assuming duty, after any medication capable of affecting the mind, emotions, and behavior is started, to ensure that such medication does not alter the individual’s ability to perform any of the essential functions of the job. Where a written reasonable accommodation determination already has been made, any additional change to an SO’s or SPO’s health status affecting that accommodation must be reported to their supervisor and the Designated Physician for a determination of fitness for duty.

(c) Supervisory personnel must document and report to the Designated Physician any observed physical, behavioral, or health changes or deterioration in work performance in SPOs and SOs under their supervision.

(d)(1) PF contractor management must inform the Designated Physician of all anticipated job transfers or re categorizations including:
(i) From SO to FPRS, BRS, ARS, or SRT Member;
(ii) From FPRS, to BRS, ARS or SRT Member;
(iii) From BRs to ARS or SRT Member;
(iv) From ARS to SRT Member;
(v) From SRT Member to ARS, BRS, FPRS or SO;
(vi) From ARS to BRS, FPRS, or SO;
(vii) From BRS to FPRS or SO;
(viii) From FPRS to SO; and
(ix) From PF to other assignments.

(2) For downward re categorizations in paragraphs (d)(1)(v) through (ix) of this section, the anticipated transfer notification must include appropriate additional information such as the apparent inability of the employee to perform essential functions, meet physical readiness standards, or to serve without posing a direct threat to self or others.

(e) The Designated Physician must notify the PPMD to ensure appropriate medical review can be made regarding any recommended or required changes to the PF member’s status.

§ 1046.20 Medical records maintenance requirements.

(a) The Designated Physician must maintain all medical information for each employee or applicant as a confidential medical record, with the exception of the psychological record. The psychological record is part of the medical record but must be stored separately, in a secure location in the custody of the evaluating psychologist. These records must be kept in accordance with the appropriate DOE Privacy Act System of Records, available at http://energy.gov/sites/prod/files/imaprod/documents/FinalPASORNCompilation.1.8.09.pdf.

(b) Nothing in this part is intended to preclude access to these records according to the requirements of other parts of this or other titles. Medical records maintained under this section may not be released except as permitted or required by law.

(c) Medical records must be retained according to the appropriate DOE Administrative Records Schedule, available at: http://energy.gov/sites/prod/files/cioprod/documents/ADM_1%281%29.pdf (paragraph 21.1)

(d) When an individual has been examined by a Designated Physician, all available history and test results must be maintained by the Designated Physician under the supervision of the PPMD in the medical record, regardless of whether:

(1) The individual completes the examination;

(2) It is determined that the individual cannot engage in physical training or testing and cannot perform the essential functions of the job; or

(3) It is determined that the individual poses a direct threat to self or others.

(e) The Designated Physician must provide written work restrictions to the affected SPO/SO and PF management. PF management must develop, approve, implement, and operate according to site-specific plans based upon the PF contractor’s operational and contract structure to ensure confidentiality of PF medical information. This plan must permit access only to those with a need to know specific information, and must identify those individuals by organizational position or responsibility. The plan must adhere to all applicable laws and regulations, including but not limited to the Privacy Act of 1974, the Health Insurance Portability and Accountability Act of 1996, the Family and Medical Leave Act of 1993, and the ADA, as amended by the ADAAA.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9610]

RIN 1545–BK68

Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations (TD 9610), which were published in the Federal Register on Monday, January 28, 2013 (78 FR 5874). The regulations related to information reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities.

DATES: Effective Date: These corrections are effective September 10, 2013. Applicability Date: These corrections are applicable on January 28, 2013.

FOR FURTHER INFORMATION CONTACT: John Sweeney, (202) 622–3840 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are §§ 1.1471–1 through 1.1474–7, promulgated under sections 1471 through 1474 of the Internal Revenue Code. These regulations affect persons making certain U.S.-related payments to FFIs and other foreign entities, and affect payments by FFIs to other persons. Sections 1471 through 1474 were added to the Internal Revenue Code, as Chapter 4 of Subtitle A, by the Hiring Incentives to Restore Employment Act of 2010 (Pub. L. 111–147, 124 Stat. 71).

Need for Correction

As published, the final regulations contain a number of items that need to be corrected or clarified. Several citations and cross references are corrected. The correcting amendments also include the addition, deletion, or modification of regulatory language to clarify the relevant provisions to meet their intended purposes. Additions, deletions, and modifications are also made to ensure that the rules in the final regulations are coordinated with other
rules contained in other relevant regulations (e.g., under chapters 3 and 61). For example in § 1.1471–3(c)(3)(iii)(B)(2), the definition of an FFI withholding statement was modified to add an applicable cross reference to the reporting on the statement that is required under chapter 61 (in addition to the reporting required under chapters 3 and 4); to delete an incorrect reference to a pool of payees exempt from chapter 4 withholding; and to add the modified requirements of an FFI withholding statement provided by a Qualified Intermediary that should have been referenced in this paragraph.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

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 1.1471–0 is amended by:

1. Revising paragraph (a)(2)(i) under § 1.1471–2.

2. Revising paragraphs (b)(7) and (c)(2)(v) under § 1.1471–4.


4. Revising paragraph (a)(5)(vii) and removing paragraph (b)(3)(iii) under § 1.1473–1.

The revisions read as follows:

§ 1.1471–0 Outline of regulation provisions for sections 1471 through 1474.

