

which Branch A is located (10%). Consequently, pursuant to § 1.954–3(b)(1)(ii)(b), Branch A is not treated as a separate corporation apart from the remainder of FS for purposes of determining foreign base company sales income.

Example (9). Manufacturing activities performed by multiple branches, no branch independently satisfies § 1.954–3(a)(4)(i), selling activities performed by remainder of the controlled foreign corporation, branch manufacturing activities included in remainder contribution. (i) *Facts.* FS, a controlled foreign corporation organized in Country M, has two branches, Branch A and Branch B, located in Country A and Country B respectively. FS purchases raw materials from a related person. The raw materials are manufactured (under the principles of § 1.954–3(a)(4)(ii) or (a)(4)(iii)) into Product X by CM, an unrelated corporation, pursuant to a contract manufacturing arrangement. CM physically performs the substantial transformation, assembly, or conversion required to manufacture Product X outside of FS's country of organization. FS manages the manufacturing costs and capacities with respect to the manufacture of Product X through employees located in Country M. Further, employees of FS located in Country M oversee the coordination between the branches. Branch A, through the activities of employees of FS located in Country A, designs Product X, controls manufacturing related logistics, and controls the raw materials and work-in-process during the manufacturing process. Branch B, through the activities of employees of FS located in Country B, provides quality control and oversight and direction during the manufacturing process. Employees of FS located in Country M sell Product X to unrelated persons for use outside of Country M. Country M imposes an effective rate of tax on sales income of 10%. Country A imposes an effective rate of tax on sales income of 12%, and Country B imposes an effective rate of tax on sales income of 24%. None of the remainder of FS, Branch A, or Branch B independently satisfies § 1.954–3(a)(4)(i). However, under the facts and circumstances of the business, FS, as a whole, provides a substantial contribution to the manufacture of Product X within the meaning of § 1.954–3(a)(4)(iv). Under the facts and circumstances of the business, the activities of the remainder of FS and Branch A, if considered together, would not provide a demonstrably greater contribution to the manufacture of Product X than the activities of Branch B. Under the facts and circumstances of the business, however, the activities of the employees of the remainder of FS and Branch A, if considered together, would constitute a substantial contribution to the manufacture of Product X.

(ii) *Result.* Based on the facts, neither the remainder of FS (through activities of its employees in Country M) nor any branch of FS independently satisfies § 1.954–3(a)(4)(i) with respect to Product X, but FS, as a whole, provides a substantial contribution through the activities of its employees to the manufacture of Product X. The remainder of FS, Branch A, and Branch B each provide a contribution through the activities of

employees to the manufacture of Product X. Therefore, FS must determine the location of manufacture under paragraph (b)(1)(ii)(c)(3)(iii) of this section. The tested sales location is Country M because the remainder of FS performs the selling activities with respect to Product X. The location of Branch B is the tested manufacturing location because the effective rate of tax imposed on FS's sales income by Country M (10%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country B (24%); and Branch B is the only manufacturing branch that would, after applying § 1.954–3(b)(1)(ii)(b), be treated as a separate corporation. The manufacturing activities performed in Country A will be included in the contribution of the remainder of FS for purposes of determining the location of manufacture of Product X because the effective rate of tax imposed on the sales income by Country M (10%) is not less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country A (12%). Under the facts and circumstances of the business, the manufacturing activities of the remainder of FS and Branch A, considered together, would not provide a demonstrably greater contribution to the manufacture of Product X than the activities of Branch B. Therefore, the location of manufacture is Country B, the location of Branch B. In determining that Country B is the location of manufacture, it was determined that after applying § 1.954–3(b)(1)(ii)(b) Branch B would be treated as a separate corporation under paragraph (b)(1)(ii)(a) of this section for purposes of determining foreign base company sales income. To determine whether income from the sale of Product X is foreign base company sales income, the remainder of FS takes into account the activities of Branch A because, under paragraph (b)(2)(ii)(a) of this section, Branch A would not be treated as a separate corporation apart from FS. The remainder of FS is considered to have manufactured Product X under § 1.954–3(a)(4)(i) because the manufacturing activities of the remainder of FS and Branch A, considered together, would make a substantial contribution to the manufacture of Product X within the meaning of § 1.954–3(a)(4)(iv). Therefore, income derived from the sale of Product X by the remainder of FS does not constitute foreign base company sales income.

(c) [Reserved]. For further guidance, see § 1.954–3(c).

(d) [Reserved]. For further guidance, see § 1.954–3(d).

(e) *Effective/applicability date of temporary regulations.* Paragraphs (b)(1)(i)(c), (b)(1)(ii)(a), (b)(1)(ii)(c), (b)(2)(i)(b), (b)(2)(ii)(a), (b)(2)(ii)(b), (b)(2)(ii)(e), and (b)(4) *Example (3)*, *Example (8)*, and *Example (9)* of this section shall apply to taxable years of controlled foreign corporations beginning after June 30, 2009, and for taxable years of United States shareholders in which or with which

such taxable years of the controlled foreign corporations end.

