line allocation | Trawl allocation |
|---|---|---|---|
| Western | 1,338 | n/a | 268 |
| Central | 4,230 | n/a | 846 |
| West Yakutat [2] | 1,551 | n/a | 199 |
| Southeast Outside | 2,435 | n/a | 0 |
| Total | 9,554 | n/a | 1,313 |

[1] The Council recommended that harvest specifications for the hook-and-line gear sablefish Individual Fishing Quota fisheries be limited to 1 year.

[2] The trawl allocation is based on allocating 5 percent of the combined Eastern Regulatory Area (West Yakutat and Southeast Outside combined) sablefish TAC to trawl gear in the West Yakutat District.

**Demersal Shelf Rockfish (DSR)**

The recommended 2014 and 2015 DSR TAC is 274 mt, and management of DSR is delegated to the State. In 2006, the Alaska Board of Fish allocated future SEO District DSR TACs between the commercial fishery (84 percent) and the sport fishery (16 percent) after deductions were made for anticipated subsistence harvests (7 mt). This results in 2014 and 2015 allocations of 224 mt to the commercial fishery and 43 mt to the sport fishery.

The State deducts estimates of incidental catch of DSR in the commercial halibut fishery and test fishery mortality from the DSR commercial fishery allocation. In 2014, this resulted in 32 mt being available for the directed commercial DSR fishery apportioned in one DSR district. The State estimated that there was not sufficient DSR quota available to have orderly fisheries in the three other DSR districts. DSR harvest in the halibut fishery is linked to the annual halibut catch limits; therefore the State can only estimate potential DSR incidental catch in that fishery when those halibut catch limits are established by the International Pacific Halibut Commission (IPHC). Federally permitted CVs using hook-and-line or jig gear fishing for groundfish and Pacific halibut in the SEO District of the GOA are required to retain all DSR (§ 679.20(j)).

**Apportionments to the Central GOA Rockfish Program**

These final 2014 and 2015 harvest specifications for the GOA include the various fishery cooperative allocations and sideboard limitations established by the Central GOA Rockfish Program. For the Rockfish Program, the rockfish primary species (Pacific ocean perch, northern rockfish, and dusky rockfish) are allocated to participants after deducting for incidental catch needs in other directed groundfish fisheries. Program participants are primarily trawl CVs and trawl C/Ps, with limited participation by vessels using longline gear.

The Rockfish Program assigns quota share and cooperative quota to participants for primary and secondary species, allows participants holding a license limitation program (LLP) license with rockfish quota share to form a rockfish cooperative, and allows holders of C/P LLP licenses to opt-out of the fishery. The Rockfish Program also has an entry level fishery for rockfish primary species for vessels using longline gear. Additionally, the Rockfish Program establishes sideboard limits to restrict the ability of harvesters operating under the Rockfish Program to increase their participation in other, non-Rockfish Program fisheries. Besides groundfish species, the Rockfish Program allocates a portion of the halibut PSC limit (191 mt) from the third season deep-water species fishery allowance for the GOA trawl fisheries to Rockfish Program participants (§ 679.81(d)), which includes 117 mt to the CV sector and 74 mt to the C/P sector.

Section 679.81(a)(2)(ii) requires allocations of 5 mt of Pacific ocean perch, 5 mt of northern rockfish, and 30 mt of dusky rockfish to the entry level longline fishery in 2014 and 2015. The allocation for the entry level longline fishery would increase incrementally each year if the catch exceeds 90 percent of the allocation of a species. The incremental increase in the allocation would continue each year until it is the maximum percent of the TAC for that species. In 2013, the catch did not exceed 90 percent of any allocated rockfish species. Therefore, NMFS is not increasing the entry level longline fishery 2014 and 2015 allocations in the Central GOA. Longline gear includes hook-and-line, jig, troll, and handline gear. The remainder of the TACs for the rockfish primary species would be allocated to the CV and C/P cooperatives. Table 9 lists the allocations of the 2014 and initial 2015 TACs for each rockfish primary species to the entry level

longline fishery, the incremental increase for future years, and the maximum percent of the TAC for the entry level longline fishery.

TABLE 9—FINAL 2014 AND INITIAL 2015 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES TO THE ENTRY LEVEL LONGLINE FISHERY IN THE CENTRAL GULF OF ALASKA

| Rockfish primary species | 2014 and 2015 allocations | Incremental increase in 2015 if ≥ 90% of 2014 allocation is harvested | Up to maximum % of TAC |
|---|---|---|---|
| Pacific ocean perch | 5 metric tons | 5 metric tons | 1 |
| Northern rockfish | 5 metric tons | 5 metric tons | 2 |
| Dusky rockfish | 30 metric tons | 20 metric tons | 5 |

Section 679.81(a)(2)(iii) requires allocations of the rockfish primary species among various components of the Rockfish Program. Tables 10 and 11 list the final 2014 and 2015 allocations of rockfish primary species in the Central GOA to the entry level longline fishery and other participants in the Rockfish Program, which include CV and C/P cooperatives. NMFS also is setting aside incidental catch amounts (ICAs) for other directed fisheries in the Central GOA of 1,200 mt of Pacific ocean perch, 200 mt of northern rockfish, and 200 mt of dusky rockfish. These amounts are based on recent average incidental catches in the Central GOA by other groundfish fisheries.

Allocations between vessels belonging to CV or C/P cooperatives are not included in these final harvest specifications. Rockfish Program applications for CV cooperatives and C/P cooperatives are not due to NMFS until March 1 of each calendar year, therefore, NMFS cannot calculate 2014 and 2015 allocations in conjunction with these final harvest specifications. NMFS will post these allocations on the Alaska Region Web site at (*http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm)* when they become available after March 1.

TABLE 10—FINAL 2014 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES IN THE CENTRAL GULF OF ALASKA TO THE ENTRY LEVEL LONGLINE FISHERY AND OTHER PARTICIPANTS IN THE ROCKFISH PROGRAM

[Values are rounded to the nearest metric ton]

| Rockfish primary species | TAC | Incidental catch allowance | TAC minus ICA | Allocation to the entry level longline [1] fishery | Allocation to other participants in the Rockfish Program [2] |
|---|---|---|---|---|---|
| Pacific ocean perch | 12,855 | 1,200 | 11,655 | 5 | 11,650 |
| Northern rockfish | 4,017 | 200 | 3,817 | 5 | 3,812 |
| Dusky rockfish | 3,584 | 200 | 3,384 | 30 | 3,354 |
| Total | 20,456 | 1,600 | 18,856 | 40 | 18,816 |

[1] Longline gear includes hook-and-line, jig, troll, and handline gear.
[2] Other participants in the Rockfish Program include vessels in CV and C/P cooperatives.

TABLE 11—FINAL 2015 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES IN THE CENTRAL GULF OF ALASKA TO THE ENTRY LEVEL LONGLINE FISHERY AND OTHER PARTICIPANTS IN THE ROCKFISH PROGRAM

[Values are rounded to the nearest metric ton]

| Rockfish primary species | TAC | Incidental catch allowance | TAC minus ICA | Allocation to the entry level longline [1] fishery | Allocation to other participants in the Rockfish Program [2] |
|---|---|---|---|---|---|
| Pacific ocean perch | 13,158 | 1,200 | 11,958 | 5 | 11,953 |
| Northern rockfish | 3,781 | 200 | 3,581 | 5 | 3,576 |
| Dusky rockfish | 3,318 | 200 | 3,118 | 30 | 3,088 |
| Total | 20,257 | 1,600 | 18,657 | 40 | 18,617 |

[1] Longline gear includes hook-and-line, jig, troll, and handline gear.
[2] Other participants in the Rockfish Program include vessels in CV and C/P cooperatives.

Section 679.81(c) requires allocations of rockfish secondary species to CV and C/P cooperatives in the Central GOA. CV cooperatives receive allocations of Pacific cod, sablefish from the trawl gear allocation, and thornyhead rockfish. C/P cooperatives receive allocations of sablefish from the trawl allocation, rougheye rockfish, shortraker rockfish, and thornyhead rockfish. Tables 12 and 13 lists the apportionments of the 2014 and 2015 TACs of rockfish secondary species in the Central GOA to CV and C/P cooperatives.

TABLE 12—FINAL 2014 APPORTIONMENTS OF ROCKFISH SECONDARY SPECIES IN THE CENTRAL GOA TO CATCHER VESSEL AND CATCHER/PROCESSOR COOPERATIVES

[Values are rounded to the nearest metric ton]

| Rockfish secondary species | Annual central GOA TAC | Catcher vessel cooperatives | | Catcher/processor cooperatives | |
|---|---|---|---|---|---|
| | | Percentage of TAC | Apportionment (mt) | Percentage of TAC | Apportionment (mt) |
| Pacific cod | 39,825 | 3.81 | 1,517 | 0.00 | 0 |
| Sablefish | 4,681 | 6.78 | 317 | 3.51 | 164 |
| Shortraker rockfish | 397 | 0.00 | 0 | 40.00 | 159 |
| Rougheye rockfish | 864 | 0.00 | 0 | 58.87 | 509 |
| Thornyhead rockfish | 875 | 7.84 | 69 | 26.50 | 232 |

TABLE 13—FINAL 2015 APPORTIONMENTS OF ROCKFISH SECONDARY SPECIES IN THE CENTRAL GOA TO CATCHER VESSEL AND CATHER/PROCESSOR COOPERATIVES

[Values are rounded to the nearest metric ton]

| Rockfish secondary species | Annual central GOA TAC | Catcher vessel cooperatives | | Catcher/processor cooperatives | |
|---|---|---|---|---|---|
| | | Percentage of TAC | Apportionment (mt) | Percentage of TAC | Apportionment (mt) |
| Pacific cod | 37,845 | 3.81 | 1,442 | 0.00 | 0 |
| Sablefish | 4,230 | 6.78 | 287 | 3.51 | 148 |
| Shortraker rockfish | 397 | 0.00 | 0 | 40.00 | 159 |
| Rougheye rockfish | 877 | 0.00 | 0 | 58.87 | 516 |
| Thornyhead rockfish | 875 | 7.84 | 69 | 26.50 | 232 |

**Halibut PSC Limits**

Section 679.21(d) establishes the annual halibut PSC limit apportionments to trawl and hook-and-line gear, and authorizes the establishment of apportionments for pot gear. As discussed previously in this preamble, the final rule implementing Amendment 95 (79 FR 9625, February 20, 2014) reduced the halibut PSC limits for the GOA trawl and hook-and-line sectors. In December 2013, the Council incorporated these reductions into its recommended final 2014 and 2015 harvest specifications. The Council recommended 2014 halibut PSC limits of 1,848 mt for trawl gear, 270 mt for hook-and-line gear, and 9 mt for the DSR fishery. The Council also recommended 2015 halibut PSC limits of 1,759 mt for the trawl sector, 261 mt for the hook-and-line sector, and 9 mt for the DSR fishery. The proposed 2014 and 2015 harvest specifications (78 FR 74079, December 10, 2013) discuss the potential that the proposed halibut PSC limits could be reduced, pending implementation of Amendment 95. The reductions established by Amendment 95 (79 FR 9625, February 20, 2014) are implemented by this action.

The FMP authorizes the Council to exempt specific gear from the halibut PSC limits. NMFS, after consultation with the Council, exempts pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from the non-trawl halibut PSC limit for 2014 and 2015. The Council recommended, and NMFS approves, these exemptions because (1) the pot gear fisheries have low annual halibut bycatch mortality, (2) IFQ program regulations prohibit discard of halibut if any halibut IFQ permit holder on board a catcher vessel holds unused halibut IFQ (§ 679.7(f)(11)), (3) sablefish IFQ fishermen typically hold halibut IFQ permits and are therefore required to retain the halibut they catch while fishing sablefish IFQ, and (4) NMFS estimates negligible halibut mortality for the jig gear fisheries. NMFS estimates that halibut mortality is negligible in the jig gear fisheries given the small amount of groundfish harvested by jig gear, the selective nature of jig gear, and the high survival rates of halibut caught and released with jig gear.