* * * * *

§ 1.1471–2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.

(a) * * *

(b) * * *

(i) Requirement to withhold on payments of U.S. source FDAP income to participating FFIs and deemed-compliant FFIs that are NQIs, NWPs, or NWTs.

* * * * *

§ 1.1471–4 FFI agreement.

* * * * *

(b) * * *

(7) Withholding requirements for U.S. branches of participating FFIs (and reporting Model 1 FFIs) that are treated as U.S. persons.

(c) * * *

§ 1.1471–5 Definitions applicable to section 1471.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(E) Account that is tax-favored.

* * * * *

§ 1.1473–1 Scope of chapter 4 definitions.

* * * * *

(b) * * *

(23) Customer master file. A customer master file includes the primary files of a withholding agent, participating FFI, or deemed-compliant FFI for maintaining account holder information, such as information used for contacting account holders and for satisfying AML due diligence.

* * * * *

(34) * * * The term electronically searchable information means information that a withholding agent or FFI maintains in its tax reporting files, customer master files, or similar files, and that is stored in the form of an electronic database against which standard queries in programming languages, such as Structured Query Language, may be used.

* * * * *

(99) Pre-FATCA Form W–8. The term pre-FATCA Form W–8 means a version of a Form W–8 that was issued by the IRS prior to 2013 (including an acceptable substitute form based on such version) and that does not contain chapter 4 statuses but otherwise meets the requirements of § 1.1441–1(e)(1)(ii) applicable to such certificate (or substitute form) and has not expired.

* * * * *

Par. 4. Section 1.1471–2 is amended by:

1. Revising the heading and first two sentences of paragraph (a)(2)(i).

2. Revising the first sentence of paragraph (a)(2)(iii)(A),


4. Revising the second and fourth sentences of paragraph (a)(2)(v).

5. Revising the first sentence of paragraph (a)(4)(ii)(A), and


The revisions read as follows:

§ 1.1471–2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.

(a) * * *

(2) * * *

(i) Requirement to withhold on payments of U.S. source FDAP income to participating FFIs and deemed-compliant FFIs that are NQIs, NWPs, or NWTs. A withholding agent that, after December 31, 2013, makes a payment of U.S. source FDAP income to a participating FFI or deemed-compliant FFI that is an NQI receiving the payment as an intermediary, or a NWP or NWT, must withhold 30 percent of the payment unless the withholding is reduced under this paragraph (a)(2)(i). A withholding agent is not required to withhold on a payment, or portion of a payment, that it can reliably associate, in the manner described in § 1.1471–3(c)(2), with a valid intermediary or flow-through withholding certificate that meets the requirements of § 1.1471–3(d)(4) and a withholding statement that meets the requirements of § 1.1471–3(c)(3)(iii)(B) and that allocates the payment or portion of the payment to payees for which no withholding is required under chapter 4.

* * * * *

(99) Pre-FATCA Form W–8. The term pre-FATCA Form W–8 means a version of a Form W–8 that was issued by the IRS prior to 2013 (including an acceptable substitute form based on such version) and that does not contain chapter 4 statuses but otherwise meets the requirements of § 1.1441–1(e)(1)(ii) applicable to such certificate (or substitute form) and has not expired.

* * * * *

(iv) Withholding obligation of a territory financial institution. A territory financial institution that is a flow-through entity or that acts as an intermediary with respect to a withholdable payment has an obligation to withhold (to the extent required...
3. Revising paragraph (b)(2)(vi)
5. Revising the fourth sentence of paragraph (c)(3)(iii)(A)(2)
6. Revising the first sentence of paragraph (c)(6)(i)(B), and (d)(6)(i)(C)(2)
7. Revising the second sentence of paragraph (d)(2)(i), (d)(2)(iii), and (c)(6)(ii)(C)(3)
8. Revising the second sentence of paragraph (d)(3)(ii)
9. Revising the first sentence of paragraph (d)(4)(i)
10. Revising the second sentence of paragraph (d)(5)(i), and (c)(6)(ii)(D)(v)
11. Revising paragraph (d)(6)(ii)
12. Revising paragraph (d)(4)(i), (d)(2)(iii), and (c)(6)(ii)(C)(3)
13. Revising paragraph (d)(6)(i)(I)
15. Revising the third sentence of paragraph (d)(6)(ii), (d)(6)(i)(I)
16. Revising the first sentence of paragraph (d)(6)(i)(I)
17. Revising the third sentence of paragraph (d)(6)(i)(I)