(f) *Application of temporary regulations to earlier taxable years.* For the application of these temporary regulations retroactively with respect to taxable years of controlled foreign corporations and to open taxable years of United States shareholders in which or with which such taxable years of the controlled foreign corporations end, see § 1.954–3(d).

(g) *Expiration date.* The applicability of this section expires on or before December 23, 2011.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: December 18, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–30727 Filed 12–24–08; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9440]

RIN 1545–BI39

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

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations relating to the annual filing of Federal employment tax returns and requirements for employment tax deposits. These temporary regulations relate to sections 6011 and 6302 of the Internal Revenue Code (Code) concerning reporting and paying income taxes withheld from wages and reporting and paying taxes under the Federal Insurance Contributions Act (FICA) (collectively, “employment taxes”). These temporary regulations generally allow certain employers to file a Form 944, “Employer's ANNUAL Federal Tax Return,” rather than Form 941, “Employer's QUARTERLY Federal Tax Return.” In addition to rules related to Form 944, the temporary regulations provide an additional method for employers who file Form 941 to determine whether the amount of accumulated employment taxes is considered de minimis. The portions of this document that are final regulations

provide necessary cross-references to the temporary regulations. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on December 29, 2008.

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

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

SUPPLEMENTARY INFORMATION:

Background

These temporary regulations amend the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) under section 6011 relating to the Federal employment tax return filing requirements and section 6302 relating to the employment tax deposit requirements. These temporary regulations are part of the IRS's effort to reduce taxpayer burden by permitting certain employers to file one return annually to report their employment tax liabilities instead of four quarterly returns. These temporary regulations affect taxpayers that file Form 941, "Employer's QUARTERLY Federal Tax Return," Form 944, "Employer's ANNUAL Federal Tax Return," and any related Spanish-language returns or returns for U.S. possessions.

On January 3, 2006, a temporary regulation (TD 9239) relating to Form 944 (the 2006 temporary regulation) was published in the **Federal Register** (71 FR 11). A notice of proposed rulemaking (REG–148568–04) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (71 FR 46) (the 2006 proposed regulation). A correction to the 2006 temporary regulation was published in the **Federal Register** on March 17, 2006 (71 FR 13766). No requests for a public hearing were received; therefore, no public hearing was held. Comments responding to the notice of proposed rulemaking were received.

Those comments requested that use of Form 944 be changed from mandatory to voluntary and that the amount of the employment tax liability used to determine whether employers are eligible to file Form 944 (the "eligibility threshold") be increased. The Treasury Department and the IRS agree with the suggestion to make Form 944 voluntary. The Treasury Department and the IRS will continue to consider whether to increase the eligibility threshold. The final regulations allow the eligibility

threshold to be increased through future guidance.

These temporary regulations continue to permit most employers who file Form 944 to pay accumulated employment taxes annually when they file their returns and modify the lookback period and *de minimis* deposit rule for these employers. In addition to the rules related to Form 944, these temporary regulations provide an additional method for employers who file Forms 941 quarterly to determine whether the amount of accumulated employment taxes is considered *de minimis*. This safe harbor was originally proposed in the 2006 proposed regulation.

Explanation of Provisions

Form 944—Regulations Concerning Filing Requirements Under Section 6011

These temporary regulations allow certain employers to file an annual employment tax return, Form 944, to report their social security, Medicare, and withheld Federal income taxes rather than the quarterly Form 941. For these employers, Form 944 will replace Form 941 and reduce their burden by reducing the number of returns they are required to file each year. Form 944 will not replace Form 943, "Employer's Annual Tax Return for Agricultural Employees" or Schedule H (Form 1040), "Household Employment Taxes." However, if an employer files Form 944, the employer may choose to report wages with respect to household employees on Form 944, instead of reporting such wages on Schedule H (Form 1040). Form 944 is generally due January 31 of the year following the tax year for which the return is filed. If the employer timely deposits all accumulated employment taxes on or before January 31 of the year following the tax year for which the return is filed, the employer will have 10 extra calendar days to file Form 944 pursuant to § 31.6071(a)–1(a).

Under the 2006 proposed and temporary regulations, the IRS sent a notification letter to qualified employers with an estimated employment tax liability of \$1,000 or less requiring them to participate in the Employers' Annual Federal Tax Program (Form 944) (hereinafter referred to as the Form 944 Program). Employers were eligible to opt out only if they estimated that their employment tax liability would exceed the \$1,000 threshold or if they wanted to e-file Forms 941 quarterly instead. New employers who estimated that their employment tax liability would be \$1,000 or less also were eligible to file Form 944. These employers were identified by their responses on Form

SS–4, Application for Employer Identification Number, and notified that they were required to file Form 944 in the letter advising them of their employer identification number. Employers that were not identified by the IRS in either manner were able to contact the IRS if they thought they were qualified. If the IRS determined they were qualified, it would send confirmation to these employers. Once employers received this letter, they were required to file Form 944 instead of Forms 941.

