litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The rule does not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule does not have tribal implications warranting the application of Executive Order 13175. This rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Unfunded Mandates Reform Act of 1995

The DEA has determined and certifies pursuant to the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.,* that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year * * * .'' Therefore, neither a Small Government Agency Plan nor any other action is required under the provisions of the UMRA.

Paperwork Reduction Act of 1995

This rule does not impose a new collection of information requirement under the Paperwork Reduction Act, 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act (CRA)). This rule will not result in: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. However, pursuant to the CRA, the DEA has submitted a copy of this interim final rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. In § 1308.22, remove the product listed in the table for the company, ''Vicks Chemical Co'' and Trade name, ''Vicks Inhaler,'' and add to the table, in alphabetical order, the product listed below:

§ 1308.22 Excluded substances.

* * * * *

EXCLUDED NONNARCOTIC PRODUCTS

Company	Trade name	NDC code	Form	Controlled substance	(mg or mg/ml)
* *	*	*	*	*	*
Proctor & Gamble Co., The	Vicks VapoInhaler	37000–686–01	IN	Levmetamfetamine (*l*-Desoxyephedrine).	50.00
* *	*	*	*	*	*

Dated: October 20, 2015.

Louis J. Milione,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 2015–27266 Filed 10–26–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9741]

RIN 1545–BB23; 1545–BC07; 1545–BH48

General Allocation and Accounting Regulations Under Section 141; Remedial Actions for Tax-Exempt Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on allocation and accounting, and certain remedial actions, for purposes of the private activity bond restrictions under section 141 of the Internal Revenue Code that apply to tax-exempt bonds issued by State and local governments. The final regulations provide State and local governmental issuers of tax-exempt bonds with guidance for applying the private activity bond restrictions.

DATES: *Effective Date:* These regulations are effective on October 27, 2015.

Applicability Date: For dates of applicability, see § 1.141–15.

FOR FURTHER INFORMATION CONTACT: Johanna Som de Cerff or Zoran Stojanovic, (202) 317–6980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1451. The collection of information in these final regulations is in § 1.141–12(d)(3), which requires an issuer to make a declaration of official intent to remediate bonds. This collection of information is necessary for an issuer's redemption or defeasance of bonds to be treated as a remedial action under § 1.141–12 to preserve the tax-exempt status of the bonds. This collection of information is an increase in the total annual burden under control number 1545–1451. The respondents are State and local government issuers of tax-exempt bonds.

Estimated total annual reporting burden is 30,250 hours.

Estimated average annual burden per respondent is 3 hours.

Estimated number of respondents is 10,100.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by section 6103.

Background

In general, interest on State and local governmental bonds is excludable from gross income under section 103 upon satisfaction of certain requirements. Interest on a private activity bond, other than a qualified private activity bond within the meaning of section 141, is not excludable under section 103. Section 141 provides certain tests that are used to determine whether a State or local bond is a private activity bond. These tests include the private business use test and the private security or payment test in section 141(b), and the private loan financing test in section 141(c). Section 145 provides similar tests that apply in modified form to qualified 501(c)(3) bonds.

Final regulations (TD 8712) under section 141 were published in the **Federal Register** on January 16, 1997 (62 FR 2275) (the 1997 Final Regulations), to provide comprehensive guidance on most aspects of the private activity bond restrictions. The 1997 Final Regulations, however, reserved most of the general allocation and accounting rules for purposes of section 141. An advance notice of proposed rulemaking (REG–142599–02) was published in the **Federal Register** on September 23, 2002 (67 FR 59767), regarding allocation and accounting rules for tax-exempt bond proceeds used to finance mixed-use output facilities. A notice of proposed rulemaking and notice of public hearing (REG–140379–02; REG–142599–02) was published in the **Federal Register** on September 26, 2006 (71 FR 56072), regarding allocation and accounting rules for tax-exempt bond proceeds, including special rules for mixed-use projects, and rules regarding the treatment of partnerships for purposes of section 141 (the Proposed Allocation Regulations). The Proposed Allocation Regulations also included amendments to regulations under section 145 on related matters that apply to qualified 501(c)(3) bonds. A public hearing was held on January 11, 2007. This document amends the Income Tax Regulations under sections 141 and 145 by adopting final rules on these topics. Certain provisions of the Proposed Allocation Regulations are not being finalized and are withdrawn. A partial withdrawal of notice of proposed rulemaking is published elsewhere in this edition of the **Federal Register**.

A notice of proposed rulemaking and notice of public hearing (REG–132483–03) was published in the **Federal Register** on July 21, 2003 (68 FR 43059), regarding the amount and allocation of nonqualified bonds for purposes of certain remedial actions under sections 141 and 142 (the Proposed Remedial Action Regulations). The public hearing was cancelled because no requests to speak were received. Final regulations (TD 9150) were published in the **Federal Register** on August 13, 2004 (69 FR 50065), adopting the portions of the Proposed Remedial Action Regulations relating to section 142. Because of the interrelationship between the remedial action provisions under section 141 and the allocation and accounting rules, the portions relating to section 141 were not finalized at that time. This document adopts final rules regarding the amount and allocation of nonqualified bonds for purposes of the remedial action provisions under section 141. We refer to the Proposed Remedial Action Regulations and the Proposed Allocation Regulations collectively as the Proposed Regulations.

Explanation and Summary of Comments

I. Introduction

After consideration of the public comments, the Treasury Department and the IRS adopt the Proposed Regulations, with revisions, as final regulations (the Final Regulations). This section discusses significant aspects of the public comments and the revisions made in the Final Regulations.

II. General Allocation Rules

The Proposed Regulations provided several allocation rules. Among these were rules regarding the allocation of proceeds of an issue of bonds that are obligations of a state or political subdivision under section 103(c)(1) (see § 1.150–1(b)) (proceeds) and all other sources of funds (other funds) to expenditures, to the project, and to the uses of the project (that is, governmental use or private business use). The Proposed Regulations provided that proceeds and other funds generally may be allocated to expenditures using any reasonable, consistently applied accounting method, and that the allocation of proceeds and other funds to expenditures must be consistent with the allocation of proceeds and other funds for purposes of the arbitrage investment restrictions under section 148.

Commenters expressed concern that the consistency requirement was in conflict with the allowance of more than one method for allocating proceeds and other funds to projects. Commenters further questioned whether allocations of proceeds to expenditures were necessary other than for purposes of the arbitrage investment restrictions. The Final Regulations clarify that the issuer's allocation of proceeds to expenditures for purposes of the arbitrage investment restrictions also apply to expenditures for purposes of the private activity bond tests.