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The provisions in this section and §1.1477–1(b) in addition to the provisions in paragraph (d)(6)(i)(I) and (d)(6)(i)(II) describes the criteria for identifying a foreign financial institution (FFI) that has not agreed to be treated as a U.S. financial institution in accordance with the US–TTE Agreement. A FFI meeting its obligations under either §1.1471–4(b) and its FFI agreement or §1.1477–1(b) in addition to the provisions in paragraph (d)(6)(i)(I) and (d)(6)(i)(II) describes the criteria for identifying a foreign financial institution (FFI) that has not agreed to be treated as a U.S. financial institution in accordance with the US–TTE Agreement. A FFI meeting its obligations under either §1.1471–4(b) and its FFI agreement or §1.1477–1(b) in addition to the provisions in paragraph (d)(6)(i)(I) and (d)(6)(i)(II) describes the criteria for identifying a foreign financial institution (FFI) that has not agreed to be treated as a U.S. financial institution in accordance with the US–TTE Agreement. A FFI meeting its obligations under either §1.1471–4(b) and its FFI agreement or §1.1477–1(b) in addition to the provisions in paragraph (d)(6)(i)(I) and (d)(6)(i)(II) describes the criteria for identifying a foreign financial institution (FFI) that has not agreed to be treated as a U.S. financial institution in accordance with the US–TTE Agreement. A FFI meeting its obligations under either §1.1471–4(b) and its FFI agreement or §1.1477–1(b) in addition to the provisions in paragraph (d)(6)(i)(I) and (d)(6)(i)(II) describes the criteria for identifying a foreign financial institution (FFI) that has not agreed to be treated as a U.S. financial institution in accordance with the US–TTE Agreement. A FFI meeting its obligations under either §1.1471–4(b) and its FFI agreement or §1.1477–1(b) in addition to the provisions in paragraph (d)(6)(i)(I) and (d)(6)(i)(II) describes the criteria for identifying a foreign financial institution (FFI) that has not agreed to be treated as a U.S. financial institution in accordance with the US–TTE Agreement. A FFI meeting its obligations under either §1.1471–4(b) and its FFI agreement or §1.1477–1(b) in addition to the provisions in paragraph (d)(6)(i)(I) and (d)(6)(i)(II) describes the criteria for identifying a foreign financial institution (FFI) that has not agreed to be treated as a U.S. financial institution in accordance with the US–TTE Agreement.
number, if any, for each country of residence (or the individual’s date of birth if the individual does not have a foreign tax identification number for the country of residence claimed), and must contain a signed and dated certification made under penalties of perjury that the information provided on the form is accurate and will be updated by the individual within 30 days of a change in circumstances that causes the form to become incorrect. * * *

(9) * * *

(iv) * * *

(A) * * * However, an agent that makes a payment pursuant to an agency arrangement (paying agent) is also a withholding agent with respect to the payment unless an exception under § 1.1473–1(d) applies. * * *

(2) * * *

(i) * * * Consistent with the presumption rules in paragraph (f)(3) of this section, a withholding agent must treat a payee that has provided a valid Form W–9 as a specified U.S. person unless the Form W–9 certifies that the payee is other than a specified U.S. person. * * *

(ii) Reliance on documentary evidence. A withholding agent may also treat the payee as a U.S. person that is other than a specified U.S. person if the withholding agent has documentary evidence described in paragraphs (c)(5)(ii)(C) and (D) of this section or general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that both establishes that the payee is a U.S. person and establishes (either through the documentation or the application of the rules in § 1.6049–4(c)(1)(ii) or paragraph (f)(3) of this section) that the payee is an exempt recipient. For purposes of the previous sentence, an exempt recipient means with respect to a withholding agent other than a participating FFI or registered deemed-compliant FFI, an exempt recipient under § 1.6049–4(c)(1)(ii) or, with respect to a withholding agent that is a participating FFI or registered deemed-compliant FFI, a U.S. person other than a specified U.S. person as described under § 1.1473–1(c).

(iii) * * * A withholding agent, other than a participating FFI or registered deemed-compliant FFI, may also treat a payee as a U.S. person if it has previously reviewed a Form W–9 or documentary evidence that established that the payee is a U.S. person and established (through the documentation or the application of the rules in § 1.6049–4(c)(1)(iii)) that the payee is an exempt recipient for purposes of chapter 61. * * *

(4) * * *

(i) * * *

For payments made prior to January 1, 2016, a registered deemed-compliant FFI that is a sponsored FFI must provide the GIIN of its sponsoring entity on the withholding certificate if the sponsored FFI has not obtained a GIIN. * * *

(6) * * *

(i) * * *

(F) The withholding agent does not know or have reason to know that the payee is a member of an expanded affiliated group with any other FFI other than an FFI that is also treated as an owner-documented FFI by the withholding agent or that the FFI has any specified U.S. persons that own an equity interest in the FFI or a debt interest (other than a debt interest that is not a financial account or that has a balance or value not exceeding $50,000) in the FFI other than those identified on the FFI owner reporting statement described in paragraph (d)(6)(iv) of this section.

(ii) * * * A withholding agent may rely upon the letter described in this paragraph (d)(6)(i) if it does not know or have reason to know that any of the information contained in the letter is unreliable or incorrect.