Commentators suggested that Form 944 should be voluntary instead of mandatory. This benefits taxpayers because it allows them to choose the filing requirement they prefer and to change from year to year more easily. In addition, commentators suggested that the threshold should be increased in order to allow more employers to take advantage of Form 944 and to bring the threshold in line with the *de minimis* deposit rule amount, which is less than \$2,500 as discussed more fully in this preamble. Sections 31.6011(a)–1T(a)(5) and 31.6011(a)–4T(a)(4) have been revised to incorporate the suggestion to make the program voluntary. Although these temporary regulations do not adopt the suggestion to increase the eligibility threshold, the Treasury Department and the IRS will continue to consider this suggestion and may increase the threshold in the future. To accommodate any potential increase to the threshold amount before final regulations are issued, these temporary regulations contain a provision that allows the IRS to increase the eligibility threshold by guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b).

Under §§ 31.6011(a)–1T(a)(5) and 31.6011(a)–4T(a)(4) in effect for taxable years beginning on or after January 1, 2009, employers who estimate that their annual employment tax liability will be \$1,000 or less can contact the IRS to express their desire to file Form 944 instead of Forms 941 for a taxable year. Only upon such a request will the IRS send a notification letter to qualified employers confirming that they may file Form 944 for that taxable year. Once employers receive this notice they must file Form 944 and cannot file Forms 941 instead for a taxable year until they contact the IRS to change their filing requirement to Form 941 for that taxable year and receive confirmation that their filing requirement has been changed.

The IRS will issue guidance published in the Internal Revenue Bulletin informing employers how they can contact the IRS to participate in the Form 944 Program and how they can

elect out if they later decide that they want to file Forms 941 instead of Form 944. Under the 2006 regulations, employers were only eligible to opt out if they estimated that their employment tax liability would exceed the \$1,000 threshold or if they wanted to e-file Forms 941 quarterly instead. Because the program is being made voluntary, beginning in tax year 2010, employers will be able to opt out for any reason if they follow procedures to be provided in future guidance. Employers that have received notification of their qualification to file Form 944, even if the notification was received prior to the publication of these regulations, must continue to file Form 944 unless they properly opt out of the Form 944 program.

In addition, a few clarifying revisions were made to the regulations under section 6011. First, §§ 31.6011(a)–1T(a) and 31.6011(a)–4T(a) were clarified by adding references to §§ 31.6011(a)–1T(a)(5) and 31.6011(a)–4T(a)(4) to account for Form 944 in §§ 31.6011(a)–1T(a)(1) and 31.6011(a)–4T(a)(1). Second, §§ 31.6011(a)–1(a)(5) and 31.6011(a)–4(a)(4) were revised to remove the details regarding the procedures to use for opting out of the Form 944 program and provide that the IRS will issue guidance published in the Internal Revenue Bulletin containing these procedures. The IRS will issue procedures in other forms of guidance published in the IRB regarding how to opt out of Form 944 for taxable year 2009 and how to elect to file Form 944 for taxable year 2010 and beyond. This will allow the IRS to administer the program more effectively, by having the flexibility to adjust the procedures as necessary due to changes in the program and taxpayer response.

Form 944—Regulations Concerning Deposit Requirements Under Section 6302

These temporary regulations revise the 2006 temporary regulation concerning requirements for employers to make deposits of employment taxes under section 6302 and § 31.6302–1 to make a few clarifying changes to § 31.6302–1 related to Form 944. These temporary regulations continue to permit employers who file Form 944 to deposit or pay their accumulated employment taxes annually when they file their Form 944 if they satisfy the provisions of the *de minimis* deposit rule, as modified in § 31.6302–1T(f)(4)(iii), rather than make monthly or semi-weekly deposits. These temporary regulations continue to contain the exception in § 31.6302–1T(c)(6) for employers who filed Form

944 in the preceding year but who no longer qualify because their annual employment tax liability exceeds the eligibility threshold.

Also, these temporary regulations continue to provide a different lookback period for Form 944 filers to use to determine an employer's status as a monthly or semi-weekly depositor. The lookback period was changed in the 2006 temporary and proposed regulations because once an employer begins to file annual Form 944 returns, it may not be possible for the IRS to determine the employer's aggregate amount of employment tax liability during the lookback period set forth in the existing regulations (12-month period ending the preceding June 30) because the employer may not have filed any quarterly returns during that period. Under the 2006 temporary regulation, § 31.6302–1T(b)(4)(i) provided that the lookback period for employers who filed Form 944 during the current, or preceding, calendar year is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 2009 is calendar year 2007.