NMFS implemented a restructured observer program in 2013 (77 FR 70062, November 21, 2012). The restructured observer program provides data on fisheries that have previously been unobserved or were subject to very limited observer coverage. Specifically, the restructured observer program will improve biological and fisheries data, including halibut PSC, for pot and sablefish IFQ fisheries. NMFS will continue to review halibut PSC data collected in pot and sablefish IFQ fisheries in 2013 and 2014, and provide input to the GOA Plan Team and Council. These data could be considered in future years when deciding whether to exempt specific gear from halibut PSC limits.

Section 679.21(d)(4) authorizes NMFS to seasonally apportion the halibut PSC limits after consultation with the Council. The FMP and regulations require the Council and NMFS to consider the following information in seasonally apportioning halibut PSC limits: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry. The Council considered information from the 2013 SAFE report, NMFS catch data, State of Alaska catch data, IPHC stock assessment and mortality data, and public testimony when apportioning the halibut PSC limits. NMFS concurs with the Council's recommendations listed in Tables 14 and 15, which respectively shows the final 2014 and 2015 Pacific halibut PSC limits, allowances, and apportionments. The limits reflect the revised halibut PSC limits implemented in accordance with Amendment 95 (79 FR 9625, February 20, 2014).

Sections 679.21(d)(4)(iii) and (iv) specify that any underages or overages of a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the fishing year. Additionally, residual amounts of a seasonal Amendment 80 sideboard halibut PSC limit may carry forward to the next season limit (§ 679.92(b)(2)).

TABLE 14—FINAL 2014 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS

[Values are in metric tons]

| Trawl gear | | | Hook-and-line gear [1] | | | | |
|---|---|---|---|---|---|---|---|
| | | | Other than DSR | | | DSR | |
| Season | Percent | Amount | Season | Percent | Amount | Season | Amount |
| January 20–April 1 | 27.5 | 508 | January 1–June 10 | 86 | 233 | January 1–December 31. | 9 |
| April 1–July 1 | 20 | 370 | June 10–September 1. | 2 | 5 | | |
| July 1–September 1 | 30 | 554 | September 1–December 31. | 12 | 32 | | |
| September 1–October 1. | 7.5 | 139 | | | | | |
| October 1–December 31. | 15 | 277 | | | | | |
| Total | | 1,848 | | | 270 | | 9 |

[1] The Pacific halibut prohibited species catch (PSC) limit for hook-and-line gear is allocated to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR. The hook-and-line sablefish fishery is exempt from halibut PSC limits, as are pot and jig gear for all groundfish fisheries.

TABLE 15—FINAL 2015 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS

[Values are in metric tons]

| Trawl gear | | | Hook-and-line gear [1] | | | | |
|---|---|---|---|---|---|---|---|
| | | | Other than DSR | | | DSR | |
| Season | Percent | Amount | Season | Percent | Amount | Season | Amount |
| January 20–April 1 | 27.5 | 484 | January 1–June 10 | 86 | 225 | January 1–December 31. | 9 |
| April 1–July 1 | 20 | 352 | June 10–September 1. | 2 | 5 | | |
| July 1–September 1 | 30 | 528 | September 1–December 31. | 12 | 31 | | |
| September 1–October 1. | 7.5 | 132 | | | | | |
| October 1–December 31. | 15 | 263 | | | | | |
| Total | | 1,759 | | | 261 | | 9 |

[1] The Pacific halibut prohibited species catch (PSC) limit for hook-and-line gear is allocated to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR. The hook-and-line sablefish fishery is exempt from halibut PSC limits, as are pot and jig gear for all groundfish fisheries.

Section 679.21(d)(3)(ii) authorizes further apportionment of the trawl halibut PSC limit to trawl fishery categories. The annual apportionments are based on each category's proportional share of the anticipated halibut bycatch mortality during the fishing year and optimization of the total amount of groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are (1) a deep-water species fishery, composed of sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder; and (2) a shallow-water species fishery, composed of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, and ''other species'' (sculpins, sharks, squids, and octopuses) (§ 679.21(d)(3)(iii)). Tables 16 and 17 list, respectively, the final 2014 and 2015 apportionments of halibut PSC trawl limits between the trawl gear deep-water and the shallow-water species fishery categories. These limits are based on the reductions implemented by Amendment 95 (79 FR 9625, February 20, 2014), which resulted in proportional reductions to the seasonal apportionments to the deep-water and shallow-water fishery.

Table 28d to 50 CFR part 679 specifies the amount of halibut PSC that is assigned to the CV and C/P sectors that are participating in the Central GOA Rockfish Program. This includes 117 mt of halibut PSC to the CV sector and 74 mt of halibut PSC to the C/P sector. These amounts are allocated from the trawl deep-water species fishery's halibut PSC third seasonal apportionment.

Section 679.21(d)(4)(iii)(B) limits the amount of the halibut PSC limit allocated to Rockfish Program participants that could be re-apportioned to the general GOA trawl

fisheries to no more than 55 percent of the unused annual halibut PSC apportioned to Rockfish Program participants. The remainder of the unused Rockfish Program halibut PSC limit is unavailable for use by vessels directed fishing with trawl gear for the remainder of the fishing year.

TABLE 16—FINAL 2014 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES FISHERY AND THE SHALLOW-WATER SPECIES FISHERY CATEGORIES

[Values are in metric tons]

| Season | Shallow-water | Deep-water [1] | Total |
|---|---|---|---|
| January 20–April 1 | 416 | 92 | 508 |
| April 1–July 1 | 92 | 277 | 369 |
| July 1–September 1 | 185 | 370 | 555 |
| September 1–October 1 | 139 | (*) | 139 |
| Subtotal January 20–October 1 | 832 | 739 | 1,571 |
| October 1–December 31 [2] | | | 277 |
| Total | | | 1,848 |

[1] Vessels participating in cooperatives in the Central GOA Rockfish Program will receive 191 mt of the third season (July 1 through September 1) deep-water species fishery halibut PSC apportionment.
[2] There is no apportionment between trawl shallow-water and deep-water species fishery categories during the fifth season (October 1 through December 31).
* Any remainder.

TABLE 17—FINAL 2015 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES FISHERY AND THE SHALLOW-WATER SPECIES FISHERY CATEGORIES

[Values are in metric tons]

| Season | Shallow-water | Deep-water [1] | Total |
|---|---|---|---|
| January 20–April 1 | 396 | 88 | 484 |
| April 1–July 1 | 88 | 264 | 352 |
| July 1–September 1 | 176 | 352 | 528 |
| September 1–October 1 | 132 | (*) | 132 |
| Subtotal January 20–October 1 | 792 | 704 | 1,496 |
| October 1–December 31 [2] | | | 264 |
| Total | | | 1,760 |

[1] Vessels participating in cooperatives in the Central GOA Rockfish Program will receive 191 mt of the third season (July 1 through September 1) deep-water species fishery halibut PSC apportionment.
[2] There is no apportionment between trawl shallow-water and deep-water species fishery categories during the fifth season (October 1 through December 31).
* Any remainder.

Section 679.21(d)(4) requires that the ''other than DSR'' halibut PSC apportionment to vessels using hook-and-line gear must be apportioned between CVs and C/Ps in accordance with § 679.21(d)(2)(iii) in conjunction with these harvest specifications. A comprehensive description and example of the calculations necessary to apportion the ''other than DSR'' hook-and-line halibut PSC limit between the hook-and-line CV and C/P sectors were included in the proposed rule to implement Amendment 83 (76 FR 44700, July 26, 2011) and are not repeated here.

For 2014, NMFS apportions halibut PSC limits of 154 mt and 115 mt to the hook-and-line CV and hook-and-line C/P sectors, respectively. For 2015, NMFS apportions halibut PSC limits of 146 mt and 115 mt to the hook-and-line CV and hook-and-line C/P sectors, respectively. Tables 18 and 19 list, respectively, the final 2014 and 2015 apportionments of halibut PSC limits between the hook-and-line CV and hook-and-line C/P sectors. These limits are based on the reductions implemented by Amendment 95 (79 FR 9625, February 20, 2014), which resulted in proportional reductions to the seasonal apportionments to these sectors.

Pursuant to § 679.21(d)(2)(iii), the hook-and-line halibut PSC limit is apportioned between the CV and C/P sectors in proportion to the total Western and Central GOA Pacific cod allocations, which vary annually based on the proportion of the Pacific cod biomass. Pacific cod is apportioned among these two management areas based on the percentage of overall biomass per area, as calculated in the 2013 Pacific cod stock assessment. Updated information in the final 2013 SAFE report describes this distributional change, which is based on allocating ABC among regulatory areas on the basis of the three most recent stock surveys. The distribution of the total GOA Pacific cod ABC has changed to 37 percent Western GOA, 60 percent Central GOA, and 3 percent Eastern GOA. Therefore, the calculations made in accordance with § 679.21(d)(2)(iii) incorporate the most recent change in GOA Pacific cod distribution with respect to establishing the annual halibut PSC limits for the CV and C/P hook-and-line sectors. The annual halibut PSC limits are divided into three seasonal apportionments, using seasonal percentages of 86 percent, 2 percent, and 12 percent. Tables 18 and 19 list, respectively, the 2014 and 2015 annual and seasonal halibut PSC apportionments between the hook-and-line sectors in the GOA.

No later than November 1 of each year, NMFS will calculate the projected unused amount of halibut PSC limit by either of the hook-and-line sectors for the remainder of the year. The projected unused amount of halibut PSC limit is made available to the other hook-and-line sector for the remainder of that fishing year if NMFS determines that an

additional amount of halibut PSC is necessary for that sector to continue its directed fishing operations (§ 679.21(d)(2)(iii)(C)).

TABLE 18—FINAL 2014 APPORTIONMENTS OF THE "OTHER HOOK-AND-LINE FISHERIES" ANNUAL HALIBUT PSC ALLOWANCE BETWEEN THE HOOK-AND-LINE GEAR CATCHER VESSEL AND CATCHER/PROCESSOR SECTORS

[Values are in metric tons]

| "Other than DSR" allowance | Hook-and-line sector | Percent of annual amount | Sector annual amount | Season | Seasonal percentage | Sector seasonal amount |
|---|---|---|---|---|---|---|
| 270 | Catcher Vessel | 57.3 | 154 | January 1—June 10 | 86 | 132 |
| | | | | June 10–September 1 | 2 | 3 |
| | | | | September 1–December 31. | 12 | 18 |
| | Catcher/Processor | 42.7 | 115 | January 1–June 10 | 86 | 99 |
| | | | | June 10–September 1 | 2 | 2 |
| | | | | September 1–December 31. | 12 | 14 |

TABLE 19—FINAL 2015 APPORTIONMENTS OF THE "OTHER HOOK-AND-LINE FISHERIES" ANNUAL HALIBUT PSC ALLOWANCE BETWEEN THE HOOK-AND-LINE GEAR CATCHER VESSEL AND CATCHER/PROCESSOR SECTORS

[Values are in metric tons]

| "Other than DSR" allowance | Hook-and-line sector | Percent of annual amount | Sector annual amount | Season | Seasonal percentage | Sector seasonal amount |
|---|---|---|---|---|---|---|
| 261 | Catcher Vessel | 57.3 | 146 | January 1–June 10 | 86 | 126 |
| | | | | June 10–September 1 | 2 | 3 |
| | | | | September 1–December 31. | 12 | 18 |
| | Catcher/Processor | 42.7 | 115 | January 1–June 10 | 86 | 99 |
| | | | | June 10–September 1 | 2 | 2 |
| | | | | September 1–December 31. | 12 | 14 |

**Estimated Halibut Bycatch in Prior Years**

The best available information on estimated halibut bycatch consists of data collected by fisheries observers during 2013. The calculated halibut bycatch mortality by trawl and hook-and-line gear in 2013 is 1,224 mt and 166 mt, respectively, for a total halibut mortality of 1,390 mt. Although these amounts are lower than the annual halibut PSC limits established in 2013, sector and or seasonal halibut PSC limits may affect specific fisheries. For example, halibut bycatch restrictions constrained trawl gear fisheries seasonally during the 2013 fishing year. Table 20 lists the closure dates for fisheries that resulted from the attainment of seasonal or annual halibut PSC limits.