The Proposed Regulations provided generally that proceeds and other funds allocated to capital expenditures for a capital project are treated as allocated ratably throughout the project in proportion to the relative amounts of proceeds and other funds spent on that project. The Proposed Regulations further provided that generally proceeds and other funds are allocated to both governmental use and private business use of the project in proportion to the relative amounts of each source of funding spent on the project. The Final Regulations adopt these general pro rata allocation rules as proposed.

The Proposed Regulations defined a project to include functionally related or

integrated facilities located on the same site, or on geographically proximate sites, that are reasonably expected to be placed in service within the same 12-month period. The Proposed Regulations provided certain special rules for the treatment of subsequent improvements to, and replacements of, a project. These proposed special rules treated subsequent improvements and replacements made more than 12 months after the original project was placed in service as part of the same project if the improvements and replacements were within the size, function, and usable space or the original design of the project.

Commenters expressed various concerns about the definition of project in the Proposed Regulations. Some commenters were concerned that the narrow definition of project, which includes only geographically proximate facilities placed in service within a short period, is inconsistent with the private activity bond tests generally, which apply to all facilities financed by the proceeds of a single issue of bonds. Commenters also questioned how the definition of project would apply in the context of a capital improvement program financed by the proceeds of a single issue of bonds that involves multiple facilities in different locations (for example, different school buildings within a district) placed in service over more than 12 months. Conversely, other commenters expressed concern that the definition of project is so broad that it would allow properties that have different owners, types of ownership interests, or types of financing (that is, are financed from different sources) to be considered a single project.

Commenters inferred that the treatment of subsequent improvements meant that the funds, which could include proceeds and equity, for the original project and the subsequent improvements would be allocated throughout the original project and the subsequent improvements, possibly subjecting assets financed solely with equity to the private activity bond restrictions. They expressed concerns that the special allocation rules for mixed-use projects (discussed in section III. in this preamble) would be unavailable for these improvements due to the timing requirement applicable to the election.

The Final Regulations simplify the definition of project to cover all facilities or capital projects financed in whole or in part with proceeds of a single issue of bonds. This definition permits an issuer in its bond documents to identify as a single project all of the properties to be financed by proceeds of a single bond issue. Under this rule, issuers may identify specific properties or portions of properties regardless of the properties' locations or placed-in-service dates. This approach to the definition of project comports with the application of the private activity bond tests generally, which apply at the issue level. The Final Regulations also clarify through the examples that improvements financed with a later issue are a separate project.

Commenters requested clarification that, consistent with longstanding practice, each undivided ownership interest in an output facility be treated separately for purposes of applying the allocation rules. The Final Regulations provide this clarification.

Commenters also recommended extending the separate facility treatment for output facilities under the Proposed Regulations to other types of facilities. The Final Regulations do not adopt this recommendation because the use of output facilities is measured differently from the use of other facilities. The use of an output facility generally is measured in the amount of output purchased as a percentage of the facility's total available output. The amount of use by each user reflects the proportionate benefit of the available output to such user. Uses of other types of facilities are measured in various ways depending on how that use occurs (for example, in different discrete portions, at different times, or simultaneously) and may reflect simultaneous use by more than one user on a different, rather than proportionate, basis. Even without separate facility treatment, however, issuers may use proceeds to finance the governmental use portion of an eligible mixed-use project.

III. Special Allocation Rules for Eligible Mixed-Use Projects

A. In General

The Proposed Regulations provided special elective allocation rules for mixed-use projects. In general, these special rules gave effect to congressional intent to permit funding of mixed-use projects in part with tax-exempt bonds and in part with other funds using reasonable, proportionate allocation methods that reflect proportionate benefits to the various users. *See* H.R. Rep. No. 99–426, at 538 (1985). The Proposed Regulations defined a mixed-use project as a project that is reasonably expected to be used for more than the de minimis amount (generally 10 percent) of private business use permitted under the private activity bond tests (de minimis permitted private business use). The Proposed Regulations provided two alternative elective allocation methods for a mixed-use project, the discrete physical portion allocation method (discrete portion method) and the undivided portion allocation method. The Proposed Regulations required the issuer to make a timely, written election, including preliminary and final allocations of proceeds and other funds, to use one of these alternative methods.

The discrete portion method allowed for dividing a mixed-use project into physically discrete portions and allocating the different sources of funds to the various discrete portions using a reasonable, consistently applied method that reflects the proportionate benefit to be derived by the various users of the project. The discrete portion method had a number of limitations, including the physical constraints of a discrete portion under the proposed project definition, limitations on measurement of a discrete portion, limitations associated with the fair market value of a discrete portion, and comparability conditions on reallocations of discrete portions within a project.

Under the undivided portion allocation method, projects were divided into governmental use and private business use portions on a notional, rather than physical, basis with tax-exempt proceeds allocated to the governmental use portion and the other funds allocated to the private business use portion. The availability of the proposed undivided portion allocation method was limited to circumstances in which the issuer reasonably expected that governmental use and private business use of the project would occur simultaneously on the same basis, or at different times.

Commenters criticized the complexity of the Proposed Regulations' two special allocation methods and the administrative burdens associated with the election requirement for mixed-use allocations. Commenters also criticized the discrete portion method's overly rigid treatment of reallocations or ''floating'' allocations. To simplify these rules, commenters recommended expanding the availability of the undivided portion allocation method to include all measureable use, adopting the undivided portion allocation method as the general rule for allocating proceeds and other sources to the uses of a mixed-use project, and eliminating the discrete portion method.

The Final Regulations adopt the recommendation to expand the availability of the undivided portion allocation method to include all

measureable use and to make the undivided portion allocation method the exclusive allocation method for eligible mixed-use projects. Consistent with this change, the Final Regulations eliminate the discrete portion method and the election requirement. The Treasury Department and the IRS believe that the expanded version of the undivided portion allocation method in the Final Regulations generally will be simpler and more administrable than the two proposed allocation methods and will cover all circumstances otherwise covered by the discrete portion method under the Proposed Regulations. For example, unlike the proposed discrete portion method, which had significant constraints on ''floating'' allocations for administrability reasons, the undivided portion allocation method in the Final Regulations inherently allows floating allocations without further action or special tracking in that it involves allocations for an entire mixed-use project. Section III.B. in this preamble further discusses the undivided portion allocation method under the Final Regulations.