In these temporary regulations, § 31.6302–1T(b)(4)(i) is clarified to reflect that the lookback period is the second preceding calendar year for employers who filed Form 944 for either of the two previous calendar years, not just the one previous calendar year. This clarification was needed because an employer would not have filed the requisite quarterly returns to use the other lookback period (12-month period ending June 30) if they filed Form 944 in either of the prior years. For example, if an employer filed Form 944 in 2006 but not in 2007, the lookback period for 2008 would be 2006, because they would not have filed quarterly returns for July through December 2006 and, thus, it would be impossible to use July 2006–June 2007 as the lookback period.

Section 31.6302–1T(b)(4)(i) also is revised to clarify that the amount of tax reported during the lookback period is determined without regard to the employer's filing requirement. In other words, in the preceding example, if an employer is required to file Forms 941 for 2008 but filed Form 944 for the lookback period (2006), the amount of employment tax liability reported for the lookback period would be the amount of employment tax the employer reported on its Form 944 for 2006 even though the employer will file Forms 941 to report its 2008 liability. The reverse also is true. The employment tax liability reported for the lookback period (2006) of an employer required to file Form 944 for

2008 would be the sum of the liabilities it reported on its four Forms 941 for 2006.

In addition, § 31.6302–1T(b)(4)(ii) is revised by changing the term “supplemental” to “adjusted” and deleting the reference to Form 941c, “Supporting Statement To Correct Information,” due to the revisions to the process of adjusting employment tax liability. Final regulations (TD 9405) relating to employment tax adjustments were published in the **Federal Register** (73 FR 37371) on July 1, 2008. For periods ending on or before December 31, 2008, the employment tax liability reported on the original return includes any prior period adjustments reported on that return (for example, prior period adjustments supported by a Form 941c attached to the return for a subsequent period). For periods beginning on or after January 1, 2009, employers can no longer make prior period adjustments on a return. Instead, employers will use an adjusted return or claim for refund to make corrections to the amounts reported on their original returns. Last, § 31.6302–1T is revised by adding references to Form 944 in paragraphs (e)(2) and (g)(1).

Form 941—New Deposit Rule Safe Harbor Under Section 6302

In addition to revising the 2006 temporary regulation regarding Form 944, these temporary regulations incorporate the safe harbor for employers who file Forms 941 that was included in the 2006 proposed regulation. The safe harbor helps small employers who file Form 941 and have an unexpected increase in their deposit liability for a quarterly return period. These temporary regulations provide an alternate method for determining whether the employer's employment tax obligations are *de minimis*, which is based on the employment taxes due for the prior return period. This special rule applies only to employers filing quarterly tax returns and, therefore, does not apply to employers who file Form 944.

Generally, deposits of taxes reported on Form 941, “Employer's QUARTERLY Federal Tax Return,” are due monthly or semi-weekly. If an employer failed to make timely deposits of employment taxes, the employer, absent reasonable cause, is subject to the penalty for failure to deposit under section 6656. Prior to these temporary regulations, § 31.6302–1(f)(4) (the *de minimis* deposit rule) provided that, for quarterly and annual return periods, if the aggregate amount of employment taxes for the return period is less than \$2,500 and that amount was deposited or paid

with a timely filed return for that return period, the amount was deemed to have been timely deposited and the employer was not subject to the penalty for failure to deposit. Accordingly, employers who paid their employment taxes when they timely filed their quarterly returns were deemed to have timely deposited their taxes if the amount of taxes due was less than \$2,500 for that quarter. Similarly, employers who paid their employment taxes when they timely filed their annual returns were deemed to have timely deposited if the amount of taxes due was less than \$2,500 for the entire year.

Under these temporary regulations, pursuant to § 31.6302-1T(f)(4)(i) and (ii), employers may pay their employment taxes when they timely file their quarterly returns and be deemed to have timely deposited if the amount of the taxes due for the current quarter or for the prior quarter is less than \$2,500.

This special rule can be illustrated by the following example: An employer has less than \$50,000 in employment taxes reported during the lookback period and is therefore a monthly depositor under § 31.6302-1(b)(2). The employer's employment tax liabilities for the first and second quarters of 2010 are \$2,450 and \$2,400, respectively. In the third quarter of 2010, however, the employer's employment tax liability is \$2,550. Under the de minimis deposit rule in effect prior to these temporary regulations, if the employer pays the \$2,550 with its return for the third quarter of 2010, the amount would not be considered timely deposited for that quarter and, therefore, the employer would be assessed the section 6656 penalty for failure to deposit.