(iii) * * * Acceptable documentation for an individual owning an equity interest in the payee or a debt holder described in paragraph (d)(6)(iv) of this section means a valid withholding certificate, valid Form W–9 (including any necessary waiver), or documentary evidence establishing the foreign status of the individual as set forth in paragraph (d)(3)(ii) of this section (regardless of whether the payment is made with respect to an offshore obligation). * * *

(9) * * *

(i) * * *

(A) * * * A withholding agent may treat a payee as a foreign government, government of a U.S. territory, international organization, or foreign central bank of issue if it has a withholding certificate that underlies the payee as such an entity, indicates that the payee is the beneficial owner of the payment, and indicates that the payee is not engaged in commercial financial activities with respect to the payments or accounts identified on the form. * * *

Par. 6. Section 1471–4 is amended by:

1. Revising the seventh sentence of paragraph (b)(1).

2. Revising the first and third sentences of paragraph (b)(2).

3. Revising the fifth sentence of paragraph (b)(3).

4. Revising paragraph (b)(7).

5. Revising the first and third sentences of paragraph (c)(2)(iii)(B).

6. Revising the second sentence of paragraph (c)(2)(iii)(C).

7. Revising the heading and first sentence of paragraph (c)(2)(v).

8. Removing the language “this paragraph (c)(5)(iv)(D)” from paragraph (c)(5)(iv)(D)(4) and adding “paragraph (c)(5)(iv)(D)(3) of this section” in its place.

9. Revising the second, fourth, and eighth sentences of paragraph (c)(6)

Example 2,

10. Revising the fourth sentence of paragraph (c)(7).


12. Revising the third sentence of paragraph (d)(4)(i).


14. Revising the first sentence of paragraph (d)(6)(i).


16. Revising the first sentence of paragraph (e)(2)(ii).


20. Revising paragraph (e)(3)(iii)(B), and

21. Revising the first sentence of paragraph (i)(1).

The revisions read as follows:

§ 1.1471–4 FFI agreement.

* * *

(b) * * *

(1) * * * See § 1.1471–2 for the exceptions to and special rules for withholding and the exclusion from the definition of withholdable payment and foreign passthru payment that applies to any payment made under a grandfathered obligation or the gross proceeds from the disposition of such an obligation. * * *

(2) * * * Except as otherwise provided under § 1.1471–2 and, with respect to certain preexisting accounts
under paragraph (c) of this section, a participating FFI is required to determine whether withholding applies at the time a payment is made by reliably associating the payment with valid documentation described in paragraph (c) of this section for the payee of the payment. * * * For a payment made to an account held by an entity, except as otherwise provided in § 1.1471–3(a)(3), the payee is the account holder. * * *

(3) * * * See the QI, WP, or WT agreement for the withholding requirements of an FFI that is a QI, WP, or WT for purposes of paragraph 4.

(7) Withholding requirements for U.S. branches of participating FFIs (and reporting Model 1 FFIs) that are treated as U.S. persons. A U.S. branch of a participating FFI (and reporting Model 1 FFI) that is treated as a U.S. person and that satisfies its backup withholding obligations under section 3406(a) with respect to accounts held at the U.S. branch by account holders that are payees treated as other than exempt recipients under chapter 61 will be treated as satisfying its withholding obligation with respect to such accounts under section 1471(b)(1) and this paragraph (b). See paragraph (d)(2)(iii)(B) of this section for the special reporting requirements applicable to U.S. branches of participating FFIs (and reporting Model 1 FFIs) that are treated as U.S. persons. See paragraphs (c)(2) and (d)(4) of this section for the reporting requirements of U.S. branches of participating FFIs (and reporting Model 1 FFIs) with respect to payments that are chapter 4 reportable amounts.

(c) * * * * *

(2) * * *

(iii) * * *

(B) * * *

* * *

For purposes of this section, a change in circumstances (as defined in § 1.1471–3(c)(6)(ii)(E)) includes any change or addition of information to the account holder’s account (including the addition, substitution, or other change of an account holder) or any change or addition of information to any account associated with such account (applying the account aggregation rules described in § 1.1471–5(b)(4)(iii) or by treating the accounts as consolidated obligations) if such change or addition of information affects the chapter 4 status of the account holder. * * * With respect to a preexisting account that meets a documentation exception described in paragraphs (c)(3)(iii) and (c)(5)(iii) of this section, a change in circumstances also includes a change in account balance or value as of the end of the first subsequent year that causes the account no longer to meet the documentation exception.

(C) * * * With respect to an account held by an entity other than a passive NFFE described in the preceding sentence, following a change in circumstances, the participating FFI must retain a record of the appropriate documentation described in paragraph (c)(3) of this section by the date that is 90 days after the change in circumstances or, if unable to do so, must treat such account as held by a nonparticipating FFI.

* * * *

(v) Special rule for U.S. branches of participating FFIs (and reporting Model 1 FFIs) that are treated as U.S. persons. A U.S. branch of a participating FFI (and reporting Model 1 FFI) that is treated as a U.S. person shall apply, in lieu of the due diligence requirements of this paragraph (c), the due diligence requirements of § 1.1471–3 to determine the chapter 4 status of account holders and payees that are entities and shall apply the documentation requirements of chapter 3 or 61 (as applicable) with respect to individual account holders.

* * * *

(6) * * * * *

Example 2. * * * The balance in U’s depository account on the effective date of CB’s FFI agreement is $20,000. * * * The balance in Entity X’s account on the effective date of CB’s FFI agreement is $130,000, and the balance in Entity Y’s account on the effective date of CB’s FFI agreement is $110,000. * * * U’s depository account qualifies for the § 1.1471–3(a)(4)(i) exception to U.S. account status because it does not exceed the $50,000 threshold, taking into account the aggregation rule described in § 1.1471–5(a)(4)(iii)(A).

* * * *

(7) * * * The responsible officer must also certify that the participating FFI has completed the account identification procedures and documentation requirements of this paragraph (c) for all other preexisting accounts or, if it has not retained a record of the documentation required under this paragraph (c) with respect to an account, treats such account in accordance with the requirements of this section and § 1.1471–5(g) or § 1.1471–3(f) (as applicable).

* * * *

(d) * * * *

(2) * * *

(iii) * * *

(B) Special reporting rules for U.S. branches treated as U.S. persons. A U.S. branch of a participating FFI (and reporting Model 1 FFI) that is treated as a U.S. person shall be treated as having satisfied the reporting requirements described in paragraphs (d)(2)(i) and (d)(2)(ii)(C) of this section if it reports under—

* * * *

(4) Section 1.1474–1(i) with respect to specified U.S. persons identified in § 1.1471–3(d)(6)(iv)(A)(1) and (2) of owner-documented FFIs.

(3) * * *

(iv) * * *

(B) The name, address, and TIN of each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(1) and (2).

* * * *

(5) * * *

(iii) * * *

The name, address, and TIN of each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(1) and (2), and * * * * *

(6) * * *

(i) * * *

Except as otherwise provided in a Model 2 IGA, a participating FFI, as part of its reporting responsibilities under this paragraph (d), shall report to the IRS for each calendar year the information described for each of the classes of account holders described in paragraphs (d)(6)(i)(A) through (E) of this section.

* * * *

* * * *

(7) * * *

(ii) * * *

(A) * * *

(1) The name, address, and TIN of each specified U.S. person who is an account holder and, in the case of any account holder that is an NFFE that is a U.S. owned foreign entity or that is an owner-documented FFI, the name of such entity and the name, address, and TIN of each substantial U.S. owner of such NFFE or, in the case of an owner-documented FFI, of each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(1) and (2).

* * * *

(e) * * *

(2) * * *

* * * * *

(ii) * * *

For purposes of this section, a branch is a unit, business, or office of an FFI that is treated as a branch under
the regulatory regime of a country or is otherwise regulated under the laws of such country as separate from other offices, units, or branches of the FFI.

* * * * *

(iv) * * *

(B) Agree that each such branch will identify its account holders under the due diligence requirements applicable to participating FFIs under paragraph (c) of this section, retain a record of account holder and payee documentation pertaining to those identification requirements for the longer of six years from the effective date of the FFI agreement or for as long as the branch maintains the account or obligation, and report to the IRS with respect to accounts that it is required to treat as U.S. accounts to the extent permitted under the relevant laws pertaining to the branch;

* * * * *

(3) * * *

(ii) * * *

(B) * * * See paragraph (e)(2)(iii)(B) of this section for when an account is considered blocked.

(iii) * * *

(B) Agree as part of such registration to identify its account holders under the due diligence requirements applicable to participating FFIs under paragraph (c) of this section, retain a record of account holder and payee documentation pertaining to those identification requirements for the longer of six years from the effective date of its registration as a limited FFI or for as long as the FFI maintains the account or obligation, and report to the IRS with respect to accounts that it is required to treat as U.S. accounts to the extent permitted under the relevant laws pertaining to the FFI;

* * * * *

(i) * * *

(1) * * *

Except to the extent otherwise provided in a Model 2 IGA, a participating FFI (or branch thereof) that is prohibited by foreign law from reporting the information required under paragraph (d) of this section with respect to a U.S. account must follow the procedures of paragraph (i)(2) of this section to obtain a valid and effective waiver of such law and, if such waiver is not obtained within a reasonable period of time, to close or transfer such account.

* * * * *

Par. 7. Section 1.1471–5 is amended by:

1. Removing the language “(e)(3)(iv)” from paragraphs (b)(1)(iii)(A), (b)(1)(iii)(B), and (b)(1)(iii)(C) and adding “(b)(3)(iv)” in its place,

2. Revising paragraphs (b)(2)(i)(C) and (b)(2)(v),

3. Revising the first sentence of and adding a new second sentence in paragraph (b)(3)(iv),

4. Revising the third sentence of paragraph (b)(4)(iv),

5. Revising the third, fourth, and fifth sentences of paragraph (e)(4)(v)

Example 1,

6. Revising the second sentence of paragraph (e)(5),

7. Adding the language “and income derived from transactions between members of the expanded affiliated group” to the end of the first parenthetical in paragraph (e)(5)(i)(B)(1),


9. Revising the first sentence of paragraph (f)(2),

10. Revising paragraph (f)(2)(iii)(B),

11. Revising the first sentence of paragraph (f)(3)(ii)(E),

12. Removing the language “§ 1.1471–4(c)(8)” in paragraph (g)(3)(i) and adding “§ 1.1471–4(c)(5)(iv)(D)” in its place,

13. Revising the first sentence of paragraph (g)(3)(ii), and

14. Revising the first sentence of paragraph (g)(3)(iii).

The revisions read as follows:

§ 1.1471–5 Definitions applicable to section 1471.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) Rollovers. An account that otherwise satisfies the requirements of paragraph (b)(2)(i)(A) or (B) of this section will not fail to satisfy such requirements solely because such account may receive assets or funds transferred from one or more accounts that meet the requirements of paragraph (b)(2)(i)(A) or (B) of this section, one or more retirement or pension funds that meet the requirements of § 1.1471–6(f), one or more accounts described in paragraph (b)(2)(vi) of this section, or one or more entities identified as nonreporting financial institutions under the terms of an applicable Model 1 or Model 2 IGA because they are retirement or pension funds.

* * * * *

(v) Certain annuity contracts. A non-investment linked, non-transferable, immediate life annuity contract (including a disability annuity) that monetizes a retirement or pension account described in paragraph (b)(2)(i)(A) or (b)(2)(vi) of this section.

* * * * *

(3) * * *

(iv) * * *

To determine if debt or equity interests described in paragraph (b)(1)(iii) of this section are regularly traded, the principles of § 1.1472–1(c)(1)(i)(A)(2)(i) and (ii) shall apply with respect to the interests, and the principles of § 1.1472–1(c)(1)(i)(B)(1) shall apply for this purpose in the case of an initial public offering of such interests. See § 1.1472–1(c)(1)(i)(C) for the definition of an established securities market.

* * * * *

(4) * * *

* * * * *

(iv) * * *

In the case of an FFI determining whether an account meets (or continues to meet) a preexisting account documentation exception described in § 1.1471–4(c)(3)(ii) or (c)(5)(ii), whether the account is an account described in paragraph (e)(4)(i) of this section, the spot rate must be determined on the date for which the FFI is determining the threshold amount as prescribed in those provisions.

* * * * *

(e) * * *

(4) * * *

(v) * * *

Example 1. * * *

Fund Manager hires Investment Advisor, a foreign entity, to provide advice and discretionary management of a portion of the financial assets held by Fund A. Investment Advisor earned more than 50% of its gross income for the last three years from providing similar services. Because Investment Advisor primarily conducts a business of managing financial assets on behalf of clients, Investment Advisor is an investment entity under paragraph (e)(4)(i)(A) of this section and an FFI under paragraph (e)(1)(iii) of this section.

* * * * *

(5) * * *

For the treatment of foreign entities described in this paragraph under section 1472, see § 1.1472–1(c)(1)(v).

* * * * *

(iv) * * *

(D) The entity has not agreed to report under § 1.1471–4(d)(2)(i)(C) or otherwise act as an agent for chapter 4 purposes on behalf of any financial institution, including a member of its expanded affiliated group.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(F) * * *

(3) * * *

(j) Is authorized to act on behalf of the FFI (such as a fund manager, trustee, corporate director, or managing partner) to fulfill the requirements of the FFI agreement;

* * * * *

(iii) Has registered the FFI with the IRS by the later of January 1, 2016, or
the date that the FFI identifies itself as qualifying under this paragraph (f)(1)(i)(F);

(2) * * * A certified deemed-compliant FFI means an FFI described in any of paragraphs (f)(2)(i) through (iv) of this section that has certified as to its status as a deemed-compliant FFI by providing a withholding agent with the documentation described in § 1.1471–3(d)(5) applicable to the relevant deemed-compliant category. * * *

Par. 8. Section 1471–6 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 1.1471–6 Payments beneficially owned by exempt beneficial owners.

(h) * * *

(2) * * * (i) Treat the payee as an NFFE that is a WP or WT in accordance with § 1.1441–5(e)(2) (for a WP) or § 1.1441–5(e)(5)(v) (for a WT); or

§ 1.1472–1 Withholding on NFFEs.

(a) * * * See § 1.1473–1(a)(4)(vi), however, for rules excepting from the definition of withholdable payment certain payments of U.S. source FDAP income made prior to January 1, 2017, with respect to an offshore obligation and § 1.1471–2(b) for rules excepting from the definition of withholdable payment a grandfathered obligation. See also § 1.1471–2(a)(2)(ii), (iv), (v), and (vi) for special rules of withholding that apply for purposes of this section and § 1.1471–2(a)(5) for withholding requirements if the source or character of a payment is unknown.

(b) * * *

(1) In general. Except as otherwise provided in paragraph (b)(2) of this section (providing transitional relief), paragraph (c) of this section (providing exceptions for payments to an excepted NFFE, a WP or WT, or an exempt beneficial owner), § 1.1471–2(a)(4)(i) (providing an exception to withholding if the withholding agent lacks control, custody, or knowledge), § 1.1471–2(a)(4)(vii) (providing an exception to withholding for payments made to an account held with or equity interests traded through a clearing organization with FATCA-compliant membership), or § 1.1471–2(a)(4)(viii) (providing an exception to withholding for payments to certain excepted accounts), a withholding agent must withhold 30 percent of any withholdable payment made after December 31, 2013, to a payee that is an NFFE unless—

(2) * * * (ii) The entity has no outstanding debt that would be a financial account under § 1.1471–5(b)(1)(iii)(C); and

* * *

Par. 9. Section 1472–1 is amended by revising the fourth sentence of and adding a new fifth sentence to paragraph (a), and revising paragraphs (b)(1) introductory text, (b)(2), and (c)(2)(i) to read as follows:

§ 1.1472–1 Withholding on NFFEs.

(a) * * * See § 1.1473–1(a)(4)(vi), however, for rules excepting from the definition of withholdable payment certain payments of U.S. source FDAP income made prior to January 1, 2017, with respect to an offshore obligation and § 1.1471–2(b) for rules excepting from the definition of withholdable payment a grandfathered obligation. See also § 1.1471–2(a)(2)(ii), (iv), (v), and (vi) for special rules of withholding that apply for purposes of this section and § 1.1471–2(a)(5) for withholding requirements if the source or character of a payment is unknown.

(b) * * *

(1) In general. Except as otherwise provided in paragraph (b)(2) of this section (providing transitional relief), paragraph (c) of this section (providing exceptions for payments to an excepted NFFE, a WP or WT, or an exempt beneficial owner), § 1.1471–2(a)(4)(i) (providing an exception to withholding if the withholding agent lacks control, custody, or knowledge), § 1.1471–2(a)(4)(vii) (providing an exception to withholding for payments made to an account held with or equity interests traded through a clearing organization with FATCA-compliant membership), or § 1.1471–2(a)(4)(viii) (providing an exception to withholding for payments to certain excepted accounts), a withholding agent must withhold 30 percent of any withholdable payment made after December 31, 2013, to a payee that is an NFFE unless—

(2) * * * (ii) The entity has no outstanding debt that would be a financial account under § 1.1471–5(b)(1)(iii)(C); and

* * *

Par. 10. Section 1473–1 is amended by:

1. Removing the second sentence of paragraph (a)(3)(iii)(A),
2. Revising the second sentence of paragraph (a)(4)(iii),
3. Revising the first sentence of paragraph (a)(4)(vi),
4. Revising the heading of paragraph (a)(5)(vii),
5. Removing the language “beneficiary” from paragraph (b)(3)(iii)(A) and adding “person” in its place, and
6. Removing the language “trust; or” from paragraph (b)(3)(iii)(B) and adding “trust as of the end of the prior calendar year; or” in its place.

The revisions read as follows:

§ 1.1473–1 Section 1473 definitions.

(a) * * * See § 1.1472–1(a)(4)(vi), however, for rules excepting from the definition of withholdable payment certain payments of U.S. source FDAP income made prior to January 1, 2017, with respect to an offshore obligation and § 1.1471–2(b) for rules excepting from the definition of withholdable payment a grandfathered obligation. See also § 1.1471–2(a)(2)(ii), (iv), (v), and (vi) for special rules of withholding that apply for purposes of this section and § 1.1471–2(a)(5) for withholding requirements if the source or character of a payment is unknown.

(b) * * *

(1) In general. Except as otherwise provided in paragraph (b)(2) of this section (providing transitional relief), paragraph (c) of this section (providing exceptions for payments to an excepted NFFE, a WP or WT, or an exempt beneficial owner), § 1.1471–2(a)(4)(i) (providing an exception to withholding if the withholding agent lacks control, custody, or knowledge), § 1.1471–2(a)(4)(vii) (providing an exception to withholding for payments made to an account held with or equity interests traded through a clearing organization with FATCA-compliant membership), or § 1.1471–2(a)(4)(viii) (providing an exception to withholding for payments to certain excepted accounts), a withholding agent must withhold 30 percent of any withholdable payment made after December 31, 2013, to a payee that is an NFFE unless—

(2) * * * (ii) The entity has no outstanding debt that would be a financial account under § 1.1471–5(b)(1)(iii)(C); and

* * *

Par. 11. Section 1474–1 is amended by:

1. Revising paragraph (a)(2),
2. Revising the first sentence of paragraph (b)(1),
§ 1.1474–1 Liability for withheld tax and withholding agent reporting.
(a) * * * *(2) Withholding agent liability. A withholding agent that is required to withhold with respect to a payment under § 1.1471–2(a), 1.1471–4(b) (in the case of a participating FFI), or 1.1472–1(b) but fails either to withhold or to deposit any tax withheld as required under paragraph (b) of this section is liable for the amount of tax not withheld and deposited.
* * * * * (b) * * * *(1) * * * * Except as otherwise provided in this section (b), every withholding agent who withholds tax pursuant to chapter 4 shall deposit such tax within the time provided in § 1.6302–2(a) by electronic funds transfer as provided under § 31.6302–1(h) of this chapter. * * * * *
* * * * * * (d) * * * * *
(4) * * * * *
(i) * * * * *
(B) * * * * With respect to a payment of U.S. source FDAP income made to a participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT or QI that elects to be withheld upon under section 1471(b)(3) and from whom the withholding agent receives pooled information regarding such FFIs account holders and payees, a U.S. withholding agent must complete a separate Form 1042–S issued to the participating FFI, registered deemed-compliant FFI, or QI (as applicable) as the recipient with respect to each pool provided in an FFI withholding statement described in § 1.1471–3(c)(3)(ii)(B)(2). * * * * See paragraph (d)(4)(ii)(A) of this section for reporting rules applicable if participating FFIs or deemed-compliant FFIs provide specific payee information for reporting to the recipient of the payment for Form 1042–S reporting purposes. * * * *(C) * * * *(1) If the U.S. branch is treated as a U.S. person, if the withholding agent treats amounts paid as effectively connected with the branch’s trade or business in the United States, or if the U.S. branch is the beneficial owner of the payment, the withholding agent must file Form 1042–S reporting the U.S. branch as the recipient;
* * * * * * (ii) * * * * *(C) * * * * * (i) * * * * If a U.S. withholding agent makes a payment to a disregarded entity and receives a valid withholding certificate or other documentary evidence from the person that is the single owner of such disregarded entity, the withholding agent must file a Form 1042–S treating the single owner as the recipient. * * * * *
* * * * * * (iii) * * * * *(A) * * * * Except as otherwise provided in paragraphs (d)(4)(ii)(B) (relating to NQIs, NWPs, NWTs, and FFIs electing under section 1471(b)(3)) and (d)(4)(ii)(C) of this section (relating to transitional payee-specific reporting for payments to nonparticipating FFIs), a participating FFI or deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) makes a payment to a nonparticipating FFI of a foreign reportable amount as defined in paragraph (d)(2)(i)(D) of this section, the FFI must report on Form 1042–S on a payee-specific basis the aggregate amount of all foreign reportable amounts paid by the FFI to the nonparticipating FFI for each of the calendar years 2015 and 2016. * * * * * * (i) * * * * *(1) * * * * Beginning in calendar year 2014, if a withholding agent (other than an FFI reporting accounts held by owner-documented FFIs under § 1.1471–4(d)) makes during a calendar year a reportable payment to an entity account holder or payee of an obligation and the withholding agent treats the entity as an owner-documented entity under § 1.1471–3(d)(6), the withholding agent is required to report for such calendar year with respect to each specified U.S. person...
I. Background on the Pennsylvania Program

Section 503(a) of the SMCRA permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program, effective July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary’s findings, the disposition of comments, and the conditions of approval of the Pennsylvania program in the July 30, 1982, Federal Register (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16.

II. Submission of the Proposed Amendment

By letter dated December 19, 2012, (Administrative Record Number, PA 895.00), Pennsylvania sent OSM a request to approve the amendment of regulations found at Chapter 86 relating to surface and underground coal mining. The submission establishes a revised schedule of fees for coal mining activity permit applications. Specifically, Pennsylvania is requesting approval of regulations found at 25 Pa. Code Chapter 86, sections 1, 3, and 17. These changes were made at Pennsylvania’s initiative.

We announced receipt of the proposed amendment in the February 26, 2013, Federal Register (78 FR 13002). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting.

We did not hold a public hearing or meeting because one was not requested. The public comment period ended on March 28, 2013. We received one comment from the United States Environmental Protection Agency (Administrative Record Number, PA 895.04). This comment was in response to OSM’s December 26, 2012, letter (Administrative Record Number, PA 895.01) soliciting comment. No comments were received from the public.

III. OSM’s Findings

30 CFR 732.17(b)(10) requires that State program amendments meet the criteria for approval of State programs set forth in 30 CFR 732.15, including that the State’s laws and regulations are in accordance with the provisions of the Act and consistent with the requirements of 30 CFR Part 700. In 30 CFR 730.5, OSM defines “consistent with” and “in accordance with” to mean: (a) With regard to SMCRA, the State laws and regulations are no less stringent than, meet the minimum requirements of, and include all applicable provisions of the Act; and (b) with regard to the Federal regulations, the State laws and regulations are no less effective than the Federal regulations in meeting the requirements of SMCRA.

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment, as described below. Any revisions that we do not specifically discuss concern non-substantive wording or editorial changes.

Minor Revisions to Pennsylvania’s Regulations

Bifurcation of 25 Pa. Code 86.3 for Clarity Purposes

Pennsylvania proposed minor wording, editorial, and recodification changes to the following previously-approved regulation at 25 Pa. Code 86.3 (a). This section is amended to add subsection (b), which necessitates the lettering of the existing paragraph as subsection (a). Although Pennsylvania has always collected permit application fees, the bifurcation of this section, resulting in the addition of subsection (b) provides clarity regarding the use of the money collected from permit application fees that are deposited in the Coal Refuse Disposal Control Fund (“CRDCF”); a function within Pennsylvania’s purview, as the regulatory authority. Specifically, subsection (b), will incorporate the definition of “Permit application fee,” discussed at length herein, and will read:

Permit application fees required under this chapter for permit applications submitted under the Coal Refuse Disposal Control Act...