TABLE 20—2013 FISHERY CLOSURES DUE TO ATTAINMENT OF PACIFIC HALIBUT PSC LIMITS

| Fishery category | Opening date | Closure date | **Federal Register** citation |
|---|---|---|---|
| Trawl Deep-water,[1] season 2 | April 1, 2013 | May 18, 2013 | 78 FR 30242, May 22, 2013. |
| Hook-and-line gear, all sectors and targets[2]. | January 1, 2013 | Remained open entire year | |

[1] With the exception of vessels participating in the Central GOA Rockfish Program and vessels fishing for pollock using pelagic trawl gear.
[2] With the exception of the sablefish fishery which was open March 23, 2013, through November 7, 2013.

**Current Estimates of Halibut Biomass and Stock Condition**

The IPHC annually assesses the abundance and potential yield of the Pacific halibut using all available data from the commercial and sport fisheries, other removals, and scientific surveys. Additional information on the Pacific halibut stock assessment may be found in the IPHC's 2013 Pacific halibut stock assessment (December 2013), available on the IPHC Web site at *www.iphc.int.* The IPHC considered the 2013 Pacific halibut stock assessment at its January 2014 annual meeting when it set the 2014 commercial halibut fishery catch limits.

The halibut resource is fully utilized. Recent catches in the commercial halibut fisheries off Alaska have averaged 26,372 mt round weight per year for the last 10 years (2004 through 2013). In January 2014, the IPHC recommended Alaska commercial catch limits totaling 10,129 mt round weight for 2014, a 37 percent decrease from 13,908 mt in 2013. Through December 31, 2013, commercial hook-and-line harvests of halibut off Alaska totaled 13,277 mt round weight. For more information, see the proposed 2014 and 2015 harvest specifications (78 FR 74079, December 10, 2013), which discusses the potential impacts of expected fishing for groundfish on halibut stocks, as well as methods

available for reducing halibut bycatch in the groundfish fisheries.

**Halibut Discard Mortality Rates**

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut incidental catch rates, discard mortality rates (DMRs), and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The DMRs are based on the best information available, including information contained in the annual SAFE report.

NMFS is implementing the Council's recommendation that the halibut DMRs developed and recommended by the IPHC for the 2013 through 2015 GOA groundfish fisheries be used for monitoring the final 2014 and 2015 halibut bycatch mortality allowances (see Tables 14 through 19). The IPHC developed the DMRs for the 2013 through 2015 GOA groundfish fisheries using the 10-year mean DMRs for those fisheries. Long-term average DMRs were not available for some fisheries, so rates from the most recent years were used. For the skate, sculpin, shark, squid, and octopus target fisheries, where not enough mortality data are available, the mortality rate of halibut caught in the Pacific cod fishery for that gear type was recommended as a default rate. The IPHC will analyze observer data annually and recommend changes to the DMRs when a fishery DMR shows large variation from the mean. A discussion of the DMRs and how the IPHC establishes them is available from the Council (see **ADDRESSES**). Table 21 lists the final 2014 and 2015 DMRs. These DMRs are unchanged from the proposed 2014 and 2015 harvest specifications (78 FR 74079, December 10, 2013).

TABLE 21—FINAL 2014 AND 2015 HALIBUT DISCARD MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA

[Values are percent of halibut assumed to be dead]

| Gear | Target fishery | Mortality rate (%) |
|---|---|---|
| Hook-and-line | Other fisheries [1] | 11 |
| | Skates | 11 |
| | Pacific cod | 11 |
| | Rockfish | 9 |
| Trawl | Arrowtooth flounder | 73 |
| | Deep-water flatfish | 43 |
| | Flathead sole | 65 |
| | Non-pelagic pollock | 60 |
| | Other fisheries [1] | 62 |
| | Pacific cod | 62 |
| | Pelagic pollock | 71 |
| | Rex sole | 69 |
| | Rockfish | 66 |
| | Sablefish | 71 |
| | Shallow-water flatfish | 67 |
| Pot | Other fisheries [1] | 17 |
| | Pacific cod | 17 |

[1] Other fisheries includes all gear types for skates, sculpins, sharks, squids, octopuses, and hook-and-line sablefish.

**Chinook Salmon Prohibited Species Catch Limits**

In 2012, NMFS issued a final rule to implement Amendment 93 to the GOA FMP (77 FR 42629, July 20, 2012). Amendment 93 established separate Chinook salmon PSC limits in the Western and Central GOA in the directed pollock fishery. These limits require NMFS to close the pollock directed fishery in the Western and Central regulatory areas of the GOA if the applicable limit is reached (§ 679.21(h)(6)). The annual Chinook salmon PSC limits in the pollock directed fishery of 6,684 salmon in the Western GOA and 18,316 salmon in the Central GOA are set in regulation at § 679.21(h)(2)(i) and (ii). In addition, all salmon (regardless of species) taken in the pollock directed fisheries in the Western and Central GOA must be retained until an observer at the processing facility that takes delivery of the catch is provided an opportunity to count the number of salmon and to collect any scientific data or biological samples from the salmon (§ 679.21(h)(4)). American Fisheries Act C/P and CV Groundfish Harvest and PSC Limits

Section 679.64 establishes groundfish harvesting and processing sideboard limitations on AFA C/Ps and CVs in the GOA. These sideboard limits are necessary to protect the interests of fishermen and processors who do not directly benefit from the AFA from those fishermen and processors who receive exclusive harvesting and processing privileges under the AFA. Section 679.7(k)(1)(ii) prohibits listed AFA C/Ps from harvesting any species of groundfish in the GOA. Additionally, § 679.7(k)(1)(iv) prohibits listed AFA C/Ps from processing any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

AFA CVs that are less than 125 ft (38.1 meters) length overall, have annual landings of pollock in the Bering Sea and Aleutian Islands less than 5,100 mt, and have made at least 40 groundfish landings from 1995 through 1997 are exempt from GOA sideboard limits under § 679.64(b)(2)(ii). Sideboard limits for non-exempt AFA CVs in the GOA are based on their traditional harvest levels of TAC in groundfish fisheries covered by the FMP. Section 679.64(b)(3)(iii) establishes the groundfish sideboard limitations in the GOA based on the retained catch of non-exempt AFA CVs of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period.

Tables 22 and 23 list the final 2014 and 2015 groundfish sideboard limits for non-exempt AFA CVs. NMFS will deduct all targeted or incidental catch of sideboard species made by non-exempt AFA CVs from the sideboard limits listed in Tables 22 and 23.

TABLE 22—FINAL 2014 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

| Species | Apportionments by season/gear | Area/component | Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC | Final 2014 TACs | Final 2014 non-exempt AFA CV sideboard limit |
|---|---|---|---|---|---|
| Pollock | A Season January 20–March 10. | Shumagin (610) | 0.6047 | 4,800 | 2,903 |
| | | Chirikof (620) | 0.1167 | 25,924 | 3,025 |
| | | Kodiak (630) | 0.2028 | 8,680 | 1,760 |
| | B Season March 10–May 31 | Shumagin (610) | 0.6047 | 4,799 | 2,902 |
| | | Chirikof (620) | 0.1167 | 30,963 | 3,613 |
| | | Kodiak (630) | 0.2028 | 3,636 | 737 |
| | C Season August 25–October 1. | Shumagin (610) | 0.6047 | 13,235 | 8,003 |
| | | Chirikof (620) | 0.1167 | 12,448 | 1,453 |
| | | Kodiak (630) | 0.2028 | 13,720 | 2,782 |
| | D Season October 1–November 1. | Shumagin (610) | 0.6047 | 13,235 | 8,003 |
| | | Chirikof (620) | 0.1167 | 12,448 | 1,453 |
| | | Kodiak (630) | 0.2028 | 13,720 | 2,782 |
| | Annual | WYK (640) | 0.3495 | 4,741 | 1,657 |
| | | SEO (650) | 0.3495 | 12,625 | 4,412 |
| Pacific cod | A Season [1] January 1–June 10. | W | 0.1331 | 13,753 | 1,831 |
| | | C | 0.0692 | 23,895 | 1,654 |
| | B Season [2] September 1–December 31. | W | 0.1331 | 9,169 | 1,220 |
| | | C | 0.0692 | 15,930 | 1,102 |
| | Annual | E inshore | 0.0079 | 1,792 | 14 |
| | | E offshore | 0.0078 | 199 | 2 |
| Sablefish | Annual, trawl gear | W | 0.0000 | 296 | 0 |
| | | C | 0.0642 | 936 | 60 |
| | | E | 0.0433 | 221 | 10 |
| Flatfish, Shallow-water | Annual | W | 0.0156 | 13,250 | 207 |
| | | C | 0.0587 | 17,813 | 1,046 |
| | | E | 0.0126 | 2,616 | 33 |
| Flatfish, deep-water | Annual | W | 0.0000 | 302 | 0 |
| | | C | 0.0647 | 3,727 | 241 |
| | | E | 0.0128 | 9,443 | 121 |
| Rex sole | Annual | W | 0.0007 | 1,270 | 1 |
| | | C | 0.0384 | 6,231 | 239 |
| | | E | 0.0029 | 1,840 | 5 |
| Arrowtooth Flounder | Annual | W | 0.0021 | 14,500 | 30 |
| | | C | 0.0280 | 75,000 | 2,100 |
| | | E | 0.0002 | 13,800 | 3 |
| Flathead sole | Annual | W | 0.0036 | 8,650 | 31 |
| | | C | 0.0213 | 15,400 | 328 |
| | | E | 0.0009 | 3,696 | 3 |
| Pacific ocean perch | Annual | W | 0.0023 | 2,399 | 6 |
| | | C | 0.0748 | 12,855 | 962 |
| | | E | 0.0466 | 4,055 | 189 |
| Northern rockfish | Annual | W | 0.0003 | 1,305 | 0 |
| | | C | 0.0277 | 4,017 | 111 |
| Shortraker rockfish | Annual | W | 0.0000 | 92 | 0 |
| | | C | 0.0218 | 397 | 9 |
| | | E | 0.0110 | 834 | 9 |
| Dusky rockfish | Annual | W | 0.0001 | 317 | 0 |
| | | C | 0.0000 | 3,584 | 0 |
| | | E | 0.0067 | 1,585 | 11 |
| Rougheye rockfish | Annual | W | 0.0000 | 82 | 0 |
| | | C | 0.0237 | 864 | 20 |
| | | E | 0.0124 | 298 | 4 |
| Demersal shelf rockfish | Annual | SEO | 0.0020 | 274 | 1 |
| Thornyhead rockfish | Annual | W | 0.0280 | 235 | 7 |
| | | C | 0.0280 | 875 | 25 |
| | | E | 0.0280 | 731 | 20 |
| Other rockfish | Annual | W | 0.0034 | n/a | n/a |
| | | C | 0.1699 | 1,031 | 175 |
| | | E | 0.0000 | 780 | 0 |
| Atka mackerel | Annual | Gulfwide | 0.0309 | 2,000 | 62 |
| Big skates | Annual | W | 0.0063 | 589 | 4 |
| | | C | 0.0063 | 1,532 | 10 |
| | | E | 0.0063 | 1,641 | 10 |
| Longnose skates | Annual | W | 0.0063 | 107 | 1 |
| | | C | 0.0063 | 1,935 | 12 |