Modifying the de minimis deposit rule to allow employers to base the determination on the employment taxes due for the immediately preceding quarter provides a safe harbor for employers regarding their deposit obligations. Thus, in this example, when the employer had an increase in its employment tax liability for the third quarter of 2010, its remittance still would be deemed to have been timely deposited because the taxes for the immediately preceding return period were de minimis. These regulations have no application to the One-Day rule in § 31.6302-1(c)(2), which requires employers to make a deposit on the next banking day if they accumulate \$100,000 or more of employment taxes on any day during a deposit period. Therefore, if an employer accumulates \$100,000 or more of employment taxes during a deposit period, the employer must make a deposit on the next banking day even if the employer's

employment tax liability for the prior quarter was de minimis. Due to the programming changes necessary to implement this safe harbor, the safe harbor will be available for deposit periods beginning on or after January 1, 2010.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. 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. For applicability of the Regulatory Flexibility Act, 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 will be 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 final regulations are Raymond Bailey and Audra M. Dineen of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Amendments to the Regulations

■ Accordingly, 26 CFR part 31 is amended as follows:

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

■ **Paragraph. 1.** The authority citation for part 31 continues to read in part as follows:

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

■ **Par. 2.** Section 31.6011(a)-1 is amended by revising paragraph (a)(1) and adding paragraph (g) to read as follows:

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

(a) * * * (1) [Reserved]. For further guidance, see § 31.6011(a)-1T(a)(1).

* * * * *

(g) [Reserved]. For further guidance, see § 31.6011(a)-1T(g).

■ **Par. 3.** Section 31.6011(a)-1T is revised to read as follows:

§ 31.6011(a)-1T Returns under Federal Insurance Contributions Act (temporary).

(a) *Requirement*—(1) *In general.* Except as otherwise provided in § 31.6011(a)-5, every employer required to make a return under the Federal Insurance Contributions Act, as in effect prior to 1955, for the calendar quarter ended December 31, 1954, in respect of wages other than wages for agricultural labor, shall make a return for each subsequent calendar quarter (whether or not wages are paid in such quarter) until he has filed a final return in accordance with § 31.6011(a)-6. Except as otherwise provided in § 31.6011(a)-5, every employer not required to make a return for the calendar quarter ended December 31, 1954, shall make a return for the first calendar quarter thereafter in which he pays wages, other than wages for agricultural labor, subject to the tax imposed by the Federal Insurance Contributions Act as in effect after 1954, and shall make a return for each subsequent calendar quarter (whether or not wages are paid therein) until he has filed a final return in accordance with § 31.6011(a)-6. Except as otherwise provided in § 31.6011(a)-8 and in § 31.6011(a)-1(a)(3), (a)(4), and (a)(5), Form 941, "Employer's QUARTERLY Federal Tax Return," is the form prescribed for making the return required by this subparagraph. Such return shall not include wages for agricultural labor required to be reported on any return prescribed by § 31.6011(a)-1(a)(2). The return shall include wages received by an employee in the form of tips only to the extent of the tips reported by the employee to the employer in a written statement furnished to the employer pursuant to section 6053(a).

(a)(2) through (a)(4) [Reserved]. For further guidance, see § 31.6011(a)-1(a)(2) through (a)(4).

(5) *Employers in the Employers' Annual Federal Tax Program (Form 944)*—(i) *In general.* Employers notified of their qualification for the Employers' Annual Federal Tax Program (Form 944) are required to file Form 944, "Employer's ANNUAL Federal Tax Return," instead of Form 941 to make a return as required by paragraph (a)(1) of this section. Upon proper request by the employer, the Internal Revenue Service (IRS) will notify employers in writing of their qualification for the Employers' Annual Federal Tax Program (Form 944). Qualified employers are those with an estimated annual employment tax liability (that is, social security, Medicare, and withheld Federal income

taxes) of \$1,000 or less for the entire calendar year, except employers required under § 31.6011(a)-1(a)(2) to make a return on Form 943, "Employer's Annual Federal Tax Return For Agricultural Employees," or § 31.6011(a)-1(a)(3) to make a return on Schedule H (Form 1040), "Household Employment Taxes." The IRS may increase the amount of the estimated annual employment tax liability that qualifies employers to file Form 944 through a revenue procedure, notice, or other IRS guidance published in the Internal Revenue Bulletin. The IRS will notify employers when they no longer qualify for the Employers' Annual Federal Tax Program (Form 944) and must file Forms 941 instead.

(ii) *Requests to participate and eligibility to opt out of the Employers' Annual Federal Tax Program (Form 944).* The IRS will establish procedures in a revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin for employers to follow to request to receive notification to participate in the Employers' Annual Federal Tax Program (Form 944) and to be removed from the Employers' Annual Federal Tax Program (Form 944) after becoming a participant in order to file Forms 941 instead.

(b) through (f) [Reserved]. For further guidance, see § 31.6011(a)-1(b) through (f).

(g) *Effective/applicability dates—(1) In general.* Paragraphs (a)(1) and (a)(5) of this section apply to taxable years beginning on or after December 30, 2008. The rules of paragraph (a)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)-1. The rules of paragraph (a)(5) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)-1T in effect prior to December 30, 2008.

(2) *Expiration date.* The applicability of this section will expire on or before December 23, 2011.