Under the Final Regulations, the undivided portion allocation method is available for ''eligible mixed use projects.'' The Final Regulations define an ''eligible mixed-use project'' as a project that is financed with proceeds of bonds that purport to be governmental bonds when issued and qualified equity (discussed under *Definition of qualified equity* in section III.C. in this preamble) pursuant to the same plan of financing (discussed under *Same plan of financing* in section III.D. in this preamble). Further, to qualify, the project must be wholly owned by one or more governmental persons or by a partnership in which at least one governmental person is a partner. (See discussion under *Partnerships* in section IV. in this preamble.)

B. Allocations to Uses of a Project

Under the Proposed Regulations, the undivided portion allocation method limited the targeting of qualified equity to private business use of the project to that percentage of the private business use equal to the percentage of capital expenditures of the project financed by the qualified equity, and similarly limited the targeting of proceeds to government use of the project to that percentage of the government use equal to the percentage of capital expenditures of the project financed by the proceeds. For projects other than output facilities, these limits applied to each one-year period of the measurement period. Commenters requested that unused qualified equity be carried over from one year to another or, in lieu of a carryover provision, revising the limit from an annual limit to one spanning the entire measurement period.

The Final Regulations do not adopt these recommendations. The general private business measurement rules, in contrast to those for use arising from output contracts, require a determination of the private business use of the proceeds on an annual basis as a preliminary step to determining the average private business use of the proceeds during the measurement period. When the amount of private business use of the project in any one-year period is less than the percentage of qualified equity, that qualified equity is not unused but, as the Final Regulations clarify, is allocated to governmental use of the project that is in excess of the percentage of proceeds. To allow carryover of private business use of the proceeds or in an amount determined solely over the measurement period would require revision of the measurement rules plus additional rules to prevent potentially abusive situations, thereby increasing complexity. The Final Regulations do, however, clarify that the annual limit only applies to use measured under the general measurement rules and not to use arising from output contracts.

C. Definition of Qualified Equity

The Proposed Regulations defined qualified equity to mean proceeds of taxable bonds and funds not derived from a borrowing that are spent on the same project as proceeds of the purported governmental bonds to which the private activity bond tests will be applied (the applicable bonds). The Proposed Regulations further provided that qualified equity does not include equity interests in real property or tangible personal property. Commenters suggested expanding the definition of qualified equity to include the value of contributed property not purchased with proceeds of tax-advantaged bonds, arguing that this contribution should be treated as the equivalent of cash. Commenters also suggested that qualified equity include funds used to redeem bonds.

The Final Regulations adopt the proposed definition of qualified equity, with modifications. In recognition of the advent of expanded types of bonds that provide a Federal tax benefit (a tax-advantaged bond), which include, for example, a qualified tax credit bond under section 54A on which the interest on the bond is taxable, the Final Regulations clarify that ''taxable bonds'' that give rise to qualified equity exclude any tax-advantaged bond. The Final Regulations do not adopt the suggestion to include contributions of existing property as qualified equity for a project because that treatment would raise difficult issues of valuation and administrability and would be inconsistent with the rules governing allocations of proceeds of reimbursement bonds.

The Final Regulations do not adopt the comment recommending that amounts (other than proceeds) used to redeem bonds be treated as qualified equity because permitting increased private business use for the redemption of bonds in the ordinary course would be inconsistent with the private activity bond restrictions on the issue of bonds being redeemed. The 1997 Final Regulations already address the use of funds to redeem bonds under certain conditions in which bond redemptions serve as a remedial action to cure violations of the private business use restrictions. Further, as discussed under *Anticipatory redemptions* in section V.A. in this preamble, the Final Regulations add a new remedial action provision permitting early redemption in anticipation of increased private business use.

D. Same Plan of Financing

The definition of ''project'' in the Proposed Regulations required spending the proceeds and other sources on the properties pursuant to the same plan of financing. Commenters requested clarification of the meaning of the same plan of financing. The Final Regulations clarify that ''same plan of financing'' has the same meaning as in § 1.150–1(c)(1)(ii) and that qualified equity is spent under the same plan of financing as proceeds of the applicable bonds if the qualified equity is spent on capital expenditures of the project no earlier than the earliest date on which the expenditure would be eligible for reimbursement were the bonds from which the proceeds are derived issued as reimbursement bonds and no later than the date that is the beginning of the measurement period for the project (other than amounts retained for reasonable purposes relating to the project as defined under the arbitrage investment restrictions).

E. Allocation of Proceeds of Multiple Issues

The Proposed Regulations provided that if proceeds of more than one issue are allocated to capital expenditures of a mixed-use project to which the issuer elects to apply the discrete physical portion or undivided portion allocation method, then proceeds of those issues

are allocated ratably to a discrete portion or undivided portion to which any proceeds are allocated in proportion to their relative shares of the total proceeds of such issues used for the project (the multiple issue rule). Commenters suggested eliminating this rule to permit issuers to allocate proceeds of the different issues financing a project to take maximum advantage of the overall private business use permitted, such as disproportionately allocating proceeds of a larger issue or a general obligation issue (that is, one paid from generally applicable taxes, for which private business use may be 100 percent because the private security or payment test will not be met) to private business use.

The Treasury Department and the IRS are concerned that a non-pro rata method of allocating proceeds of more than one issue to the uses of a project could not only lead to more private business use than when proceeds of a single issue are allocated, but would also be difficult to administer. Furthermore, this approach also would be inconsistent with the general allocation rule that allocates proceeds of two issues on a proportionate basis to the uses of a project that is not an eligible mixed-use project.

Commenters also suggested that the proposed multiple issue rule would create a barrier to tax-exempt financing of projects, such as airports, that traditionally have been financed with a combination of tax-exempt governmental bonds and qualified private activity bonds to reflect the governmental and qualified private business use occurring, respectively, in different discrete portions of a project, as neither type of bond would meet the criteria for tax-exempt status if the proceeds of both types were allocated to the same portions. The Treasury Department and the IRS recognize that certain projects contain portions that, if treated as separate facilities, would be eligible for financing with different types of tax-exempt bonds. The Final Regulations remove this barrier to tax-exempt financing of projects through the definition of ''project,'' which allows each issuer to identify the different projects financed by its separate issues of governmental bonds and qualified private activity bonds.

IV. Partnerships

The Proposed Regulations generally treated a partnership as an entity that is a nongovernmental person for purposes of the private activity bond tests. However, if all of the partners in a partnership were governmental persons, the Proposed Regulations provided a limited exception that would treat the partnership as an aggregate of its partners (that is, as governmental persons) for these purposes. The preamble to the Proposed Regulations specifically requested comments on the usefulness of aggregate treatment for a partnership of governmental persons (or 501(c)(3) organizations for qualified 501(c)(3) bonds) and private businesses. The preamble to the Proposed Regulations further indicated that the Treasury Department and the IRS were considering aggregate treatment in at least the limited circumstance of partnerships involving a constant percentage (''straight up'') allocation of all partnership items. Commenters were in favor of aggregate treatment for such partnerships.