TABLE 22—FINAL 2014 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

| Species | Apportionments by season/gear | Area/component | Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC | Final 2014 TACs | Final 2014 non-exempt AFA CV sideboard limit |
|---|---|---|---|---|---|
| | | E | 0.0063 | 834 | 5 |
| Other skates | Annual | Gulfwide | 0.0063 | 1,989 | 13 |
| Sculpins | Annual | Gulfwide | 0.0063 | 5,569 | 35 |
| Sharks | Annual | Gulfwide | 0.0063 | 5,989 | 38 |
| Squids | Annual | Gulfwide | 0.0063 | 1,148 | 7 |
| Octopuses | Annual | Gulfwide | 0.0063 | 1,507 | 9 |

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

TABLE 23—FINAL 2015 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

| Species | Apportionments by season/gear | Area/component | Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC | Final 2015 TACs | Final 2015 non-exempt AFA CV sideboard limit |
|---|---|---|---|---|---|
| Pollock | A Season January 20–March 10. | Shumagin (610) | 0.6047 | 5,357 | 3,239 |
| | | Chirikof (620) | 0.1167 | 28,932 | 3,376 |
| | | Kodiak (630) | 0.2028 | 9,687 | 1,965 |
| | B Season March 10–May 31 | Shumagin (610) | 0.6047 | 5,356 | 3,239 |
| | | Chirikof (620) | 0.1167 | 34,555 | 4,032 |
| | | Kodiak (630) | 0.2028 | 4,059 | 823 |
| | C Season August 25–October 1. | Shumagin (610) | 0.6047 | 14,771 | 8,932 |
| | | Chirikof (620) | 0.1167 | 13,892 | 1,621 |
| | | Kodiak (630) | 0.2028 | 15,311 | 3,105 |
| | D Season October 1–November 1. | Shumagin (610) | 0.6047 | 14,771 | 8,932 |
| | | Chirikof (620) | 0.1167 | 13,892 | 1,621 |
| | | Kodiak (630) | 0.2028 | 15,311 | 3,105 |
| | Annual | WYK (640) | 0.3495 | 5,291 | 1,849 |
| | | SEO (650) | 0.3495 | 12,625 | 4,412 |
| Pacific cod | A Season[1] January 1–June 10. | W | 0.1331 | 13,069 | 1,740 |
| | | C | 0.0692 | 22,707 | 1,571 |
| | B Season[2] September 1–December 31. | W | 0.1331 | 8,713 | 1,160 |
| | | C | 0.0692 | 15,138 | 1,048 |
| | Annual | E inshore | 0.0079 | 1,703 | 13 |
| | | E offshore | 0.0078 | 189 | 1 |
| Sablefish | Annual, trawl gear | W | 0.0000 | 268 | 0 |
| | | C | 0.0642 | 846 | 54 |
| | | E | 0.0433 | 199 | 9 |
| Flatfish, Shallow-water | Annual | W | 0.0156 | 13,250 | 207 |
| | | C | 0.0587 | 16,372 | 961 |
| | | E | 0.0126 | 2,405 | 30 |
| Flatfish, deep-water | Annual | W | 0.0000 | 300 | 0 |
| | | C | 0.0647 | 3,680 | 238 |
| | | E | 0.0128 | 9,323 | 119 |
| Rex sole deep-water | Annual | W | 0.0007 | 1,245 | 1 |
| | | C | 0.0384 | 6,106 | 234 |
| | | E | 0.0029 | 1,804 | 5 |
| Arrowtooth flounder | Annual | W | 0.0021 | 14,500 | 30 |
| | | C | 0.0280 | 75,000 | 2,100 |
| | | E | 0.0002 | 13,800 | 3 |
| Flathead sole | Annual | W | 0.0036 | 8,650 | 31 |
| | | C | 0.0213 | 15,400 | 328 |
| | | E | 0.0009 | 3,676 | 3 |
| Pacific ocean perch | Annual | W | 0.0023 | 2,456 | 6 |
| | | C | 0.0748 | 13,158 | 984 |
| | | E | 0.0466 | 4,150 | 193 |
| Northern Rockfish | Annual | W | 0.0003 | 1,229 | 0 |
| | | C | 0.0277 | 3,781 | 105 |
| Shortraker rockfish | Annual | W | 0.0000 | 92 | 0 |
| | | C | 0.0218 | 397 | 9 |

TABLE 23—FINAL 2015 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

| Species | Apportionments by season/gear | Area/component | Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC | Final 2015 TACs | Final 2015 non-exempt AFA CV sideboard limit |
|---|---|---|---|---|---|
| | | E | 0.0110 | 834 | 9 |
| Dusky rockfish | Annual | W | 0.0001 | 295 | 0 |
| | | C | 0.0000 | 3,318 | 0 |
| | | E | 0.0067 | 1,468 | 10 |
| Rougheye rockfish | Annual | W | 0.0000 | 83 | 0 |
| | | C | 0.0237 | 877 | 21 |
| | | E | 0.0124 | 302 | 4 |
| Demersal shelf rockfish | Annual | SEO | 0.0020 | 274 | 1 |
| Thornyhead rockfish | Annual | W | 0.0280 | 235 | 7 |
| | | C | 0.0280 | 875 | 25 |
| | | E | 0.0280 | 731 | 20 |
| Other Rockfish | Annual | W | 0.0034 | n/a | n/a |
| | | C | 0.1699 | 1,031 | 175 |
| | | E | 0.0000 | 780 | 0 |
| Atka mackerel | Annual | Gulfwide | 0.0309 | 2,000 | 62 |
| Big skates | Annual | W | 0.0063 | 589 | 4 |
| | | C | 0.0063 | 1,532 | 10 |
| | | E | 0.0063 | 1,641 | 10 |
| Longnose skates | Annual | W | 0.0063 | 107 | 1 |
| | | C | 0.0063 | 1,935 | 12 |
| | | E | 0.0063 | 834 | 5 |
| Other skates | Annual | Gulfwide | 0.0063 | 1,989 | 13 |
| Sculpins | Annual | Gulfwide | 0.0063 | 5,569 | 35 |
| Squids | Annual | Gulfwide | 0.0063 | 5,989 | 38 |
| Sharks | Annual | Gulfwide | 0.0063 | 1,148 | 7 |
| Octopuses | Annual | Gulfwide | 0.0063 | 1,507 | 9 |

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

**Non-Exempt AFA Catcher Vessel Halibut PSC Limits**

The halibut PSC sideboard limits for non-exempt AFA CVs in the GOA are based on the aggregate retained groundfish catch by non-exempt AFA CVs in each PSC target category from 1995 through 1997 divided by the retained catch of all vessels in that fishery from 1995 through 1997 (§ 679.64(b)(4)). Tables 24 and 25 list the final 2014 and 2015 non-exempt AFA CV halibut PSC limits for vessels using trawl gear in the GOA, respectively. These halibut PSC limits are reduced from the proposed 2014 and 2015 harvest specifications to incorporate reductions to the trawl sector's halibut PSC limit implemented by Amendment 95, as described earlier.

TABLE 24—FINAL 2014 NON-EXEMPT AFA CV HALIBUT PROHIBITED SPECIES CATCH (PSC) LIMITS FOR VESSELS USING TRAWL GEAR IN THE GOA

[Values are rounded to nearest metric ton]

| Season | Season dates | Target fishery | Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch | 2014 PSC Limit | 2014 Non-exempt AFA CV PSC limit |
|---|---|---|---|---|---|
| 1 | January 20–April 1 | shallow-water | 0.340 | 444 | 151 |
| | | deep-water | 0.070 | 99 | 7 |
| 2 | April 1–July 2 | shallow-water | 0.340 | 99 | 34 |
| | | deep-water | 0.070 | 296 | 21 |
| 3 | July 1–September 1 | shallow-water | 0.340 | 197 | 67 |
| | | deep-water | 0.070 | 395 | 28 |
| 4 | September 1–October 1 | shallow-water | 0.340 | 148 | 50 |
| | | deep-water | 0.070 | 0 | 0 |
| 5 | October 1–December 31 | all targets | 0.205 | 296 | 61 |

TABLE 25—FINAL 2015 NON-EXEMPT AFA CV HALIBUT PROHIBITED SPECIES CATCH (PSC) LIMITS FOR VESSELS USING TRAWL GEAR IN THE GOA

[Values are rounded to nearest metric ton]

| Season | Season dates | Target fishery | Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch | 2015 PSC limit | 2015 non-exempt AFA CV PSC limit |
|---|---|---|---|---|---|
| 1 | January 20–April 1 | shallow-water | 0.340 | 396 | 135 |
| | | deep-water | 0.070 | 88 | 6 |
| 2 | April 1–July 1 | shallow-water | 0.340 | 88 | 30 |
| | | deep-water | 0.070 | 264 | 18 |
| 3 | July 1–September 1 | shallow-water | 0.340 | 176 | 60 |
| | | deep-water | 0.070 | 352 | 25 |
| 4 | September 1–October 1 | shallow-water | 0.340 | 132 | 45 |
| | | deep-water | 0.070 | 0 | 0 |
| 5 | October 1–December 31 | all targets | 0.205 | 264 | 54 |

**Non-AFA Crab Vessel Groundfish Harvest Limitations**

Section 680.22 establishes groundfish catch limits for vessels with a history of participation in the Bering Sea snow crab fishery to prevent these vessels from using the increased flexibility provided by the Crab Rationalization Program to expand their level of participation in the GOA groundfish fisheries. Sideboard limits restrict these vessels' catch to their collective historical landings in each GOA groundfish fishery (except the fixed-gear sablefish fishery). Sideboard limits also apply to catch made using an LLP license derived from the history of a restricted vessel, even if that LLP license is used on another vessel.

The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the Allocation of Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources (70 FR 10174, March 2, 2005), Amendment 34 to the Fishery Management Plan for Bering Sea/Aleutian Island King and Tanner Crabs (76 FR 35772, June 20, 2011), and Amendment 83 to the GOA FMP (76 FR 74670, December 1, 2011).

Tables 26 and 27 list the final 2014 and 2015 groundfish sideboard limitations for non-AFA crab vessels. All targeted or incidental catch of sideboard species made by non-AFA crab vessels or associated LLP licenses will be deducted from these sideboard limits.