■ **Par. 4.** Section 31.6011(a)-4 is amended by revising paragraph (a)(1) and adding paragraph (d) to read as follows:

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

(a) * * * (1) [Reserved]. For further guidance, see § 31.6011(a)-4T(a)(1).

* * *

(d) [Reserved]. For further guidance, see § 31.6011(a)-4T(d).

■ **Par. 5.** Section 31.6011(a)-4T is revised to read as follows:

§ 31.6011(a)-4T Returns of income tax withheld (temporary).

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

(a)(2) through (a)(3) [Reserved]. For further guidance, see § 31.6011(a)-4(a)(2) through (a)(3).

(4) *Employers in the Employers' Annual Federal Tax Program (Form 944)—(i) In general.* Employers notified of their qualification for the Employers' Annual Federal Tax Program (Form 944) are required to file Form 944, "Employer's ANNUAL Federal Tax Return," instead of Form 941 to make a return of income tax withheld from wages pursuant to section 3402. Upon proper request by the employer, the Internal Revenue Service (IRS) will notify employers in writing of their qualification for the Employers' Annual Federal Tax Program (Form 944). Qualified employers are those with an estimated annual employment tax liability (that is, social security, Medicare, and withheld federal income taxes) of \$1,000 or less for the entire calendar year, except employers required under § 31.6011(a)-4(a)(2) to make a return on Schedule H (Form 1040), "Household Employment Taxes," or § 31.6011(a)-4(a)(3) to make a return on Form 943, "Employer's Annual Federal Tax Return For Agricultural Employees." The IRS may increase the amount of the estimated annual employment tax liability that qualifies employers to file Form 944 through a revenue procedure, notice or other IRS guidance published in the Internal Revenue Bulletin. The IRS will notify employers when they no longer qualify for the Employers' Annual Federal Tax Program (Form 944) and must file Forms 941 instead.

(ii) *Request to participate and eligibility to opt out of the Employers' Annual Federal Tax Program (Form 944).* The IRS will establish procedures in a revenue procedure, notice, or other

IRS guidance published in the Internal Revenue Bulletin for employers to follow to request to receive notification to participate in the Employers' Annual Federal Tax Program (Form 944) and to be removed from the Employers' Annual Federal Tax Program (Form 944) after becoming a participant in order to file Forms 941 instead.

(b) through (c) [Reserved]. For further guidance, see § 31.6011(a)-4(b) through (c).

(d) *Effective/applicability dates—(1) In general.* Paragraphs (a)(1) and (a)(4) of this section apply to taxable years beginning on or after December 30, 2008. The rules of paragraph (a)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)-4. The rules of paragraph (a)(4) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)-4T in effect prior to December 30, 2008.

(2) *Expiration date.* The applicability of this section will expire on or before December 23, 2011.

■ **Par. 6.** Section 31.6302-0 is amended by revising the entries for § 31.6302-1(f)(4)(i), (g)(1) and (n) to read as follows:

§ 31.6302-0 Table of contents.

* * *

§ 31.6302-1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * *

(f) * * *

(4) * * *

(i) [Reserved]. For further guidance, see § 31.6302-0T, the entry for § 31.6302-1T(f)(4)(i).

* * *

(g) * * *

(1) [Reserved]. For further guidance, see § 31.6302-0T, the entry for § 31.6302-1T(g)(1).

* * *

(n) [Reserved]. For further guidance, see § 31.6302-0T, the entry for § 31.6302-1T(n).

■ **Par. 7.** Section 31.6302-0T is added to read as follows:

§ 31.6302-0T Table of contents (temporary).

This section lists the captions that appear in § 31.6302-1T.

Section 31.6302-1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992 (temporary).

(a) through (b)(3) [Reserved]. For further guidance, see § 31.6302-0, the entries for § 31.6302-1(a) through (b)(3).

(4) Lookback period.

(i) In general.

(ii) Adjustments and claims for refund.

(c)(1) through (c)(4) [Reserved]. For further guidance, see § 31.6302-0, the entries for § 31.6302-1(c)(1) through (c)(4).

(c)(5) Exception to the monthly and semi-weekly deposit rules for employers in the Employers' Annual Federal Tax Program (Form 944).

(c)(6) Extension of time to deposit for employers in the Employers' Annual Federal Tax Program (Form 944) during the preceding year.

(d) *Examples 1 through 5* [Reserved]. For further guidance, see § 31.6302-0, the entries for § 31.6302-1(d) *Examples 1 through 5*.

Example 6. Extension of time to deposit for employers in the Employer's Annual Federal Tax Program (Form 944) during the preceding year satisfied.

(e) through (f)(3) [Reserved]. For further guidance, see § 31.6302-0, the entries for § 31.6302-1(e) through (f)(3).

(4) De minimis rule.

(i) De minimis deposit rules for quarterly and annual return periods beginning or after January 1, 2001.

(ii) De minimis deposit rule for quarterly return periods beginning on or after January 1, 2010.