In recognition of the development of various financing and management structures for government (or 501(c)(3) organization) facilities that involve the participation of private businesses, to provide flexibility to accommodate public-private partnerships, and to remove barriers to tax-exempt financing of the government's (or 501(c)(3) organization's) portion of the benefit of property used in joint ventures, the Final Regulations provide aggregate treatment for all partnerships. The Final Regulations further provide a rule for measuring the private business use of financed property resulting from the use of the property by a partnership that includes a partner that is a nongovernmental person. The amount of such use is the nongovernmental partner's share of the amount of the use of the property by the partnership, with such share defined as the nongovernmental partner's greatest percentage share of any of the specified partnership items attributable to the time during the measurement period that the partnership uses the property. The Final Regulations also provide that an issuer may determine the nongovernmental partner's share under guidance published in the Internal Revenue Bulletin.

The definition of qualified 501(c)(3) bonds under section 145(a) includes the private activity bond tests (with certain modifications) and an ownership test under which the property financed with qualified 501(c)(3) bonds must be owned by a 501(c)(3) organization or a governmental unit. In applying the private activity bond tests for purposes of qualified 501(c)(3) bonds, the Proposed Regulations treated a partnership as an aggregate if each of the partners was either a governmental person or a 501(c)(3) organization. The Proposed Regulations, however, did not apply such aggregate treatment for purposes of the ownership test. Commenters recommended applying aggregate treatment to partnerships for purposes of the ownership test, seeing no reason to distinguish between ownership for purposes of the ownership test and for purposes of the private activity bond tests, which also look to ownership of the financed property. The Final Regulations adopt this comment.

V. Remedial Actions

A. Anticipatory Redemptions

The Proposed Allocation Regulations permitted proceeds of taxable bonds and funds not derived from borrowing that are used to retire tax-exempt governmental bonds to be treated as qualified equity under certain circumstances. This allows targeting of funds other than tax-exempt bond proceeds to finance portions of projects that are expected to be used for private business use in the future. The intent of this proposed rule is to encourage retirement of tax-exempt bonds before the occurrence of nonqualified use. The Proposed Allocation Regulations addressed when the bond must be retired, the issuer's reasonable expectations regarding use of the project, actual use of the project prior to the redemption, and the length of the term of the issue of which the bond to be retired is a part. Specifically, the bond to be redeemed was required to be retired at least five years before its otherwise-scheduled maturity date and within a period that starts one year before the deliberate act and ends 91 days before the deliberate act. Further, the issuer must not have expected that the project would be a mixed-use project. Thus, under the Proposed Allocation Regulations, an issuer could not use this anticipatory redemption for a project for which it had elected the special mixed-use allocation rules.

Most commenters stated that the proposed provision would be of limited use and that the eligibility requirements are contrary to the policy of encouraging redemption of tax-exempt bonds earlier rather than later. Commenters recommended that the conditions for anticipatory redemption not be stricter than those under the existing remedial action regime for private business use, which permits a curative redemption or defeasance of nonqualified bonds within 90 days of the deliberate action causing the private activity bonds tests to be met. Commenters further suggested adding a provision to the remedial action rules permitting an issuer to redeem or defease bonds at any

time in advance of a deliberate action that would cause the private business tests to be met. The suggested provision would require the issuer to declare its intent to redeem or defease the bonds that potentially could become the nonqualified bonds and identify the financed property. To encourage early redemption of tax-exempt bonds without imposing another set of rules for projects with unanticipated private business use, the Final Regulations adopt this recommendation to expand the remedial action rules to address this point.

B. Nonqualified Bonds

The Proposed Remedial Action Regulations included amendments relating to the amount and allocation of nonqualified bonds to be remediated as a result of a deliberate action causing the private business tests or the private loan financing test to be met. The Proposed Remedial Action Regulations provided that the amount of the nonqualified bonds is that portion of the outstanding bonds in an amount that, if the remaining bonds were issued on the date on which the deliberate action occurs, the remaining bonds would not meet the private business use test or private loan financing test, as applicable. For this purpose, the amount of private business use is the greatest percentage of private business use in any one-year period commencing with the one-year period in which the deliberate action occurs.

Commenters requested that the amount of nonqualified bonds be determined using the average amount of private business use over the entire measurement period rather than the highest private business use in any one-year period. The Final Regulations do not adopt this recommendation because this request is inconsistent with the limitations on annual allocations of proceeds and qualified equity to the uses of the project. The Final Regulations adopt the amendment to the provision regarding the amount of nonqualified bonds as proposed.

Commenters generally agreed with the proposed change that allows any bonds of any issue to be treated as the nonqualified bonds provided that the redemption or defeasance does not have the effect of extending the weighted average maturity (WAM) of the issue. Commenters, however, stated that some bond indentures require optional redemptions of a portion of a term bond to be used first to reduce the earliest mandatory sinking fund payments on the bond. In this case, the redemption or defeasance of the longest bonds would result in the extension of the WAM. Commenters recommended that the regulations permit bonds with longer maturities to be treated as the nonqualified bonds, as is permitted under the existing regulations. The Final Regulations adopt the rule as proposed, but provide a transition rule for outstanding bonds similar to that provided with respect to outstanding exempt facility bonds.

The Final Regulations reduce the amount of nonqualified bonds. An issuer who chooses to redeem or defease the nonqualified bonds need only redeem or defease sufficient bonds such that the remaining bonds would not meet the private business use or private loan financing test. Thus, unlike under the previous definition of nonqualified bonds, not all of the private business use or private loan, as calculated under the remedial action rules, necessarily will be remediated. To take into account any such remaining unremediated private business use or loan should a subsequent deliberate action occur, a conforming change is needed pertaining to continuing compliance. The Final Regulations include this change.

VII. Effective/Applicability Dates

The Final Regulations generally apply to bonds sold on or after January 25, 2016. The rules regarding remedial actions, however, apply to deliberate actions that occur on or after January 25, 2016. The Final Regulations allow permissive application of (1) the partnership provisions, the allocation and accounting rules, and certain corresponding rules for qualified 501(c)(3) bonds in whole, but not in part, to bonds to which the 1997 Final Regulations apply; and (2) the multipurpose rule to bonds to which the refunding rules apply.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact 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 these regulations will not have a significant economic impact on a substantial number of small governmental jurisdictions. This certification is based upon the fact that few small governmental issuers are expected to take an anticipatory remedial action and that the amount of time required to meet the recordkeeping requirement is not significant. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notices of proposed rulemaking preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small governmental jurisdictions. No comments were received.

Drafting Information

The principal author of these regulations is Johanna Som de Cerff, Office of Associate Chief Counsel (Financial Institutions & Products), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of 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 * * *

■ **Par. 2.** Section 1.141–0 is amended by adding an entry for § 1.141–1(e), revising entries for § 1.141–6 and § 1.141–12(d)(3) through (5), adding an entry for § 1.141–12(d)(6), revising the heading for § 1.141–15, and adding entries for § 1.141–15(b)(4), (e)(1), (e)(2), (l) and (m) to read as follows:

§ 1.141–0 Table of contents.

* * * * *

§ 1.141–1 Definitions and rules of general application.

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(e) Partnerships.

* * * * *

§ 1.141–6 Allocation and accounting rules.

(a) Allocation of proceeds to expenditures, projects, and uses in general.

(1) Allocations to expenditures.

(2) Allocations of sources to a project and its uses.

(3) Definition of project.

(b) Special allocation rules for eligible mixed-use projects.

(1) In general.

(2) Definition of eligible mixed-use project.

(3) Definition of qualified equity.

(4) Same plan of financing.

(c) Allocations of private payments.

(d) Allocations of proceeds to common costs of an issue.

(e) Allocations of proceeds to bonds.
(f) Examples.

* * * * *

§ 1.141–12 Remedial actions.

* * * * *

(d) * * *
(3) Anticipatory remedial action.
(4) Notice of defeasance.
(5) Special limitation.
(6) Defeasance escrow defined.

* * * * *

§ 1.141–15 Effective/applicability dates.

* * * * *

(b) * * *
(4) Certain remedial actions.

* * * * *

(e) * * *
(1) In general.
(2) Transition rule for pre-effective date bonds.

* * * * *

(l) Applicability date for certain regulations related to allocation and accounting.
(1) In general.
(2) Permissive application.
(m) Permissive retroactive application of certain regulations.

* * * * *

■ **Par. 3.** Section 1.141–1 is amended by adding paragraph (e) to read as follows:

§ 1.141–1 Definitions and rules of general application.

* * * * *

(e) *Partnerships.* A partnership (as defined in section 7701(a)(2)) is treated as an aggregate of its partners, rather than as an entity.

■ **Par. 4.** Section 1.141–3 is amended by redesignating paragraph (g)(2)(v) as paragraph (g)(2)(vi) and adding new paragraph (g)(2)(v) to read as follows:

§ 1.141–3 Definition of private business use.

* * * * *

(g) * * *
(2) * * *

(v) *Special rule for partners that are nongovernmental persons*—(A) The amount of private business use by a nongovernmental person resulting from the use of property by a partnership in which that nongovernmental person is a partner is that nongovernmental partner's share of the amount of use of the property by the partnership. For this purpose, except as otherwise provided in paragraph (g)(2)(v)(B) of this section, a nongovernmental partner's share of the partnership's use of the property is the nongovernmental partner's greatest percentage share under section 704(b) of any partnership item of income, gain, loss, deduction, or credit attributable to the period that the partnership uses the property during the measurement period. For example, if a partnership has a nongovernmental partner and that partner's share of partnership items varies, with the greatest share being 25 percent, then that nongovernmental partner's share of the partnership's use of property is 25 percent.

(B) An issuer may determine a nongovernmental partner's share of the partnership's use of the property under guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter).

* * * * *

■ **Par. 5.** Section 1.141–6 is revised to read as follows:

§ 1.141–6 Allocation and accounting rules.

(a) *Allocations of proceeds to expenditures, projects, and uses in general*—(1) *Allocations to expenditures.* The allocations of proceeds and other sources of funds to expenditures under § 1.148–6(d) apply for purposes of §§ 1.141–1 through 1.141–15.

(2) *Allocations of sources to a project and its uses.* Except as provided in paragraph (b) of this section (regarding an eligible mixed-use project), if two or more sources of funding (including two or more tax-exempt issues) are allocated to capital expenditures (as defined in § 1.150–1(b)) for a project (as defined in paragraph (a)(3) of this section), those sources are allocated throughout that project to the governmental use and private business use of the project in proportion to the relative amounts of those sources of funding spent on the project.

(3) *Definition of project*—(i) *In general.* For purposes of this section, *project* means one or more facilities or capital projects, including land, buildings, equipment, or other property, financed in whole or in part with proceeds of the issue.

(ii) *Output facilities.* If an output facility has multiple undivided ownership interests (respectively owned by governmental persons or by both governmental and nongovernmental persons), each owner's interest in the facility is treated as a separate facility for purposes of this section, provided that all owners of the undivided ownership interests share the ownership and output in proportion to their contributions to the capital costs of the output facility.

(b) *Special allocation rules for eligible mixed-use projects*—(1) *In general.* The sources of funding allocated to capital expenditures for an eligible mixed-use project (as defined in paragraph (b)(2) of this section) are allocated to undivided portions of the eligible mixed-use project and the governmental use and private business use of the eligible mixed-use project in accordance with this paragraph (b). Qualified equity (as defined in paragraph (b)(3) of this section) is allocated first to the private business use of the eligible mixed-use project and then to governmental use, and proceeds are allocated first to the governmental use and then to private business use, using the percentages of the eligible mixed-use project financed with the respective sources and the percentages of the respective uses. Thus, if the percentage of the eligible mixed-use project financed with qualified equity is less than the percentage of private business use of the project, all of the qualified equity is allocated to the private business use. Proceeds are allocated to the balance of the private business use of the project. Similarly, if the percentage of the eligible mixed-use project financed with proceeds is less than the percentage of governmental use of the project, all of the proceeds are allocated to the governmental use, and qualified equity is allocated to the balance of the governmental use of the project. Further, if proceeds of more than one issue finance the eligible mixed-use project, proceeds of each issue are allocated ratably to the uses to which proceeds are allocated in proportion to the relative amounts of the proceeds of such issues allocated to the eligible mixed-use project. For private business use measured under § 1.141–3(g), qualified equity and proceeds are allocated to the uses of the eligible mixed-use project in each one-year period under § 1.141–3(g)(4). *See Example 1* of paragraph (f) of this section.

(2) *Definition of eligible mixed-use project. Eligible mixed-use project* means a project (as defined in paragraph (a)(3) of this section) that is financed with proceeds of bonds that, when issued, purported to be governmental bonds (as defined in § 1.150–1(b)) (the applicable bonds) and with qualified equity pursuant to the same plan of financing (within the meaning of § 1.150–1(c)(1)(ii)). An eligible mixed-use project must be wholly owned by one or more governmental persons or by a partnership in which at least one governmental person is a partner.

(3) *Definition of qualified equity.* For purposes of this section, *qualified equity* means proceeds of bonds that are not tax-advantaged bonds and funds that are not derived from proceeds of a borrowing that are spent on the same eligible mixed-use project as the proceeds of the applicable bonds. Qualified equity does not include equity interests in real property or tangible personal property. Further, qualified equity does not include funds used to

redeem or repay governmental bonds. *See* §§ 1.141–2(d)(2)(ii) and 1.141–12(i) (regarding the effects of certain redemptions as remedial actions).

(4) *Same plan of financing.* Qualified equity finances a project under the same plan of financing that includes the applicable bonds if the qualified equity pays for capital expenditures of the project on a date that is no earlier than a date on which such expenditures would be eligible for reimbursement by proceeds of the applicable bonds under § 1.150–2(d)(2) (regardless of whether the applicable bonds are reimbursement bonds) and, except for a reasonable retainage (within the meaning of § 1.148–7(h)), no later than the date on which the measurement period begins.

(c) *Allocations of private payments.* Except as provided in this paragraph (c), private payments for a project are allocated in accordance with § 1.141–4. Payments under an output contract that result in private business use of an eligible mixed-use project are allocated to the same source of funding (notwithstanding § 1.141–4(c)(3)(v) (regarding certain allocations of private payments to equity)) allocated to the private business use from such contract under paragraph (b) of this section.

(d) *Allocations of proceeds to common costs of an issue.* Proceeds used for expenditures for common costs (for example, issuance costs, qualified guarantee fees, or reasonably required reserve or replacement funds) are allocated in accordance with § 1.141–3(g)(6). Proceeds, as allocated under § 1.141–3(g)(6) to an eligible mixed-use project, are allocated to the uses of the project in the same proportions as the proceeds allocated to the uses under paragraph (b) of this section.

(e) *Allocations of proceeds to bonds.* In general, proceeds are allocated to bonds in accordance with the rules for allocations of proceeds to bonds for separate purposes of multipurpose issues in § 1.141–13(d). For an issue that is not a multipurpose issue (or is a multipurpose issue for which the issuer has not made a multipurpose allocation), proceeds are allocated to bonds ratably in a manner similar to the allocation of proceeds to projects under paragraph (a)(2) of this section.

(f) *Examples.* The following examples illustrate the application of this section:

Example 1. Mixed-use project. City A issues $70x of bonds (the Bonds) and finances the construction of a 10-story office building costing $100x (the Project) with proceeds of the Bonds and $30x of qualified equity (the Qualified Equity). To the extent that the private business use of the Project does not exceed 30 percent in any particular year, the Qualified Equity is allocated to the private business use. If private business use of the Project were, for example, 44 percent in a year, the Qualified Equity would be allocated to 30 percent ($30x) private business use and proceeds of the Bonds would be allocated to the excess (that is, 14 percent or $14x), resulting in private business use of the Bonds in that year of 20 percent ($14x/$70x). Conversely, if private business use of the Project were 20 percent, Qualified Equity would be allocated to that 20 percent. The remaining Qualified Equity (that is, 10 percent or $10x) would be allocated to the governmental use in excess of the 70 percent to which the proceeds of the Bonds would be allocated.

Example 2. Mixed-use output facility. Authority A is a governmental person that owns and operates an electric transmission facility. Several years ago, Authority A used its equity to pay capital expenditures of $1000x for the facility. Authority A wants to make capital improvements to the facility in the amount of $100x (the Project). Authority A reasonably expects that, after completion of the Project, it will sell 46 percent of the available output of the facility, as determined under § 1.141–7, under output contracts that result in private business use and it will sell 54 percent of the available output of the facility for governmental use. On January 1, 2017, Authority A issues $60x of bonds (the Bonds) and uses the proceeds of the Bonds and $40x of qualified equity (the Qualified Equity) to finance the Project. The Qualified Equity is allocated to 40 of the 46 percent private business use resulting from the output contracts. Proceeds of the Bonds are allocated to the 54 percent governmental use and thereafter to the remaining 6 percent private business use.

Example 3. Subsequent improvements and replacements. County A owns a hospital, which opened in 2001, that it financed entirely with proceeds of bonds it issued in 1998 (the 1998 Bonds). In 2017, County A finances the cost of an addition to the hospital with proceeds of bonds (the 2017 Bonds) and qualified equity (the 2017 Qualified Equity). The original hospital is a project (the 1998 Project) and the addition is a project (the 2017 Project). Proceeds of the 2017 Bonds and the 2017 Qualified Equity are allocated to the 2017 Project. The 2017 Qualified Equity is allocated first to the private business use of the 2017 Project and then to the governmental use of the 2017 Project. Proceeds of the 2017 Bonds are allocated first to the governmental use of the 2017 Project and then to the private business use of that project. Neither proceeds of the 2017 Bonds nor 2017 Qualified Equity is allocated to the uses of the 1998 Project. Proceeds of the 1998 Bonds are not allocated to uses of the 2017 Project.

■ **Par 6.** Section 1.141–12 is amended by:

■ a. Revising the last sentence of paragraph (d)(1).

■ b. Redesignating paragraphs (d)(3) through (d)(5) as (d)(4) through (d)(6).

■ c. Adding new paragraph (d)(3).

■ d. Revising paragraph (i)(1).

■ e. Redesignating paragraph (i)(2) as (i)(3).

■ f. Adding new paragraph (i)(2).

■ g. Revising paragraphs (j), and (k), *Example 8.*

The revisions and additions read as follows:

§ 1.141–12 Remedial actions.

* * * * *

(d) * * * (1) * * * Except as provided in paragraph (d)(3) of this section, if the bonds are not redeemed within 90 days of the date of the deliberate action, a defeasance escrow must be established for those bonds within 90 days of the deliberate action.

* * * * *

(3) *Anticipatory remedial action.* The requirements of paragraphs (d)(1) and (2) of this section for redemption or defeasance of the nonqualified bonds within 90 days of the deliberate action are met if the issuer declares its official intent to redeem or defease all of the bonds that would become nonqualified bonds in the event of a subsequent deliberate action that would cause the private business tests or the private loan financing test to be met and redeems or defeases such bonds prior to that deliberate action. The issuer must declare its official intent on or before the date on which it redeems or defeases such bonds, and the declaration of intent must identify the financed property or loan with respect to which the anticipatory remedial action is being taken and describe the deliberate action that potentially may result in the private business tests being met (for example, sale of financed property that the buyer may then lease to a nongovernmental person). Rules similar to those in § 1.150–2(e) (regarding official intent for reimbursement bonds) apply to declarations of intent under this paragraph (d)(3), including deviations in the descriptions of the project or loan and deliberate action and the reasonableness of the official intent.