TABLE 26—FINAL 2014 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

| Species | Season/gear | Area/component/gear | Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest | Final 2014 TACs | Final 2014 non-AFA crab vessel sideboard limit |
|---|---|---|---|---|---|
| Pollock | A Season January 20–March 10. | Shumagin (610) | 0.0098 | 4,800 | 47 |
| | | Chirikof (620) | 0.0031 | 25,924 | 80 |
| | | Kodiak (630) | 0.0002 | 8,680 | 2 |
| | B Season March 10–May 31 | Shumagin (610) | 0.0098 | 4,799 | 47 |
| | | Chirikof (620) | 0.0031 | 30,963 | 96 |
| | | Kodiak (630) | 0.0002 | 3,636 | 1 |
| | C Season August 25–October 1. | Shumagin (610) | 0.0098 | 13,235 | 130 |
| | | Chirikof (620) | 0.0031 | 12,448 | 39 |
| | | Kodiak (630) | 0.0002 | 13,720 | 3 |
| | D Season October 1–November 1. | Shumagin (610) | 0.0098 | 13,235 | 130 |
| | | Chirikof (620) | 0.0031 | 12,448 | 39 |
| | | Kodiak (630) | 0.0002 | 13,720 | 3 |
| | Annual | WYK (640) | 0.0000 | 4,741 | 0 |
| | | SEO (650) | 0.0000 | 12,625 | 0 |
| Pacific cod | A Season [1] January 1–June 10. | W Jig | 0.0000 | 13,753 | 0 |
| | | W Hook-and-line CV | 0.0004 | 13,753 | 6 |
| | | W Hook-and-line C/P | 0.0018 | 13,753 | 25 |
| | | W Pot CV | 0.0997 | 13,753 | 1,371 |
| | | W Pot C/P | 0.0078 | 13,753 | 107 |
| | | W Trawl CV | 0.0007 | 13,753 | 10 |
| | | C Jig | 0.0000 | 23,895 | 0 |
| | | C Hook-and-line CV | 0.0001 | 23,895 | 2 |
| | | C Hook-and-line C/P | 0.0012 | 23,895 | 29 |
| | | C Pot CV | 0.0474 | 23,895 | 1,133 |
| | | C Pot C/P | 0.0136 | 23,895 | 325 |
| | | C Trawl CV | 0.0012 | 23,895 | 29 |
| | B Season [2] | W Jig | 0.0000 | 9,169 | 0 |

TABLE 26—FINAL 2014 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

| Species | Season/gear | Area/component/gear | Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest | Final 2014 TACs | Final 2014 non-AFA crab vessel sideboard limit |
|---|---|---|---|---|---|
| | Jig Gear: June 10–December 31. | W Hook-and-line CV | 0.0004 | 9,169 | 4 |
| | | W Hook-and-line C/P | 0.0001 | 9,169 | 17 |
| | All other gears: September 1–December 31. | W Pot CV | 0.0997 | 9,1699,169 | 914 |
| | | W Pot C/P | 0.0078 | 9,169 | 72 |
| | | W Trawl CV | 0.0007 | | 6 |
| | | C Jig | 0.0000 | 15,930 | 0 |
| | | C Hook-and-line CV | 0.0001 | 15,930 | 2 |
| | | C Hook-and-line C/P | 0.0012 | 15,930 | 19 |
| | | C Pot CV | 0.0474 | 15,930 | 755 |
| | | C Pot C/P | 0.0136 | 15,930 | 217 |
| | | C Trawl CV | 0.0012 | 15,930 | 19 |
| | Annual | E inshore | 0.0110 | 1,792 | 20 |
| | | E offshore | 0.0000 | 199 | 0 |
| Sablefish | Annual, trawl gear | W | 0.0000 | 296 | 0 |
| | | C | 0.0000 | 936 | 0 |
| | | E | 0.0000 | 221 | 0 |
| Flatfish, shallow-water | Annual | W | 0.0059 | 13,250 | 78 |
| | | C | 0.0001 | 17,813 | 2 |
| | | E | 0.0000 | 2,616 | 0 |
| Flatfish, deep-water | Annual | W | 0.0035 | 302 | 1 |
| | | C | 0.0000 | 3,727 | 0 |
| | | E | 0.0000 | 9,443 | 0 |
| Rex sole | Annual | W | 0.0000 | 1,270 | 0 |
| | | C | 0.0000 | 6,231 | 0 |
| | | E | 0.0000 | 1,840 | 0 |
| Arrowtooth flounder | Annual | W | 0.0004 | 14,500 | 6 |
| | | C | 0.0001 | 75,000 | 8 |
| | | E | 0.0000 | 13,800 | 0 |
| Flathead sole | Annual | W | 0.0002 | 8,650 | 2 |
| | | C | 0.0004 | 15,400 | 6 |
| | | E | 0.0000 | 3,696 | 0 |
| Pacific ocean perch | Annual | W | 0.0000 | 2,399 | 0 |
| | | C | 0.0000 | 12,855 | 0 |
| | | E | 0.0000 | 4,055 | 0 |
| Northern rockfish | Annual | W | 0.0005 | 1,305 | 1 |
| | | C | 0.0000 | 4,017 | 0 |
| Shortraker rockfish | Annual | W | 0.0013 | 92 | 0 |
| | | C | 0.0012 | 397 | 0 |
| | | E | 0.0009 | 834 | 1 |
| Dusky rockfish | Annual | W | 0.0017 | 317 | 1 |
| | | C | 0.0000 | 3,584 | 0 |
| | | E | 0.0000 | 1,585 | 0 |
| Rougheye rockfish | Annual | W | 0.0067 | 82 | 1 |
| | | C | 0.0047 | 864 | 4 |
| | | E | 0.0008 | 298 | 0 |
| Demersal shelf rockfish | Annual | SEO | 0.0000 | 274 | 0 |
| Thornyhead rockfish | Annual | W | 0.0047 | 235 | 1 |
| | | C | 0.0066 | 875 | 6 |
| | | E | 0.0045 | 731 | 3 |
| Other rockfish | Annual | W | 0.0035 | 0 | 0 |
| | | C | 0.0033 | 1,031 | 3 |
| | | E | 0.0000 | 780 | 0 |
| Atka mackerel | Annual | Gulfwide | 0.0000 | 2,000 | 0 |
| Big skate | Annual | W | 0.0392 | 589 | 23 |
| | | C | 0.0159 | 1,532 | 24 |
| | | E | 0.0000 | 1,641 | 0 |
| Longnose skate | Annual | W | 0.0392 | 107 | 4 |
| | | C | 0.0159 | 1,935 | 31 |
| | | E | 0.0000 | 834 | 0 |
| Other skates | Annual | Gulfwide | 0.0176 | 1,989 | 35 |
| Sculpins | Annual | Gulfwide | 0.0176 | 5,569 | 98 |
| Sharks | Annual | Gulfwide | 0.0176 | 5,989 | 105 |
| Squids | Annual | Gulfwide | 0.0176 | 1,148 | 20 |
| Octopuses | Annual | Gulfwide | 0.0176 | 1,507 | 27 |

[1] The Pacific cod A season for trawl gear does not open until January 20.

[2] The Pacific cod B season for trawl gear closes November 1.

TABLE 27—FINAL 2015 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

| Species | Season/gear | Area/component/gear | Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest | Final 2015 TACs | Final 2015 non-AFA crab vessel sideboard limit |
|---|---|---|---|---|---|
| Pollock | A Season January 20—March 10. | Shumagin (610) | 0.0098 | 5,357 | 52 |
| | | Chirikof (620) | 0.0031 | 28,932 | 90 |
| | | Kodiak (630) | 0.0002 | 9,687 | 2 |
| | B Season March 10–May 31 | Shumagin (610) | 0.0098 | 5,356 | 52 |
| | | Chirikof (620) | 0.0031 | 34,555 | 107 |
| | | Kodiak (630) | 0.0002 | 4,059 | 1 |
| | C Season August 25–October 1. | Shumagin (610) | 0.0098 | 14,771 | 145 |
| | | Chirikof (620) | 0.0031 | 13,892 | 43 |
| | | Kodiak (630) | 0.0002 | 15,311 | 3 |
| | D Season October 1–November 1. | Shumagin (610) | 0.0098 | 14,771 | 145 |
| | | Chirikof (620) | 0.0031 | 13,892 | 43 |
| | | Kodiak (630) | 0.0002 | 15,311 | 3 |
| | Annual | WYK (640) | 0.0000 | 5,291 | 0 |
| | | SEO (650) | 0.0000 | 12,625 | 0 |
| Pacific cod | A Season [1] January 1–June 10. | W Jig | 0.0000 | 13,069 | 0 |
| | | W Hook-and-Line CV | 0.0000 | 13,069 | 5 |
| | | W Hook-and-line C/P | 0.0018 | 13,069 | 24 |
| | | W Pot CV | 0.0997 | 13,069 | 1,303 |
| | | W Pot C/P | 0.0078 | 13,069 | 102 |
| | | W Trawl CV | 0.0007 | 13,069 | 9 |
| | | C Jig | 0.0000 | 22,707 | 0 |
| | | C Hook-and-line CV | 0.0001 | 22,707 | 2 |
| | | C Hook-and-line C/P | 0.0012 | 22,707 | 27 |
| | | C Pot CV | 0.0474 | 22,707 | 1,076 |
| | | C Pot C/P | 0.0136 | 22,707 | 309 |
| | | C Trawl CV | 0.0012 | 22,707 | 27 |
| | B Season [2] | W Jig | 0.0000 | 8,713 | 0 |
| | | W Hook-and-line CV | 0.0004 | 8,713 | 3 |
| | Jig Gear: June 10–December 31. | W Hook-and-line C/P | 0.0018 | 8,713 | 16 |
| | | W Pot CV | 0.0997 | 8,713 | 869 |
| | All other gears: September 1–December 31. | W Pot C/P | 0.0078 | 8,713 | 68 |
| | | W Trawl CV | 0.0007 | 8,713 | 6 |
| | | C Jig | 0.0000 | 15,138 | 0 |
| | | C Hook-and-line CV | 0.0001 | 15,138 | 2 |
| | | C Hook-and-line C/P | 0.0012 | 15,138 | 18 |
| | | C Pot CV | 0.0474 | 15,138 | 718 |
| | | C Pot C/P | 0.0136 | 15,138 | 206 |
| | | C Trawl CV | 0.0012 | 15,138 | 18 |
| | Annual | E inshore | 0.0110 | 1,703 | 19 |
| | | E offshore | 0.0000 | 189 | 0 |
| Sablefish | Annual, trawl gear | W | 0.0000 | 268 | 0 |
| | | C | 0.0000 | 846 | 0 |
| | | E | 0.0000 | 199 | 0 |
| Flatfish, shallow-water | Annual | W | 0.0059 | 13,250 | 78 |
| | | C | 0.0001 | 16,372 | 2 |
| | | E | 0.0000 | 2,405 | 0 |
| Flatfish, deep-water | Annual | W | 0.0035 | 300 | 1 |
| | | C | 0.0000 | 3,680 | 0 |
| | | E | 0.0000 | 9,323 | 0 |
| Rex sole | Annual | W | 0.0000 | 1,245 | 0 |
| | | C | 0.0000 | 6,106 | 0 |
| | | E | 0.0000 | 1,804 | 0 |
| Arrowtooth flounder | Annual | W | 0.0004 | 14,500 | 6 |
| | | C | 0.0001 | 75,000 | 8 |
| | | E | 0.0000 | 13,800 | 0 |
| Flathead sole | Annual | W | 0.0002 | 8,650 | 2 |
| | | C | 0.0004 | 15,400 | 6 |
| | | E | 0.0000 | 3,676 | 0 |
| Pacific ocean perch | Annual | W | 0.0000 | 2,456 | 0 |
| | | C | 0.0000 | 13,158 | 0 |
| | | E | 0.0000 | 4,150 | 0 |
| Northern rockfish | Annual | W | 0.0005 | 1,229 | 1 |
| | | C | 0.0000 | 3,781 | 0 |

TABLE 27—FINAL 2015 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

| Species | Season/gear | Area/component/gear | Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest | Final 2015 TACs | Final 2015 non-AFA crab vessel sideboard limit |
|---|---|---|---|---|---|
| Shortraker rockfish | Annual | W | 0.0013 | 92 | 0 |
| | | C | 0.0012 | 397 | 0 |
| | | E | 0.0009 | 834 | 1 |
| Dusky rockfish | Annual | W | 0.0017 | 295 | 1 |
| | | C | 0.0000 | 3,318 | 0 |
| | | E | 0.0000 | 1,468 | 0 |
| Rougheye rockfish | Annual | W | 0.0067 | 83 | 1 |
| | | C | 0.0047 | 877 | 4 |
| | | E | 0.0008 | 302 | 0 |
| Demersal shelf rockfish | Annual | SEO | 0.0000 | 274 | 0 |
| Thornyhead rockfish | Annual | W | 0.0047 | 235 | 1 |
| | | C | 0.0066 | 875 | 6 |
| | | E | 0.0045 | 731 | 3 |
| Other rockfish | Annual | W | 0.0035 | 0 | 0 |
| | | C | 0.0033 | 1,031 | 3 |
| | | E | 0.0000 | 780 | 0 |
| Atka mackerel | Annual | Gulfwide | 0.0000 | 2,000 | 0 |
| Big skate | Annual | W | 0.0392 | 589 | 23 |
| | | C | 0.0159 | 1,532 | 24 |
| | | E | 0.0000 | 1,641 | 0 |
| Longnose skate | Annual | W | 0.0392 | 107 | 4 |
| | | C | 0.0159 | 1,935 | 31 |
| | | E | 0.0000 | 834 | 0 |
| Other skates | Annual | Gulfwide | 0.0176 | 1,989 | 35 |
| Sculpins | Annual | Gulfwide | 0.0176 | 5,569 | 98 |
| Sharks | Annual | Gulfwide | 0.0176 | 5,989 | 105 |
| Squids | Annual | Gulfwide | 0.0176 | 1,148 | 20 |
| Octopuses | Annual | Gulfwide | 0.0176 | 1,507 | 27 |

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

**Rockfish Program Groundfish Sideboard and Halibut PSC Limitations**

The Rockfish Program establishes three classes of sideboard provisions: CV groundfish sideboard restrictions, C/P rockfish sideboard restrictions, and C/P opt-out vessel sideboard restrictions. These sideboards are intended to limit the ability of rockfish harvesters to expand into other fisheries.

CVs participating in the Rockfish Program may not participate in directed fishing for dusky rockfish, Pacific ocean perch, and northern rockfish in the West Yakutat district and Western GOA from July 1 through July 31. Also, CVs may not participate in directed fishing for arrowtooth flounder, deep-water flatfish, and rex sole in the GOA from July 1 through July 31 (§ 679.82(d)).

Catcher/processors participating in Rockfish Program cooperatives are restricted by rockfish and halibut PSC limits. These C/Ps are prohibited from directed fishing for dusky rockfish, Pacific ocean perch, and northern rockfish in the West Yakutat district and Western GOA from July 1 through July 31. Holders of C/P-designated LLP licenses that opt-out of participating in a Rockfish Program cooperative will be able to access that portion of each sideboard limit that is not assigned to rockfish cooperatives. Tables 28 and 29 list the final 2014 and 2015 Rockfish Program C/P sideboard limits in the West Yakutat district and the Western GOA. Due to confidentiality requirements associated with fisheries data, the sideboard limits for the West Yakutat district are not displayed.

TABLE 28—FINAL 2014 ROCKFISH PROGRAM HARVEST LIMITS BY SECTOR FOR WEST YAKUTAT DISTRICT AND WESTERN GOA BY THE CATCHER/PROCESSOR SECTOR

[Values are rounded to the nearest metric ton]

| Area | Fishery | C/P sector (% of TAC) | Final 2014 TACs | Final 2014 C/P limit |
|---|---|---|---|---|
| West Yakutat District | Dusky rockfish | Confidential [1] | 1,384 | Confidential.[1] |
| | Pacific ocean perch | Confidential [1] | 1,931 | Confidential.[1] |
| Western GOA | Dusky rockfish | 72.3 | 317 | 229. |
| | Pacific ocean perch | 50.6 | 2,399 | 1,214. |
| | Northern rockfish | 74.3 | 1,305 | 970. |

[1] Not released due to confidentiality requirements associated with fish ticket data, as established by NMFS and the State of Alaska.

TABLE 29—FINAL 2015 ROCKFISH PROGRAM HARVEST LIMITS BY SECTOR FOR WEST YAKUTAT DISTRICT AND WESTERN GOA BY THE CATCHER/PROCESSOR SECTOR

[Values are rounded to the nearest metric ton]

| Area | Fishery | C/P sector (% of TAC) | Final 2015 TACs | Final 2015 C/P limit |
|---|---|---|---|---|
| West Yakutat District | Dusky rockfish | Confidential [1] | 1,277 | Confidential.[1] |
| | Pacific ocean perch | Confidential [1] | 1,976 | Confidential.[1] |
| Western GOA | Dusky rockfish | 72.3 | 295 | 213. |
| | Pacific ocean perch | 50.6 | 2,456 | 1,243. |
| | Northern rockfish | 74.3 | 1,229 | 913. |

[1] Not released due to confidentiality requirements associated with fish ticket data, as established by NMFS and the State of Alaska.

Under the Rockfish Program, the C/P sector is subject to halibut PSC sideboard limits for the trawl deep-water and shallow-water species fisheries from July 1 through July 31. No halibut PSC sideboard limits apply to the CV sector, as vessels participating in cooperatives receive a portion of the annual halibut PSC limit. C/Ps that opt-out of the Rockfish Program would be able to access that portion of the deep-water and shallow-water halibut PSC sideboard limit not assigned to C/P rockfish cooperatives. The sideboard provisions for C/Ps that elect to opt-out of participating in a rockfish cooperative are described in § 679.82(c), (e), and (f). Sideboards are linked to the catch history of specific vessels that may choose to opt-out. After March 1, NMFS will determine which C/Ps have opted-out of the Rockfish Program in 2014, and will know the ratios and amounts used to calculate opt-out sideboard ratios. NMFS will then calculate any applicable opt-out sideboards and post these allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm*). Tables 30 and 31 list the 2014 and 2015 Rockfish Program halibut PSC limits for the catcher/processor sector. These halibut PSC limits are reduced from the proposed 2014 and 2015 harvest specifications to incorporate reductions implemented under Amendment 95, as described earlier.

TABLE 30—FINAL 2014 ROCKFISH PROGRAM HALIBUT MORTALITY LIMITS FOR THE CATCHER/PROCESSOR SECTOR

[Values are rounded to the nearest metric ton]

| Sector | Shallow-water species fishery halibut PSC sideboard ratio (percent) | Deep-water species fishery halibut PSC sideboard ratio (percent) | 2014 halibut mortality limit (mt) | Annual shallow-water species fishery halibut PSC sideboard limit (mt) | Annual deep-water species fishery halibut PSC sideboard limit (mt) |
|---|---|---|---|---|---|
| Catcher/processor | 0.10 | 2.50 | 1,848 | 2 | 46 |

TABLE 31—FINAL 2015 ROCKFISH PROGRAM HALIBUT MORTALITY LIMITS FOR THE CATCHER/PROCESSOR SECTOR

[Values are rounded to the nearest metric ton]

| Sector | Shallow-water species fishery halibut PSC sideboard ratio (percent) | Deep-water species fishery halibut PSC sideboard ratio (percent) | 2015 halibut mortality limit (mt) | Annual shallow-water species fishery halibut PSC sideboard limit (mt) | Annual deep-water species fishery halibut PSC sideboard limit (mt) |
|---|---|---|---|---|---|
| Catcher/processor | 0.10 | 2.50 | 1,759 | 2 | 44 |

**Amendment 80 Program Groundfish and PSC Sideboard Limits**

Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (Amendment 80 Program) established a limited access privilege program for the non-AFA trawl C/P sector. The Amendment 80 Program established groundfish and halibut PSC catch limits for Amendment 80 Program participants to limit the ability of participants eligible for the Amendment 80 Program to expand their harvest efforts in the GOA.

Section 679.92 establishes groundfish harvesting sideboard limits on all Amendment 80 program vessels, other than the F/V GOLDEN FLEECE, to amounts no greater than the limits listed in Table 37 to 50 CFR part 679. Under regulations at § 679.92(d), the F/V GOLDEN FLEECE is prohibited from directed fishing for pollock, Pacific cod, Pacific ocean perch, dusky rockfish, and northern rockfish in the GOA.

Groundfish sideboard limits for Amendment 80 Program vessels operating in the GOA are based on their average aggregate harvests from 1998 through 2004. Tables 32 and 33 list the final 2014 and 2015 sideboard limits for Amendment 80 Program vessels. These limits are based on the final 2014 and 2015 TACs established by this action, and thus may differ proportionately from the sideboard limits in the proposed harvest specifications. NMFS will deduct all targeted or incidental catch of sideboard species made by Amendment 80 Program vessels from the sideboard limits in Tables 32 and 33.

TABLE 32—FINAL 2014 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS

[Values are rounded to nearest metric ton]

| Species | Apportionments and allocations by season | Area | Ratio of amendment 80 sector vessels 1998–2004 catch to TAC | 2014 TAC (mt) | 2014 amendment 80 vessel sideboards (mt) |
|---|---|---|---|---|---|
| Pollock | A Season January 20–February 25. | Shumagin (610) | 0.003 | 4,800 | 14 |
| | | Chirikof (620) | 0.002 | 25,924 | 52 |
| | | Kodiak (630) | 0.002 | 8,680 | 17 |
| | B Season March 10–May 31 | Shumagin (610) | 0.003 | 4,799 | 14 |
| | | Chirikof (620) | 0.002 | 30,963 | 62 |
| | | Kodiak (630) | 0.002 | 3,636 | 7 |
| | C Season August 25–September 15. | Shumagin (610) | 0.003 | 13,235 | 40 |
| | | Chirikof (620) | 0.002 | 12,448 | 25 |
| | | Kodiak (630) | 0.002 | 13,720 | 27 |
| | D Season October 1–November 1. | Shumagin (610) | 0.003 | 13,235 | 40 |
| | | Chirikof (620) | 0.002 | 12,448 | 25 |
| | | Kodiak (630) | 0.002 | 13,720 | 27 |
| | Annual | WYK (640) | 0.002 | 4,741 | 9 |
| Pacific cod | A Season [1] January 1–June 10. | W | 0.020 | 13,753 | 275 |
| | | C | 0.044 | 23,895 | 1,051 |
| | B Season [2] September 1–December 31. | W | 0.020 | 9,169 | 183 |
| | | C | 0.044 | 15,930 | 701 |
| | Annual | WYK | 0.034 | 1,991 | 68 |
| Pacific ocean perch | Annual | W | 0.994 | 2,399 | 2,385 |
| | | WYK | 0.961 | 1,931 | 1,856 |
| Northern rockfish | Annual | W | 1.000 | 1,305 | 1,305 |
| Dusky rockfish | Annual | W | 0.764 | 317 | 242 |
| | | WYK | 0.896 | 1,384 | 1,240 |

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

TABLE 33—FINAL 2015 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS

[Values are rounded to nearest metric ton]

| Species | Apportionments and allocations by season | Area | Ratio of amendment 80 sector vessels 1998–2004 catch to TAC | 2015 TAC (mt) | 2015 amendment 80 vessel sideboards mt) |
|---|---|---|---|---|---|
| Pollock | A Season January 20–February 25. | Shumagin (610) | 0.003 | 5,357 | 16 |
| | | Chirikof (620) | 0.002 | 28,932 | 58 |
| | | Kodiak (630) | 0.002 | 9,687 | 19 |
| | B Season March 10–May 31 | Shumagin (610) | 0.003 | 5,356 | 16 |
| | | Chirikof (620) | 0.002 | 34,554 | 69 |
| | | Kodiak (630) | 0.002 | 4,059 | 8 |
| | C Season August 25–September 15. | Shumagin (610) | 0.003 | 14,771 | 44 |
| | | Chirikof (620) | 0.002 | 13,892 | 28 |
| | | Kodiak (630) | 0.002 | 15,311 | 31 |
| | D Season October 1–November 1. | Shumagin (610) | 0.003 | 14,771 | 44 |
| | | Chirikof (620) | 0.002 | 13,892 | 28 |
| | | Kodiak (630) | 0.002 | 15,311 | 31 |
| | Annual | WYK (640) | 0.002 | 5,291 | 11 |
| Pacific cod | A Season [1] January 1–June 10. | W | 0.020 | 13,069 | 261 |
| | | C | 0.044 | 22,707 | 999 |
| | B Season [2] September 1–December 31. | W | 0.020 | 8,713 | 174 |
| | | C | 0.044 | 15,138 | 666 |
| | Annual | WYK | 0.034 | 1,892 | 64 |
| Pacific ocean perch | Annual | W | 0.994 | 2,456 | 2,441 |
| | | WYK | 0.961 | 1,976 | 1,899 |
| Northern rockfish | Annual | W | 1.000 | 1,229 | 1,229 |
| Dusky rockfish | Annual | W | 0.764 | 295 | 225 |
| | | WYK | 0.896 | 1,277 | 1,144 |

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

The PSC sideboard limits for Amendment 80 Program vessels in the GOA are based on the historic use of halibut PSC by Amendment 80 Program vessels in each PSC target category from 1998 through 2004. These values are slightly lower than the average historic use to accommodate two factors: Allocation of halibut PSC cooperative

quota under the Central GOA Rockfish Program and the exemption of the F/V GOLDEN FLEECE from this restriction (§ 679.92(b)(2)). Tables 34 and 35 list the final 2014 and 2015 halibut PSC limits for Amendment 80 Program vessels, as contained in Table 38 to 50 CFR part 679. These halibut PSC limits are reduced from the proposed 2014 and 2015 harvest specifications to incorporate the trawl sector's halibut PSC limit reductions, as described earlier.

TABLE 34—FINAL 2014 HALIBUT PSC LIMITS FOR AMENDMENT 80 PROGRAM VESSELS IN THE GOA

[Values are rounded to nearest metric ton]

| Season | Season dates | Target fishery | Historic amendment 80 use of the annual halibut PSC limit catch (ratio) | 2014 annual PSC limit (mt) | 2014 amendment 80 vessel PSC limit |
|---|---|---|---|---|---|
| 1 | January 20–April 1 | shallow-water | 0.0048 | 1,848 | 9 |
| | | deep-water | 0.0115 | 1,848 | 21 |
| 2 | April 1–July 1 | shallow-water | 0.0189 | 1,848 | 35 |
| | | deep-water | 0.1072 | 1,848 | 198 |
| 3 | July 1–September 1 | shallow-water | 0.0146 | 1,848 | 27 |
| | | deep-water | 0.0521 | 1,848 | 96 |
| 4 | September 1–October 1 | shallow-water | 0.0074 | 1,848 | 14 |
| | | deep-water | 0.0014 | 1,848 | 3 |
| 5 | October 1–December 31 | shallow-water | 0.0227 | 1,848 | 42 |
| | | deep-water | 0.0371 | 1,848 | 69 |

TABLE 35—FINAL 2015 HALIBUT PSC LIMITS FOR AMENDMENT 80 PROGRAM VESSELS IN THE GOA

[Values are rounded to nearest metric ton]

| Season | Season dates | Target fishery | Historic amendment 80 use of the annual halibut PSC limit catch (ratio) | 2014 annual PSC limit (mt) | 2014 amendment 80 vessel PSC limit |
|---|---|---|---|---|---|
| 1 | January 20–April 1 | shallow-water | 0.0048 | 1,759 | 8 |
| | | deep-water | 0.0115 | 1,759 | 20 |
| 2 | April 1–July 1 | shallow-water | 0.0189 | 1,759 | 33 |
| | | deep-water | 0.1072 | 1,759 | 189 |
| 3 | July 1–September 1 | shallow-water | 0.0146 | 1,759 | 26 |
| | | deep-water | 0.0521 | 1,759 | 92 |
| 4 | September 1–October 1 | shallow-water | 0.0074 | 1,759 | 13 |
| | | deep-water | 0.0014 | 1,759 | 2 |
| 5 | October 1–December 31 | shallow-water | 0.0227 | 1,759 | 40 |
| | | deep-water | 0.0371 | 1,759 | 65 |

**Directed Fishing Closures**

Pursuant to § 679.20(d)(1)(i), if the Regional Administrator determines (1) that any allocation or apportionment of a target species or species group allocated or apportioned to a fishery will be reached; or (2) with respect to pollock and Pacific cod, that an allocation or apportionment to an inshore or offshore component or sector allocation will be reached, the Regional Administrator may establish a directed fishing allowance (DFA) for that species or species group. If the Regional Administrator establishes a DFA and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified GOA regulatory area or district (§ 679.20(d)(1)(iii)).

The Regional Administrator has determined that the TACs for the species listed in Table 36 are necessary to account for the incidental catch of these species in other anticipated groundfish fisheries for the 2014 and 2015 fishing years.

TABLE 36—2014 AND 2015 DIRECTED FISHING CLOSURES IN THE GOA

[Amounts for incidental catch in other directed fisheries are in metric tons]

| Target | Area/component/gear | Incidental catch amount |
|---|---|---|
| Pollock | all/offshore | [1]not applicable |
| Sablefish [2] | all/trawl | 1,453 (2014)<br>1,313 (2015) |
| Pacific cod | Western, catcher/processor, trawl | 536 (2014)<br>510 (2015) |

TABLE 36—2014 AND 2015 DIRECTED FISHING CLOSURES IN THE GOA—Continued

[Amounts for incidental catch in other directed fisheries are in metric tons]

| Target | Area/component/gear | Incidental catch amount |
|---|---|---|
| Shortraker rockfish [2] | all | 1,323 |
| Other rockfish | all | 1,811 |
| Rougheye rockfish [2] | all | 1,244 (2014)<br>1,262 (2015) |
| Thornyhead rockfish | all | 1,841 |
| Atka mackerel | all | 2,000 |
| Big skate | all | 3,762 |
| Longnose skate | all | 2,876 |
| Other skates | all | 1,989 |
| Sharks | all | 5,989 |
| Squids | all | 1,148 |
| Octopuses | all | 1,507 |

[1] Pollock is closed to directed fishing in the GOA by the offshore component under § 679.20(a)(6)(i).
[2] Closures not applicable to participants in cooperatives conducted under the Central GOA Rockfish Program.

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the DFA for the species or species groups listed in Table 36 as zero mt. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for those species, areas, gear types, and components in the GOA listed in Table 36. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 2015.

Section 679.64(b)(5) provides for management of AFA CV groundfish harvest limits and PSC bycatch limits using directed fishing closures and PSC closures according to procedures set out at §§ 679.20(d)(1)(iv), 679.21(d)(8), and 679.21(e)(3)(v). The Regional Administrator has determined that, in addition to the closures listed above, many of the non-exempt AFA CV sideboard limits listed in Tables 22 and 23 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2014 and 2015 fishing years. In accordance with § 679.20(d)(1)(iv), the Regional Administrator sets the DFAs for the species and species groups in Table 37 at zero mt. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by non-exempt AFA CVs in the GOA for the species and specified areas listed in Table 37. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 2015.

TABLE 37—2014 AND 2015 NON-EXEMPT AFA CV SIDEBOARD DIRECTED FISHING CLOSURES FOR ALL GEAR TYPES IN THE GOA

[Amounts for incidental catch in other directed fisheries are in metric tons]

| Species | Regulatory area/district | Incidental catch amount |
|---|---|---|
| Pacific cod | Eastern | 14 (inshore) and 2 (offshore) in 2014.<br>13 (inshore) and 1 (offshore) in 2015. |
| Shallow-water flatfish | Eastern | 33 in 2014, 30 in 2015. |
| Deep-water flatfish | Western | 0. |
| Rex sole | Eastern and Western | 5 and 1. |
| Arrowtooth flounder | Eastern and Western | 3 and 30. |
| Flathead sole | Eastern and Western | 3 and 31. |
| Pacific ocean perch | Western | 6. |
| Northern rockfish | Western | 0. |
| Dusky rockfish | Entire GOA | 11 in 2014, 10 in 2015. |
| Demersal shelf rockfish | SEO District | 1. |
| Sculpins | Entire GOA | 35. |
| Squids | Entire GOA | 7. |

Section 680.22 provides for the management of non-AFA crab vessel sideboards using directed fishing closures in accordance with § 680.22(e)(2) and (3). The Regional Administrator has determined that the non-AFA crab vessel sideboards listed in Tables 26 and 27 are insufficient to support a directed fishery and has set the sideboard DFA at zero mt, with the exception of Pacific cod pot CV sector apportionments in the Western and Central Regulatory Areas. Therefore, NMFS is prohibiting directed fishing by non-AFA crab vessels in the GOA for all species and species groups listed in Tables 26 and 27, with the exception of the Pacific cod pot CV sector apportionments in the Western and Central Regulatory Areas.

Closures implemented under the 2013 and 2014 GOA harvest specifications for groundfish (78 FR 13162, February 26, 2013) remain effective under authority of these final 2014 and 2015 harvest specifications, and are posted at the following Web site: *http://www.alaskafisheries.noaa.gov/cm/info_bulletins/*. While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679. NMFS may implement other closures during

the 2014 and 2015 fishing years as necessary for effective conservation and management.

**Comments and Response**

NMFS did not receive any comments in response to the proposed 2014 and 2015 harvest specifications (78 FR 74079, December 10, 2013).

**Classification**

NMFS has determined that these final harvest specifications are consistent with the FMP and with the Magnuson-Stevens Act and other applicable laws.

This action is authorized under 50 CFR 679.20 and is exempt from review under

**Executive Orders 12866 and 13563**

NMFS prepared an EIS for this action (see **ADDRESSES**) and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision (ROD) for the EIS. In January 2014, NMFS prepared a Supplemental Information Report (SIR) for this action. Copies of the EIS, ROD, and SIR for this action are available from NMFS (see **ADDRESSES**). The EIS analyzes the environmental consequences of the groundfish harvest specifications and alternative harvest strategies on resources in the action area. The EIS found no significant environmental consequences of this action and its alternatives. The preferred alternative is a harvest strategy in which TACs are set at a level that falls within the range of ABCs recommended by the Council's SSC; the sum of the TACs must achieve the OY specified in the FMP. The SIR evaluates the need to prepare a Supplemental EIS (SEIS) for the 2014 and 2015 groundfish harvest specifications.

An SEIS should be prepared if (1) the agency makes substantial changes in the proposed action that are relevant to environmental concerns, or (2) significant new circumstances or information exist relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)(1)). After reviewing the information contained in the SIR and SAFE reports, the Regional Administrator has determined that (1) approval of the 2014 and 2015 harvest specifications, which were set according to the preferred harvest strategy in the EIS, do not constitute a change in the action; and (2) there are no significant new circumstances or information relevant to environmental concerns and bearing on the action or its impacts. Additionally, the 2014 and 2015 harvest specifications will result in environmental impacts within the scope of those analyzed and disclosed in the EIS. Therefore, supplemental National Environmental Policy Act documentation is not necessary to implement the 2014 and 2015 harvest specifications.

Pursuant to section 604 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* a FRFA was prepared for this action. The FRFA incorporates information contained in the Initial Regulatory Flexibility Analysis (IRFA), and includes a summary of the significant issues raised by public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action.

A copy of the FRFA prepared for this final rule is available from NMFS (see **ADDRESSES**). A description of this action, its purpose, and its legal basis are contained at the beginning of the preamble to this final rule and are not repeated here.

NMFS published the proposed rule on December 10, 2013 (78 FR 74079). NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) to accompany this action, and included a summary in the proposed rule. The comment period closed on January 9, 2014. No comments were received on the IRFA or the economic impacts of the rule more generally.

The entities directly regulated by this action are those that receive allocations of groundfish in the EEZ of the GOA, and in parallel fisheries within State of Alaska waters, during the annual harvest specifications process. These directly regulated entities include the groundfish CVs and C/Ps active in these areas. Direct allocations of groundfish are also made to Central GOA Rockfish Program cooperatives. These entities are, therefore, also considered to be directly regulated.

In 2012, there were 1,424 individual catcher vessels with gross revenues meeting small entity criteria. These criteria, established by the Small Business Administration, include a business involved in finfish or shellfish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of $19.0 million for all its affiliated operations worldwide in the case of a finfish business, and $5.0 million in the case of a shellfish business. Some of these vessels are members of AFA inshore pollock cooperatives, of GOA rockfish cooperatives, or of BSAI crab rationalization cooperatives and, therefore, under the Regulatory Flexibility Act (RFA) it is the aggregate gross receipts of all participating members of the cooperative that must meet the threshold. Vessels that participate in these cooperatives are considered to be large entities within the meaning of the RFA. After accounting for membership in these cooperatives, there are an estimated 1,378 small catcher vessel entities remaining in the GOA groundfish sector. Additionally, in 2012 there were 32 catcher/processors meeting small entity criteria. After taking account of relevant cooperative affiliations, there were seven. The average gross revenue for these seven small catcher/processor entities was $1.6 million.

This action does not modify recordkeeping or reporting requirements.

NMFS considered other, alternative harvest strategies when choosing the preferred harvest strategy (Alternative 2) in December 2006. These included the following:

- Alternative 1: Set TACs to produce fishing mortality rates, F, that are equal to maxFABC, unless the sum of the TACs is constrained by the OY established in the FMPs. This is equivalent to setting TACs to produce harvest levels equal to the maximum permissible ABCs, as constrained by OY. The term ''maxFABC'' refers to the maximum permissible value of FABC under Amendment 56 to the groundfish FMPs. Historically, the TAC has been set at or below the ABC, therefore, this alternative represents a likely upper limit for setting the TAC within the OY and ABC limits.
- Alternative 3: For species in Tiers 1, 2, and 3, set TAC to produce F equal to the most recent 5-year average actual F. For species in Tiers 4, 5, and 6, set TAC equal to the most recent 5-year average actual catch. For stocks with a high level of scientific information, TACs would be set to produce harvest levels equal to the most recent 5-year average actual fishing mortality rates. For stocks with insufficient scientific information, TACs would be set equal to the most recent 5-year average actual catch. This alternative recognizes that for some stocks, catches may fall well below ABCs, and recent average F may provide a better indicator of actual F than FABC does.
- Alternative 4: (1) Set TACs for rockfish species in Tier 3 at F75%. Set TACs for rockfish species in Tier 5 at F=0.5M. Set spatially explicit TACs for shortraker and rougheye rockfish in the GOA. (2) Taking the rockfish TACs as calculated above, reduce all other TACs by a proportion that does not vary across species, so that the sum of all TACs, including rockfish TACs, is equal

to the lower bound of the area OY (116,000 mt in the GOA). This alternative sets conservative and spatially explicit TACs for rockfish species that are long-lived and late to mature and sets conservative TACs for the other groundfish species.

• Alternative 5: (No Action) Set TACs at zero.

These four alternatives do not meet the objectives of this action although they have a smaller adverse economic impact on small entities than the preferred alternative. The Council rejected these alternatives as harvest strategies in 2006, and the Secretary did so in 2007.

Alternative 1 selected harvest rates that will allow fishermen to harvest stocks at the level of ABCs, unless total harvests are constrained by the upper bound of the GOA OY of 800,000 metric tons. The sums of ABCs in 2014 and 2015 are 640,675 mt and 644,165 mt, respectively. The sums of the TACs in 2014 and 2015 are 499,274 mt and 511,599 mt, respectively. Thus, although the sum of ABCs in each year is less than 800,000 metric tons, the sums of the TACs in each year are less than the sums of the ABCs.

In most cases, the Council has set TACs equal to ABCs. The divergence between aggregate TACs and aggregate ABCs reflects a variety of special species- and fishery-specific circumstances:

• Pacific cod TACs are set equal to 70 percent in the Western GOA and 75 percent in the Central GOA of the Pacific cod ABCs in each year to account for the guideline harvest levels (GHL) set by the State of Alaska for its GHL Pacific cod fisheries (30 and 25 percent, respectively, of the Western and Central GOA ABCs). Thus, the difference between the Federal TACs and ABCs does not actually reflect a Pacific cod harvest below the Pacific cod ABC, as the balance is available for the State's cod GHL fisheries.

• Shallow-water flatfish and flathead sole TACs are set below ABCs in the Western and Central GOA regulatory areas. Arrowtooth flounder TACs are set below ABC in all GOA regulatory areas. Catches of these flatfish species rarely, if ever, approach the proposed ABCs or TACs. Important trawl fisheries in the GOA take halibut PSC, and are constrained by limits on the allowable halibut PSC mortality. These limits routinely force the closure of trawl fisheries before they have harvested the available groundfish ABC. Thus, actual harvests of groundfish in the GOA routinely fall short of some ABCs and TACs. Markets can also constrain harvests below the TACs, as has been the case with arrowtooth flounder, in the past. These TACs are set to allow for increased harvest opportunities for these targets while conserving the halibut PSC limit for use in other, more fully utilized, fisheries.

• The other rockfish TAC is set below the ABC in the Southeast Outside district based on several factors. In addition to conservation concerns for the rockfish species in this group, there is a regulatory prohibition against using trawl gear east of 140° W. longitude. Because most species of other rockfish are caught exclusively with trawl gear, the catch of such species with other gear types, such as hook-and-line, is low. The commercial catch of other rockfish in the Eastern regulatory area, which includes the West Yakutat and Southeast Outside districts, has ranged from approximately 70 mt to 248 mt per year over the last decade.

• The GOA-wide Atka mackerel TAC is set below the ABC. The estimates of survey biomass continue to be unreliable in the GOA. Therefore, the Council recommended and NMFS agrees that the Atka mackerel TAC in the GOA be set at an amount to support incidental catch in other directed fisheries.

Alternative 3 selects harvest rates based on the most recent 5 years of harvest rates (for species in Tiers 1 through 3) or for the most recent 5 years of harvests (for species in Tiers 4 through 6). This alternative is inconsistent with the objectives of this action, because it does not take account of the most recent biological information for this fishery.

Alternative 4 would lead to significantly lower harvests of all species to reduce TACs from the upper end of the OY range in the GOA to its lower end of 116,000 mt. Overall, this would reduce 2014 TACs by about 77 percent. This would lead to significant reductions in harvests of species by small entities. While production declines in the GOA would undoubtedly be associated with price increases in the GOA, these increases would still be constrained by the availability of substitutes, and are very unlikely to offset revenue declines from smaller production. Thus, this action would have a detrimental economic impact on small entities.

Alternative 5, which sets all harvests equal to zero, may also address conservation issues, but would have a significant adverse economic impact on small entities.

Impacts on marine mammals resulting from fishing activities conducted under this rule are discussed in the EIS and SIR (see **ADDRESSES**).

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in effectiveness for this rule because delaying this rule would be contrary to the public interest. The Plan Team review occurred in November 2013, and Council consideration and recommendations occurred in December 2013. Accordingly, NMFS' review could not begin until January 2014. For all fisheries not currently closed because the TACs established under the final 2013 and 2014 harvest specifications (78 FR 13162, February 26, 2013) were not reached, it is possible that they would be closed prior to the expiration of a 30-day delayed effectiveness period, because their TACs could be reached within that period. If implemented immediately, this rule would allow these fisheries to continue because the new TACs implemented by this rule are higher than the ones under which they are currently fishing.

Certain fisheries, such as those for pollock and Pacific cod, are intensive, fast-paced fisheries. Other fisheries, such as those for sablefish, flatfish, rockfish, Atka mackerel, skates, sculpins, sharks, squids, and octopuses, are critical as directed fisheries and as incidental catch in other fisheries. U.S. fishing vessels have demonstrated the capacity to catch the TAC allocations in many of these fisheries. If this rule allowed for a 30-day delay in effectiveness and if a TAC were reached during those 30 days, NMFS would close directed fishing or prohibit retention for the applicable species. Any delay in allocating the final TACs in these fisheries would cause confusion to the industry and potential economic harm through unnecessary discards, thus undermining the intent of the rule. Waiving the 30-day delay allows NMFS to prevent economic loss to fishermen that could otherwise occur should the 2014 TACs be reached. Determining which fisheries may close is impossible because these fisheries are affected by several factors that cannot be predicted in advance, including fishing effort, weather, movement of fishery stocks, and market price. Furthermore, the closure of one fishery has a cascading effect on other fisheries by freeing-up fishing vessels, allowing them to move from closed fisheries to open ones, increasing the fishing capacity in those open fisheries, and causing them to close at an accelerated pace.

In fisheries subject to declining sideboard limits, a failure to implement the updated sideboard limits before initial season's end could deny the intended economic protection to the non-sideboarded sectors. Conversely, in

fisheries with increasing sideboard limits, economic benefit could be denied to the sideboard limited sectors.

If the final harvest specifications are not effective by March 8, 2014, which is the start of the 2014 Pacific halibut season as specified by the IPHC, the hook-and-line sablefish fishery will not begin concurrently with the Pacific halibut IFQ season. This would result in confusion for the industry and economic harm from unnecessary discard of sablefish that are caught along with Pacific halibut, as both hook-and-line sablefish and Pacific halibut are managed under the same IFQ program. Immediate effectiveness of the final 2014 and 2015 harvest specifications will allow the sablefish IFQ fishery to begin concurrently with the Pacific halibut IFQ season.

In addition, the immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources based on the best available scientific information. This is particularly true for those species that have lower 2014 ABCs and TACs than those established in the 2013 and 2014 harvest specifications (78 FR 13162, February 26, 2013). Immediate effectiveness also would give the fishing industry the earliest possible opportunity to plan and conduct its fishing operations with respect to new information about TACs. Therefore, NMFS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3).

## Small Entity Compliance Guide

The following information is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary purpose is to announce the final 2014 and 2015 harvest specifications and prohibited species bycatch allowances for the groundfish fisheries of the GOA. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2014 and 2015 fishing years, and to accomplish the goals and objectives of the FMP. This action affects all fishermen who participate in the GOA fisheries. The specific amounts of OFL, ABC, TAC, and PSC are provided in tables to assist the reader. NMFS will announce closures of directed fishing in the **Federal Register** and information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

**Authority:** 16 U.S.C. 773 *et seq.;* 16 U.S.C. 1540 (f), 1801 *et seq.;* 16 U.S.C. 3631 *et seq.;* Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 109–241; Pub. L 109–479.

Dated: February 28, 2014.

**Paul N. Doremus,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. 2014–04886 Filed 3–5–14; 8:45 am]

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