(iii) De minimis deposit rule for employers who file Form 944.

(f)(5) *Examples 1 and 2* [Reserved]. For further guidance, see § 31.6302-0, the entries for § 31.6302-1(f)(5) *Examples 1 and 2*.

Example 3. De minimis deposit rule for employers who file Form 944 satisfied.

(g) [Reserved]. For further guidance, see § 31.6302-0, the entry for § 31.6302-1(g).

(1) In general.

(g)(2) through (m) [Reserved]. For further guidance, see § 31.6302-0, the entries for § 31.6302-1(g)(2) through (m).

(n) Effective/applicability dates.

■ **Par. 8.** Section 31.6302-1 is amended by revising paragraphs (e)(2), (f)(4)(i), (g)(1) and (n) and adding paragraph (f)(4)(ii) to read as follows:

* * * * *

(e) * * *

(2) [Reserved]. For further guidance, see § 31.6302-1T(e)(2).

(f) * * *

(4) * * * (i) and (ii) [Reserved]. For further guidance, see § 31.6302-1T(f)(4)(i) and (ii).

* * * * *

(g) * * * (1) [Reserved]. For further guidance, see § 31.6302-1T(g)(1).

* * * * *

(n) [Reserved]. For further guidance, see § 31.6302-1T(n).

■ **Par. 9.** Section 31.6302-1T is revised to read as follows:

§ 31.6302-1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992 (temporary).

(a) through (b)(3) [Reserved]. For further guidance, see § 31.6302-1(a) through (b)(3).

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

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

period adjustments reported on Forms 941 or 944 for 2008 and earlier years are taken into account in determining the employment tax liability for the return period in which the adjustments are reported.

(c)(1) through (c)(4) [Reserved]. For further guidance, see § 31.6302-1(c)(1) through (c)(4).

(5) *Exception to the monthly and semi-weekly deposit rules for employers in the Employers' Annual Federal Tax Program (Form 944).* Generally, an employer who files Form 944 for a taxable year may remit its accumulated employment taxes with its timely filed return for that taxable year and is not required to deposit under either the monthly or semi-weekly rules set forth in § 31.6302-1(c)(1) and (2) during that taxable year. An employer who files Form 944 whose actual employment tax liability exceeds the eligibility threshold, as set forth in §§ 31.6011(a)-1T(a)(5) and 31.6011(a)-4T(a)(4), will not qualify for this exception and should follow the deposit rules set forth in this section.

(6) *Extension of time to deposit for employers in the Employers' Annual Federal Tax Program (Form 944) during the preceding year.* An employer who filed Form 944 for the preceding year but will file Forms 941 instead for the current year will be deemed to have timely deposited its current year's January deposit obligation(s) under § 31.6302-1(c)(1) through (4) if the employer deposits the amount of such deposit obligation(s) by March 15 of that year.

(d) *Examples 1 through 5* [Reserved]. For further guidance, see § 31.6302-1(d) *Examples 1 through 5*.

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

February on March 15, 2007. Pursuant to § 31.6302-1(c)(6), F will be deemed to have timely deposited the employment taxes due for January 2007, and, thus, the IRS will not impose a failure-to-deposit penalty under section 6656 for that month.

(e)(1) [Reserved]. For further guidance, see § 31.6302-1(e)(1).

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

(f)(1) through (f)(3) [Reserved]. For further guidance, see § 31.6302-1(f)(1) through (f)(3).

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

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

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

employment taxes due for that quarter if the employer fully deposits the employment taxes accumulated during the quarter by the last day of the month following the close of that quarter.

Employment taxes accumulated during the fourth quarter can be either deposited by January 31 or remitted with a timely filed return for the return period.

(5) *Examples 1 and 2* [Reserved]. For further guidance, see § 31.6302-1(f)(5) *Examples 1 and 2*.

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

(g) *Agricultural employers—special rules*—(1) *In general*. An agricultural employer reports wages paid to farm workers annually on Form 943 (Employer's Annual Tax Return for Agricultural Employees) and reports wages paid to nonfarm workers quarterly on Form 941 or annually on Form 944. Accordingly, an agricultural employer must treat employment taxes reportable on Form 943 ("Form 943 taxes") separately from employment taxes reportable on Form 941 or Form 944 ("Form 941 or Form 944 taxes"). Form 943 taxes and Form 941 or Form

944 taxes are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of § 31.6302-1(c)(3) applies, or whether any safe harbor is applicable. In addition, separate Federal tax deposit coupons must be used to deposit Form 943 taxes and Form 941 or Form 944 taxes. (See § 31.6302-1(b) for rules for determining an agricultural employer's deposit status for Form 941 taxes.) The determination of whether an agricultural employer is a monthly or semi-weekly depositor of Form 943 taxes is made according to the rules of this paragraph (g).

(g)(2) through (m) [Reserved]. For further guidance, see § 31.6302-1(g)(2) through (m).