* * * * *

(i) * * *

(1) If a remedial action is taken under paragraph (d) of this section, the amount of private business use or private loans resulting from the deliberate action that is taken into account for purposes of determining whether the bonds are private activity bonds is that portion of the remaining bonds that is used for private business use or private loans (as calculated under paragraph (j) of this section);

(2) If a remedial action is taken under paragraph (e) or (f) of this section, the amount of private business use or private loans resulting from the deliberate action is not taken into account for purposes of determining

whether the bonds are private activity bonds; and

* * * * *

(j) *Nonqualified bonds*—(1) *Amount of nonqualified bonds.* The nonqualified bonds are a portion of the outstanding bonds in an amount that, if the remaining bonds were issued on the date on which the deliberate action occurs, the remaining bonds would not meet the private business use test or private loan financing test, as applicable. For this purpose, the amount of private business use is the greatest percentage of private business use in any one-year period commencing with the one-year period in which the deliberate action occurs.

(2) *Allocation of nonqualified bonds.* Allocations of nonqualified bonds must be made on a pro rata basis, except that, for purposes of paragraph (d) of this section (relating to redemption or defeasance), an issuer may treat any bonds of an issue as the nonqualified bonds so long as—

(i) The remaining weighted average maturity of the issue, determined as of the date on which the nonqualified bonds are redeemed or defeased (determination date), and excluding from the determination the nonqualified bonds redeemed or defeased by the issuer in accordance with this section, is not greater than

(ii) The remaining weighted average maturity of the issue, determined as of the determination date, but without regard to the redemption or defeasance of any bonds (including the nonqualified bonds) occurring on the determination date.

(k) * * *

Example 8. Compliance after remedial action. In 2007, City G issues bonds with proceeds of $10 million to finance a courthouse. The bonds have a weighted average maturity that does not exceed 120 percent of the reasonably expected economic life of the courthouse. City G enters into contracts with nongovernmental persons that result in private business use of 10 percent of the courthouse per year. More than 10 percent of the debt service on the issue is secured by private security or payments. In 2019, in a bona fide and arm's length arrangement, City G enters into a management contract with a nongovernmental person that results in private business use of an additional 40 percent of the courthouse per year during the remaining term of the bonds. City G immediately redeems the nonqualified bonds, or 44.44 percent of the outstanding bonds. This is the portion of the outstanding bonds that, if the remaining bonds were issued on the date on which the deliberate action occurs, the remaining bonds would not meet the private business use test, treating the amount of private business use as the greatest percentage of private business use in any one-year period commencing with the one-year period in which the deliberate action occurs (50 percent). This percentage is computed by dividing the percentage of the facility used for a government use (50 percent) by the minimum amount of government use required (90 percent), and subtracting the resulting percentage (55.56 percent) from 100 percent (44.44 percent). For purposes of subsequently applying section 141 to the issue, City G may continue to use all of the proceeds of the outstanding bonds in the same manner (that is, for the courthouse and the private business use) without causing the issue to meet the private business use test. The issue continues to meet the private security or payment test. The result would be the same if City G, instead of redeeming the bonds, established a defeasance escrow for those bonds, provided that the requirement of paragraph (d)(5) of this section is met. If City G takes a subsequent deliberate action that results in further private business use, it must take into account 10 percent of private business use in addition to that caused by the second deliberate act.

■ **Par 7.** Section 1.141–13 is amended by revising paragraph (d)(1) and paragraph (g), *Example 5,* to read as follows:

§ 1.141–13 Refunding issues.

* * * * *

(d) *Multipurpose issue allocations*—(1) *In general.* For purposes of section 141, unless the context clearly requires otherwise, § 1.148–9(h) applies to allocations of multipurpose issues (as defined in § 1.148–1(b)), including allocations involving the refunding purposes of the issue. An allocation under this paragraph (d) may be made at any time, but once made, may not be changed. An allocation is not reasonable under this paragraph (d) if it achieves more favorable results under section 141 than could be achieved with actual separate issues. Each of the separate issues under the allocation must consist of one or more tax-exempt bonds. Allocations made under this paragraph (d) and § 1.148–9(h) must be consistent for purposes of sections 141 and 148.

* * * * *

(g) * * *

Example 5. Multipurpose issue. (i) In 2017, State D issues bonds to finance the construction of two office buildings, Building 1 and Building 2. D expends an equal amount of the proceeds on each building. D enters into arrangements that result in private business use of 8 percent of Building 1 and 12 percent of Building 2 during the measurement period under § 1.141–3(g) and private payments of 4 percent of the 2017 bonds in respect of Building 1 and 6 percent of the 2017 bonds in respect of Building 2. These arrangements result in a total of 10 percent of the proceeds of the 2017 bonds being used for a private business use and total private payments of 10 percent. In 2022, D purports to make a multipurpose issue allocation under paragraph (d) of this section of the outstanding 2017 bonds, allocating the issue into two separate issues of equal amounts with one issue allocable to Building 1 and the second allocable to Building 2. An allocation is unreasonable under paragraph (d) of this section if it achieves more favorable results under section 141 than could be achieved with actual separate issues. D's allocation is unreasonable because, if permitted, it would allow more favorable results under section 141 for the 2017 bonds (that is, private business use and private payments that exceed 10 percent for the 2017 bonds allocable to Building 2) than could be achieved with actual separate issues. In addition, if D's purported allocation was intended to result in two separate issues of tax-exempt governmental bonds (versus tax-exempt private activity bonds), the allocation would violate paragraph (d) of this section in the first instance because the allocation to the separate issue for Building 2 would fail to qualify separately as an issue of tax-exempt governmental bonds as a result of its 12 percent of private business use and private payments.

(ii) The facts are the same as in paragraph (i) of this *Example 5,* except that D enters into arrangements only for Building 1, and it expects no private business use of Building 2. In 2022, D allocates an equal amount of the outstanding 2017 bonds to Building 1 and Building 2. D selects particular bonds for each separate issue such that the allocation does not achieve a more favorable result than could have been achieved by issuing actual separate issues. D uses the same allocation for purposes of both sections 141 and 148. D's allocation is reasonable.

(iii) The facts are the same as in paragraph (ii) of this *Example 5,* except that as part of the same issue, D issues bonds for a privately used airport. The airport bonds, if issued as a separate issue, would be qualified private activity bonds. The remaining bonds, if issued separately from the airport bonds, would be governmental bonds. Treated as one issue, however, the bonds are taxable private activity bonds. Therefore, D makes its allocation of the bonds under paragraph (d) of this section and § 1.150–1(c)(3) into 3 separate issues on or before the issue date. Assuming all other applicable requirements are met, the bonds of the respective issues will be tax-exempt qualified private activity bonds or governmental bonds.

* * * * *

■ **Par. 8.** Section 1.141–15 is amended by:

■ a. Revising the heading and paragraph (a).

■ b. Adding paragraph (b)(4),

■ c. Revising paragraphs (e) and (i).

■ d. Adding paragraphs (l) and (m).

The revisions and additions read as follows:

§ 1.141–15 Effective/applicability dates.

(a) *Scope.* The effective dates of this section apply for purposes of §§ 1.141–1 through 1.141–14, 1.145–1 through

1.145–2, and 1.150–1(a)(3) and the definition of bond documents contained in § 1.150–1(b).

(b) * * *

(4) *Certain remedial actions*—(i) *General rule.* For bonds subject to § 1.141–12, the provisions of § 1.141–12(d)(3), (i), (j), and (k), *Example 8,* apply to deliberate actions that occur on or after January 25, 2016.

(ii) *Special rule for allocations of nonqualified bonds.* For purposes of § 1.141–12(j)(2), in addition to the allocation methods permitted in § 1.141–12(j)(2), an issuer may treat bonds with the longest maturities (determined on a bond-by-bond basis) as the nonqualified bonds, but only for bonds sold before January 25, 2016.

* * * * *

(e) *Permissive application of certain sections*—(1) *In general.* The following sections may each be applied by issuers to any bonds:

(i) Section 1.141–3(b)(4);

(ii) Section 1.141–3(b)(6); and

(iii) Section 1.141–12.

(2) *Transition rule for pre-effective date bonds.* For purposes of paragraphs (e)(1) and (h) of this section, issuers may apply § 1.141–12 to bonds issued before May 16, 1997, without regard to paragraph (d)(5) thereof with respect to deliberate actions that occur on or after April 21, 2003.

* * * * *

(i) *Permissive application of certain regulations relating to output facilities.* Issuers may apply each of the following sections to any bonds used to finance output facilities:

(1) Section 1.141–6;

(2) Section 1.141–7(f)(3); and

(3) Section 1.141–7(g).

* * * * *

(l) *Applicability date for certain regulations relating to allocation and accounting*—(1) *In general.* Except as otherwise provided in this section, §§ 1.141–1(e), 1.141–3(g)(2)(v), 1.141–6, 1.141–13(d), and 1.145–2(b)(4), (b)(5), and (c)(2) apply to bonds that are sold on or after January 25, 2016 and to which the 1997 regulations (as defined in paragraph (b)(1) of this section) apply.

(2) *Permissive application.* Issuers may apply §§ 1.141–1(e), 1.141–3(g)(2)(v), 1.141–6, and 1.145–2(b)(4), (b)(5), and (c)(2), in whole but not in part, to bonds to which the 1997 regulations apply.

(m) *Permissive retroactive application of certain regulations.* Issuers may apply § 1.141–13(d) to bonds to which § 1.141–13 applies.

■ **Par. 9.** Section 1.145–2 is amended by adding paragraphs (b)(4) and (b)(5) and revising the first sentence of paragraph (c)(2) to read as follows:

§ 1.145–2 Application of private activity bond regulations.

* * * * *

(b) * * *

(4) References to *governmental bonds* in § 1.141–6 mean qualified 501(c)(3) bonds.

(5) References to *ownership by governmental persons* in § 1.141–6 mean ownership by governmental persons or 501(c)(3) organizations.

(c) * * *

(2) *Costs of issuance.* Sections 1.141–3(g)(6) and 1.141–6(d) do not apply to the extent costs of issuance are allocated among the other purposes for which the proceeds are used or to portions of a project. * * *

* * * * *

■ **Par. 10.** Section 1.150–5 is amended by revising paragraph (a)(1) to read as follows:

§ 1.150–5 Filing notices and elections.

(a) * * *

(1) Section 1.141–12(d)(4);

* * * * *

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: October 6, 2015.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2015–27328 Filed 10–26–15; 8:45 am]

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DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 552

RIN 1235–AA05

Application of the Fair Labor Standards Act to Domestic Service; Dates of Previously Announced 30-Day Period of Non-Enforcement

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Policy statement.

SUMMARY: The Department of Labor (Department) previously announced that it would not bring enforcement actions against any employer for violations of Fair Labor Standards Act (FLSA) obligations resulting from amendments to its domestic service regulations for 30 days after the U.S. Court of Appeals for the District of Columbia issued a mandate making effective its opinion affirming the validity of the regulatory changes. The Court issued its mandate on October 13, 2015; the Department's 30-day non-enforcement period will therefore conclude on November 12, 2015. From November 12, 2015 through December 31, 2015, the Department will exercise prosecutorial discretion pursuant to its previously announced time-limited non-enforcement policy.

DATES: The Department will not bring enforcement actions against any employer for FLSA violations resulting from the revised domestic service regulations before November 12, 2015.

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Assistant Administrator, Office of Policy, U.S. Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW., Room S–3502, FP Building, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number), email: *HomeCare@dol.gov*. Copies of this Policy Statement may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0675 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Non-Enforcement Period Until November 12, 2015

The Department's Final Rule amending FLSA regulations regarding domestic service employment, 78 FR 60454 (October 1, 2013), which extends minimum wage and overtime protections to most home care workers, had an effective date of January 1, 2015. The Department did not begin enforcement of the Final Rule on that date both because of its time-limited non-enforcement policy, 79 FR 60974 (October 9, 2014), and because it was a party to a federal lawsuit regarding the amended regulations in which the U.S. District Court for the District of Columbia issued opinions and orders vacating the rule's major provisions. *Home Care Ass'n of Am.* v. *Weil,* 76 F. Supp. 3d 138 (D.D.C. 2014); *Home Care Ass'n of Am.* v. *Weil,* 78 F. Supp. 3d 123 (D.D.C. 2015). On August 21, 2015, the U.S. Court of Appeals for the District of Columbia Circuit reversed the district court's judgment. *Home Care Ass'n of America* v. *Weil,* 799 F.3d 1084 (D.C. Cir. 2015). On September 14, 2015, the Department announced that it would not bring enforcement actions against any employer for violations of FLSA obligations resulting from the amended domestic service regulations for 30 days after the date the Court of Appeals issued a mandate making its opinion