(n) *Effective/applicability dates*—(1) *In general*. Sections 31.6302-1 through 31.6302-3 apply with respect to the deposit of employment taxes attributable to payments made after December 31, 1992. To the extent that the provisions of §§ 31.6302-1 through 31.6302-3 are inconsistent with the provisions of §§ 31.6302(c)-1 and 31.6302(c)-2, a taxpayer will be considered to be in compliance with §§ 31.6301-1 through 31.6302-3 if the taxpayer makes timely deposits during 1993 in accordance with §§ 31.6302(c)-1 and 31.6302(c)-2. Paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6*, (e)(2), (f)(4)(i), (f)(4)(iii), (f)(5) *Example 3*, and (g)(1) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (f)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraphs (e)(2) and (g)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6302-1 in effect prior to December 30, 2008. The rules of paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6*, (f)(4)(i), (f)(4)(iii), and (f)(5) *Example 3* of this section that apply to taxable years beginning on or after January 1, 2006 and before December 30, 2008, are contained in § 31.6302-1T in effect prior to December 30, 2008. The rules of paragraphs (b)(4) and (f)(4) of this section that apply to taxable years beginning before January 1, 2006, are contained in § 31.6302-1 in effect prior to January 1, 2006.

(2) *Expiration date.* The applicability of this section will expire on or before December 23, 2011.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: December 18, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8-30582 Filed 12-24-08; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9439]

RIN 1545-BC93

Disclosure of Return Information to the Bureau of Economic Analysis

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to disclosures of corporate tax return information to the Bureau of Economic Analysis (Bureau). The final regulations authorize the IRS to disclose certain items of corporate tax return information to the Secretary of Commerce for purposes of structuring United States national economic accounts and conducting related statistical activities authorized by law. The final regulations facilitate the assistance of the IRS to the Bureau in its statistics programs, require no action by taxpayers, and have no effect on their tax liabilities.

DATES: *Effective Date:* These regulations are effective on December 29, 2008.

Applicability Date: These regulations apply to disclosures made to the Bureau of Economic Analysis on or after December 29, 2008.

FOR FURTHER INFORMATION CONTACT:

Charles B. Christopher (202) 622-4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR Part 301) under section 6103(j)(1)(B) of the Internal Revenue Code (Code). The final regulations contain rules relating to the disclosure of corporate tax return information to the Bureau of Economic Analysis (Bureau) of the Department of

Commerce for the purpose of, but only to the extent necessary in, structuring national economic accounts and conducting related statistical activities authorized by law.

Section 6103(j)(1)(B) provides that, upon written request from the Secretary of Commerce, the Secretary of the Treasury shall furnish to BEA return information that is prescribed by Treasury regulations for the purpose of, but only to the extent necessary in, structuring of national economic accounts and conducting related statistical activities authorized by law. Prior regulations under section 6103(j)(1)(B) permitted the disclosure to BEA of return information from corporate returns processed by the IRS's Statistics of Income Division for its corporate sample file.

By letter dated December 18, 2003, the Department of Commerce requested disclosure of certain items of return information obtained from all corporate returns, not just those processed by the IRS's Statistics of Income Division for its corporate sample file. Proposed regulations (REG-148864-03, 2006-2 CB 320; 71 FR 38323) and temporary regulations (TD 9267, 71 FR 38262) were published in the **Federal Register** on July 6, 2006. The Department of Commerce thereafter submitted comments requesting certain technical corrections to the items of corporate return information authorized to be disclosed. No other comments were received, and no public hearing was requested or held. After consideration of the comments received from the Department of Commerce, the proposed regulations, as amended by this Treasury decision, are adopted as final regulations, and the corresponding temporary regulations are removed. See § 601.601(d)(2)(ii)(b). These final regulations generally retain the provisions of the proposed regulations with the inclusion of the additional requested items as explained in more detail in this preamble.

Explanation and Summary of Comments

Proposed § 301.6103(j)(1)-1(c)(3) provided an itemized description of the corporate tax return information authorized to be disclosed to the Bureau for the purpose of structuring national economic accounts and conducting related statistical activities required by law. In its comments, the Department of Commerce requested that certain additional items of corporate tax return information that are essential to the Bureau's ability to measure accurately U.S. economic activity be included in the itemized list in the final regulations.

Most of the additional items of corporate tax return information to which the Department of Commerce requests access are slightly different variants of the same items authorized in the proposed regulations. The inclusion of these items will enable the Bureau to measure accurately corporate profits, gross domestic product, and other measures of activity in the economy. After consideration of these comments, the Treasury Department and IRS have included the additional requested items in the final regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. 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. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Robin M. Tuczak, Office of the Associate Chief Counsel (Procedure & Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR Part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 2.** Section 301.6103(j)(1)-1 is amended by revising paragraphs (c) introductory text, (c)(1), and (e), removing and reserving paragraph (c)(2), and adding paragraph (c)(3) to read as follows: