CPO of a family office or one of its principals has engaged in conduct serious enough to be subject to the disqualification provisions of Section 8a(2), such as fraud or misappropriation, then it should seek registration with the Commission and be subject to our oversight.

However, I am pleased that at my request, the CFTC staff will be making a special call to CPOs of family offices to determine how many, if any, are subject to statutory disqualification under Section 8a(2). The Commission currently has no information in this regard. I have consistently supported basing our regulatory decisions on the best available data. The data we will obtain from this special call will inform our judgment about whether further action is necessary to protect customers and the market.

I also am pleased that the Commission has declined to exclude registered investment advisers from the scope of this rule. The Securities and Exchange Commission has a different statutory disqualification regime. Registrants should abide by CFTC rules when they operate in our markets.

Going forward, the Commission should propose similar restrictions on the claiming of exemptions by statutorily disqualified commodity trading advisors. While this rule narrows one of the gaps in our Part 4 regulatory framework, this additional significant gap remains and should be closed.

I would like to thank the staff of the Division of Swap Dealer and Intermediary Oversight for working with my office to incorporate some of our comments and proposed revisions to this rule. As a matter of course, a collaborative rulemaking process that takes into account the input from all five Commissioners will produce better regulations.

[FR Doc. 2020–12607 Filed 7–7–20; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9900]

RIN 1545–BP84

Carryback of Consolidated Net Operating Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 1502 of the Internal Revenue Code (Code) that affect corporations filing consolidated returns. These regulations permit consolidated groups that acquire new members that were members of another consolidated group to elect in a year subsequent to the year of acquisition to waive all or part of the pre-acquisition portion of an extended carryback period under section 172 of the Code for certain losses attributable to the acquired members where there is a retroactive statutory extension of the NOL carryback period under section 172. These regulations respond to the enactment of section 2303 of the CARES Act, which retroactively extends the carryback period under section 172 for taxable years beginning after 2017 and before 2021.

DATES:

Effective date: These temporary regulations are effective on July 2, 2020.

Applicability date: For the date of applicability, see § 1.1502–21T(h)(9).

FOR FURTHER INFORMATION CONTACT: Jonathan R. Neuville, at (202) 317–5363 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The text of these temporary regulations also serves as the text of part of the proposed regulations set forth in the related notice of proposed rulemaking on this subject (REG–125716–18) in the Proposed Rules section in this issue of the **Federal Register**.

Background

This Treasury decision amends the Income Tax Regulations (26 CFR part 1) under section 1502 of the Code. Section 1502 authorizes the Secretary of the Treasury or his delegate (Secretary) to prescribe regulations for an affiliated group of corporations that join in filing (or that are required to join in filing) a consolidated return (consolidated group) to reflect clearly the Federal income tax liability of the consolidated group and to prevent avoidance of such tax liability. See § 1.1502–1(h) (defining the term ''consolidated group''). For purposes of carrying out those objectives, section 1502 also permits the Secretary to prescribe rules that may be different from the provisions of chapter 1 of the Code that would apply if the corporations composing the consolidated group filed separate returns. Terms used in the consolidated return regulations generally are defined in § 1.1502–1.

The Department of the Treasury (Treasury Department) and the IRS are issuing these temporary regulations to provide guidance to consolidated groups regarding the application of the net operating loss (NOL) carryback rules under section 172(b) of the Code, as amended by (i) section 2303(b) of the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136, 134 Stat. 281 (March 27, 2020) (CARES Act), and (ii) any future statutory amendments to section 172. Specifically, if there is a retroactive statutory extension of the NOL carryback period under section 172, these temporary regulations permit consolidated groups that acquired new members that were members of another consolidated group prior to the statutory change to elect to waive, in a taxable year subsequent to the taxable year of the acquisition, all or part of the pre-acquisition portion of an extended carryback period (as defined in part I of the Explanation of Provisions) under section 172 for consolidated net operating losses (CNOLs) attributable to the acquired members.

I. NOL Carrybacks and Carryovers Under Section 172

For purposes of section 172, an NOL equals the excess of a taxpayer's deductions allowed by chapter 1 of the Code over the taxpayer's gross income, computed with the modifications specified in section 172(d). Section 172(c). For a taxable year beginning before January 1, 2021, section 172(a)(1) allows as a deduction an amount equal to the aggregate of the NOL carryovers and carrybacks to such year. As amended by section 2303(b)(2) of the CARES Act, section 172(b)(1)(A)(i) of the Code provides that an NOL for any taxable year must be an NOL carryback to the extent provided in section 172(b)(1)(B), 172(b)(1)(C)(i), and 172(b)(1)(D).

A. Tax Cuts and Jobs Act Amendments to Section 172

Prior to enactment of the CARES Act, section 172 was most recently amended by Public Law 115–97, 131 Stat. 2054 (December 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). In relevant part, section 13302(b) of the TCJA amended section 172(b) to generally prohibit the carryback of NOLs arising in taxable years beginning after December 31, 2017 (post–2017 NOLs). The TCJA also provided limited exceptions to the general carryback prohibition by amending sections 172(b)(1)(B) and 172(b)(1)(C)(i) to provide that farming losses (within the meaning of section 172(b)(1)(B)(ii)) and losses incurred by insurance companies (as defined in section 816(a) of the Code) other than life insurance companies (non-life insurance companies), respectively, must be carried back to each of the two taxable years preceding the taxable year of the loss. Therefore, prior to enactment of the CARES Act, taxpayers generally could not carry back post-2017 NOLs to prior taxable years.

B. CARES Act Amendments to Section 172

Section 2303(b) of the CARES Act added section 172(b)(1)(D) to the Code. This provision contains an additional exception to the general prohibition of NOL carrybacks. Specifically, section 172(b)(1)(D) provides that an NOL arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, must be carried back to each of the five taxable years preceding the taxable year in which that NOL arises (five-year carryback period). Section 172(b)(2) requires taxpayers to carry the entire amount of such NOL back to the earliest taxable year of that five-year carryback period. Section 172(b)(2) also provides that the portion of the NOL that must be carried to each successive taxable year in the five-year carryback period equals the amount, if any, that was not used in the preceding taxable years to which the NOL was carried.

Section 172(b)(1)(D)(i)(II), as added by section 2303(b)(1) of the CARES Act, further provides that the exceptions to the prohibition of NOL carrybacks regarding farming losses and non-life insurance companies do not apply to NOLs that are subject to the five-year carryback period. See sections 172(b)(1)(B)(i) (regarding farming losses) and 172(b)(1)(C)(i) (regarding non-life insurance companies). Therefore, farming losses and losses incurred by non-life insurance companies arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, are carried back five years instead of two years. Section 172(b)(1)(D)(i)(II).

C. Election To Waive Carryback Under Section 172(b)(3)

Section 172(b)(3) permits a taxpayer entitled to a carryback period under section 172(b)(1) to make, with respect to an NOL for any taxable year, an irrevocable election to relinquish the carryback period. A taxpayer generally must make this election (i) in such manner as may be prescribed by the Secretary, and (ii) by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the NOL for which the election is to be in effect. However, solely with regard to NOLs arising in a taxable year beginning in 2018 or 2019, section 172(b)(1)(D)(v)(II), as added by section 2303(b)(1) of the CARES Act, provides a special rule that requires elections to waive the carryback period for such NOLs under section 172(b)(3) to be made no later than the due date (including extensions of time) for filing the taxpayer's Federal income tax return for the first taxable year ending after March 27, 2020. See also Rev. Proc. 2020–24, 2020–18 I.R.B. 750, §§ 4.01(1), 4.03 (providing procedures regarding the time and manner of filing elections for consolidated groups to waive the carryback under section 172(b)(3) for NOLs arising in taxable years beginning in 2018 or 2019).

II. Consolidated Return Regulations

Section 1.1502–21(a) defines the consolidated net operating loss (that is, a CNOL) deduction for any consolidated return year as ''the aggregate of the net operating loss carryovers and carrybacks to the year,'' which consist of (i) CNOLs of the consolidated group, and (ii) any NOLs of the group's members arising in separate return years. A ''CNOL'' is, for a consolidated return year, the excess of a consolidated group's deductions over the group's gross income, as determined under § 1.1502–11(a) (without regard to any CNOL deduction). See § 1.1502–21(e).

A. General Rules Regarding NOL Carryovers and Carrybacks

The NOL carryovers and carrybacks to a taxable year are determined under the principles of section 172 and § 1.1502–21. Section 1.1502–21(b)(1). Thus, losses permitted to be absorbed in a consolidated return year generally are absorbed in the order of the taxable years in which they arose, and losses carried from taxable years ending on the same date, and which are available to offset consolidated taxable income for the year, generally are absorbed on a pro rata basis. Id. If any percentage of the CNOL that is attributable to a member (determined pursuant to § 1.1502–21(b)(2)(iv)(B)) may be carried to a separate return year of the member, the amount of the CNOL that is attributable to the member is apportioned to the member and carried to the separate return year. Section 1.1502–21(b)(2)(i). If carried back to a separate return year, the apportioned loss may not be carried back to an equivalent, or earlier, consolidated return year of the group. Id.

B. General Waiver Election To Relinquish Entire Carryback

Section 1.1502–21(b)(3)(i) permits a consolidated group to make an irrevocable election under section 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year (general waiver election). When making this general waiver election for a consolidated return year, a consolidated group cannot make this election separately for a particular member (whether or not it remains a member). Section 1.1502–21(b)(3)(i). Rather, the consolidated return regulations provide only a narrowly scoped ''split-waiver election'' (as described in detail in part II.C of this Background) that a consolidated group can make solely with respect to one or more members that previously were members of another group. Id. A general waiver election must be made in a separate statement filed with the group's Federal income tax return for the consolidated return year in which the NOL arises. Id.

C. Special Election for Acquisitions of Members That Were Members of Another Consolidated Group

A consolidated group (acquiring group) that acquires a new member (acquired member) that was a member of another consolidated group (former group) may make an irrevocable election to relinquish, with respect to all CNOLs of the acquiring group that are attributable to the acquired member, the portion of the carryback period for which the acquired member was a member of a former group (split-waiver election). See § 1.1502–21(b)(3)(ii)(B). If an acquiring group makes a split-waiver election for a consolidated return year, the portion of the acquiring group's CNOL attributable to the acquired member for which the election is made will not be carried back to a former group. Id. Unlike a general waiver election, a split-waiver election is not a yearly election, but rather applies to all CNOLs attributable to an acquired member that otherwise would be subject to a carryback to a taxable year of a former group under section 172. Id.

Eligibility for a split-waiver election is subject to certain conditions and procedures. Importantly, a split-waiver election must be made in a separate statement filed with the acquiring group's original Federal income tax return for the year the corporation became a member. Id. In other words, if a split-waiver election is not made with this particular Federal income tax return, the election cannot later be made by amending this return in a subsequent consolidated return year or by attaching the above-described statement to a Federal income tax return for a later consolidated return year. If any other corporation joining the acquiring group was affiliated with the acquired member immediately before the acquired member joined the acquiring group, that other corporation also must be included in the split-waiver election. Id.

Explanation of Provisions

I. In General

On prior occasions, enacted legislation has amended section 172 to extend the carryback period for NOLs. See Worker, Homeownership, and Business Assistance Act of 2009, Public Law 111–92, 123 Stat. 2984 (November 6, 2009); Job Creation and Worker Assistance Act of 2002, Public Law 107–147, 116 Stat. 21 (March 9, 2002). Most recently, section 2303(b) of the CARES Act added section 172(b)(1)(D) to the Code. As described in part I of the Background, section 172(b)(1)(D) requires (in the absence of a waiver under section 172(b)(3)) a five-year carryback period for an NOL that arises in a taxable year beginning after December 31, 2017, and before January 1, 2021.

Such statutory changes to NOL carryback periods uniquely impact consolidated groups that acquire one or more corporations prior to the statutory extension of the carryback period. During the past two decades, the Treasury Department and the IRS have provided consolidated groups with certain additional elections for waiving carrybacks of losses into other, former groups. See 75 FR 35643 (June 23, 2010) (2010 split-waiver regulations); 67 FR 38000 (May 31, 2002) (2002 split-waiver regulations). These additional elections, while responsive to particular statutory amendments, have reflected common policy objectives of providing affected groups with the ability to waive all or a portion of the statutorily extended NOL carryback period.

The Treasury Department and the IRS have determined that it is appropriate to provide similar rules with regard to amendments to the NOL carryback rules under section 2303(b) of the CARES Act, as well as any similar statutory changes in the future. (For purposes of these regulations, the amended NOL carryback rules implemented by the CARES Act in particular or by future legislation more generally are referred to as the ''amended carryback rules.'') Therefore, these temporary regulations provide principle-based rules applicable to CNOLs arising in taxable years to which amended carryback rules become applicable after the acquisition of a member. Under these rules, which are consistent with the 2002 and 2010 split-waiver regulations (although these rules are not limited to a one-time statutory change of the NOL carryback rules), acquiring groups would possess the opportunity to waive, on a taxable-year-by-taxable-year basis, all or a portion of the carryback period with regard to CNOLs attributable to acquired members for pre-acquisition years during which the acquired members were members of a former group.

Therefore, these temporary regulations provide two additional types of split-waiver elections for consolidated groups that (i) include one or more acquired members, and (ii) have CNOLs that, under amended carryback rules, become eligible to be carried back for a greater number of years than under statutory law in effect at the time of the acquisition (default carryback period). See the discussion in parts II through IV of this Explanation of Provisions. A default carryback period may consist of zero years in the case of a complete prohibition on carrybacks. The additional years added under amended carryback rules constitute the ''extended carryback period.'' The two additional types of split-waiver elections set forth in these temporary regulations provide relief, and are subject to conditions and procedures, consistent with the applicable split-waiver elections set forth in the 2002 and 2010 split-waiver regulations.

II. Amended Statute Split-Waiver Election

These temporary regulations permit an acquiring group to make a special split-waiver election with regard to a CNOL for a consolidated return year in which an acquired member was included in the acquiring group and to which amended carryback rules apply (amended statute split-waiver election). Through this election, an acquiring group can relinquish that part of the extended carryback period during which an acquired member was a member of a former group (for the portion of a CNOL attributable to the acquired member), notwithstanding that the group did not file a split-waiver election for the year in which the acquired member became a member of the acquiring group (as required by § 1.1502–21(b)(3)(ii)(B)). Accordingly, an amended statute split-waiver election applies only to the portion of a CNOL that is attributable to an acquired member for the portion of the carryback period (including the default carryback period and the extended carryback period) during which the acquired member was a member of a former group.

An acquiring group makes an amended statute split-waiver election on a year-by-year basis, consistent with the 2002 and 2010 split-waiver regulations. Consequently, an acquiring group may make this election for the portion of a CNOL attributable to an acquired member that arises in any particular taxable year to which an amended carryback rule applies (amended carryback CNOL), regardless of whether the acquiring group makes such an election for CNOLs arising in other consolidated return years. However, also consistent with the 2002 and 2010 split-waiver regulations, an acquiring group can make an amended statute split-waiver election with respect to an amended carryback CNOL only if any carryback to a taxable year included in the extended carryback period is not claimed on a return or other filing by a former group that is filed on or before the date this election is filed by the acquiring group. Also consistent with the 2002 and 2010 split-waiver regulations, an acquiring group can make an amended statute split-waiver election with respect to an acquired member only if the acquiring group did not file (i) a valid split-waiver election with respect to that acquired member on or before the effective date of the relevant amended carryback rules, or (ii) a general waiver election with respect to a CNOL of the acquiring group from which the amended carryback CNOL is attributed to the acquired member.

The amended statute split-waiver election generally must be made by attaching a statement to the acquiring group's timely filed tax return (including extensions) with regard to the consolidated return year during which the amended carryback CNOL was incurred. In certain circumstances, the statement may be attached to an amended return, but that return must be filed no later than 150 days after the effective date of the relevant amended carryback rules. These regulations also include rules specific to the amendments to section 172 made by section 2303(b) of the CARES Act, which provide an additional option under which the statement may be attached to an amended return filed no later than November 30, 2020 (a date that is 150 days after the date of filing of these temporary regulations). These filing requirements incorporate the principles of the filing requirements set forth in the 2002 and 2010 split-waiver regulations, which were tailored to specific enacted legislation.

III. Extended Split-Waiver Election

To provide acquiring groups with additional flexibility for making split-waiver elections, these temporary regulations provide a second, alternative split-waiver election (extended split-waiver election) that applies solely to the extended carryback period (that is, the additional carryback years provided under amended carryback rules). Through an extended split-waiver

election, an acquiring group can ensure that amended carryback CNOLs are carried back to taxable years of former groups only to the extent those losses would have been carried back under prior law (that is, the default carryback period). In other words, this election affects only the extended carryback period for an acquired member's attributed loss.

The extended split-waiver election and the amended statute split-waiver election are subject to the same conditions and procedures, and provide the same relief, except that the extended split-waiver election waives only the extended carryback period. Therefore, any CNOL carryback to default carryback years would be unaffected by an extended split-waiver election. For example, if the default carryback period were two years and a change in law extended the carryback period to five years, an acquiring group could make an extended split-waiver election to waive the carryback to a former group of only the three additional carryback years with respect to the amended carryback CNOL. Accordingly, the extended split-waiver election is available if losses attributable to the acquired member have been carried back solely to taxable years of a former group in the default carryback period, but not in the extended carryback period.

IV. Applicability Date

These temporary regulations apply to any CNOLs arising in a taxable year ending after July 2, 2020. However, consistent with the applicability date for the amendments to section 172(b) pursuant to section 2303(b) of the CARES Act, and pursuant to section 7805(b)(2), taxpayers may apply these temporary regulations to any CNOLs arising in a taxable year beginning after December 31, 2017. The applicability of these temporary regulations will expire on July 3, 2023.

V. Good Cause

The Treasury Department and the IRS are issuing these temporary regulations without prior notice and the opportunity for public comment pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), which provides that advance notice and the opportunity for public comment are not required with respect to a rulemaking when an agency ''for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Under the ''public interest'' prong of 5 U.S.C. 553(b)(B), the good cause exception appropriately applies where notice and comment would harm, defeat, or frustrate the public interest, rather than serving it.

These temporary regulations, which solely provide certain acquiring groups with elective relief, are necessary to permit certain acquiring groups to elect to waive all or a portion of the carryback period for certain losses attributable to acquired members for pre-acquisition years during which the acquired members were members of a former group. The amended carryback rules enacted by section 2303(b) of the CARES Act apply for NOLs arising in a taxable year beginning after December 31, 2017, and before January 1, 2021. Consequently, good cause arises from the fact that these temporary regulations will affect taxable years of certain acquiring groups for which tax returns already are due or may become due during a period of comment and delayed effectiveness. Deferring the effectiveness of the temporary regulations until after such a period could prevent taxpayers from immediately electing to obtain the intended benefits of section 2303(b) of the CARES Act and increase taxpayer compliance costs and uncertainty because of delay of the time before which relevant acquiring groups could make the elections permitted by the regulations with certainty.

Special Analyses

I. Regulatory Planning and Review

Executive Orders 13771, 13563, and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

II. Paperwork Reduction Act

The collections of information in these temporary regulations are in § 1.1502–21T(b)(3)(ii)(C)(*5*)(*i*) and § 1.1502–21T(b)(3)(ii)(C)(*5*)(*ii*). The information is required to inform the IRS on whether, and to what extent, an acquiring group makes either of the elections described in these temporary regulations.

The collection of information provided by these temporary regulations has been approved by the Office of Management and Budget (OMB) under control number 1545–0123. For purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA), the reporting burden associated with the collection of information in Form 1120 (U.S. Corporation Income Tax Return) will be reflected in the PRA Submission associated with OMB control number 1545–0123.

In general, if the acquiring group makes an election under § 1.1502–21T(b)(3)(ii)(C), the acquiring group is required to attach a separate statement to its Form 1120 as provided in § 1.1502–21T(b)(3)(ii)(C)(*5*)(*i*) and § 1.1502–21T(b)(3)(ii)(C)(*5*)(*ii*), respectively. This statement must be filed as provided in § 1.1502–21T(b)(3)(ii)(C)(*6*).

The following table displays the number of respondents estimated to be required to report on Form 1120 with respect to the collections of information required by these temporary regulations. Due to the absence of historical tax data, direct estimates of the number of respondents required to attach a statement to other types of tax returns, as applicable, are not available.

	Number of respondents (estimated)
Amended Statute Split-Waiver Election & Extended Split-Waiver Election	
Form 1120	17,500

Source: RAAS:CDW.

The numbers of respondents in the table were estimated by the Research, Applied Analytics and Statistics Division (RAAS) of the IRS from the Compliance Data Warehouse (CDW). Data for Form 1120 represents estimates of the total number of taxpayers that may attach an election statement to their Form 1120 to make the elections in § 1.1502–21T(b)(3)(ii)(C)(*5*)(*i*) and § 1.1502–21T(b)(3)(ii)(C)(*5*)(*ii*).

It is estimated that 17,500 consolidated entities will be required to attach a statement under these temporary regulations. The burden associated with the information collections in these temporary regulations are included in aggregated burden estimates for the OMB control number 1545–0123. The burden estimates provided in the OMB control

numbers in the following table are aggregate amounts that relate to the entire package of forms associated with the OMB control number, and will in the future include, but not isolate, the estimated burden of those information collections associated with these temporary regulations. To guard against over-counting the burden that consolidated tax provisions imposed prior to § 1.1502–21T, the Treasury Department and the IRS urge readers to recognize that these burden estimates have also been cited by regulations that rely on the applicable OMB control numbers in order to collect information from the applicable types of filers.

Form	Type of filer	OMB No.	Status
Form 1120	Corporation	1545–0123	Published in the **Federal Register** on 9/30/19. Public Comment period closed on 11/29/19. Approved by OIRA through 1/31/2021.
	Link: *https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-1120-f-1120-h-1120-nd.*		

Source: RAAS:CDW.

III. Regulatory Flexibility Act

These temporary regulations do not impose a collection of information on small entities. Further, pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these temporary regulations would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these temporary regulations apply only to corporations that file consolidated Federal income tax returns, and that such corporations tend to be larger businesses. Therefore, these temporary regulations would not create additional obligations for, or impose an economic impact on, small entities.

Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold is approximately $156 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These temporary regulations do not have federalism implications, do not impose substantial direct compliance costs on state and local governments, and do not preempt state law within the meaning of the Executive Order.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, and Notices cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

Drafting Information

The principal author of these regulations is Jonathan R. Neuville of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX

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

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

■ **Par. 2.** Section 1.1502–21T is revised to read as follows:

§ 1.1502–21T Net operating losses (temporary).

(a) For further guidance, see § 1.1502–21(a).

(b) For further guidance, see § 1.1502–21(b) introductory text through (b)(2).

(1) and (2) [Reserved]

(3) For further guidance, see § 1.1502–21(b)(3) introductory text through (b)(3)(ii)(B).

(i) [Reserved]

(ii)(A) [Reserved]

(B) [Reserved]

(C) *Waiver of carryback period for losses in taxable years to which statutorily amended carryback rules apply*—(*1*) *In general.* An acquiring group may make either (but not both) an amended statute split-waiver election or an extended split-waiver election with respect to a particular amended carryback CNOL. (See paragraph (b)(3)(ii)(C)(*2*) of this section for definitions of terms used in paragraph this (b)(3)(ii)(C) and paragraph (b)(3)(ii)(D) of this section.) These elections are available only if the statutory amendment to the carryback period referred to in paragraph (b)(3)(ii)(C)(*2*)(*iv*) of this section occurs after the date of acquisition of an acquired member. A separate election is available for each taxable year to which amended carryback rules apply. An acquiring group may make an amended statute split-waiver election or an extended split-waiver election only if the acquiring group, with regard to that election—

(*i*) Satisfies the requirements in paragraph (b)(3)(ii)(C)(*3*) of this section; and

(*ii*) Follows the procedures in paragraphs (b)(3)(ii)(C)(*5*) and (*6*) of this section, as relevant to that election.

(*2*) *Definitions.* The definitions provided in this paragraph (b)(3)(ii)(C)(*2*) apply for purposes of this paragraph (b)(3)(ii)(C) and paragraph (b)(3)(ii)(D) of this section.

(*i*) *Acquired member.* The term *acquired member* means a member of a consolidated group that joins another consolidated group.

(*ii*) *Acquiring group.* The term *acquiring group* means a consolidated group that has acquired a former member of another consolidated group (that is, an acquired member).

(*iii*) *Amended carryback CNOL.* The term *amended carryback CNOL* means the portion of a CNOL attributable to an acquired member (determined pursuant to § 1.1502–21(b)(2)(iv)(B)) arising in a taxable year to which amended carryback rules apply.

(*iv*) *Amended carryback rules.* The term *amended carryback rules* means the rules of section 172 of the Code after amendment by statute to extend the carryback period for NOLs attributable to an acquired member (determined pursuant to § 1.1502–21(b)(2)(iv)(B)).

(*v*) *Amended statute split-waiver election.* The term *amended statute split-waiver election* means, with respect to any amended carryback CNOL, an irrevocable election made by an acquiring group to relinquish the portion of the carryback period (including the default carryback period and the extended carryback period) for that loss during which an acquired member was a member of any former group.

(*vi*) *Amended statute split-waiver election statement.* The term *amended statute split-waiver election statement* has the meaning provided in paragraph (b)(3)(ii)(C)(*5*)(*i*) of this section.

(*vii*) *Default carryback period.* The term *default carryback period* means the NOL carryback period existing at the time the acquiring group acquired the acquired member, before the applicability of amended carryback rules.

(*viii*) *Extended carryback period.* The term *extended carryback period* means the additional taxable years added to a default carryback period by any amended carryback rules.

(*ix*) *Extended split-waiver election.* The term *extended split-waiver election* means, with respect to any amended carryback CNOL, an irrevocable election made by an acquiring group to relinquish solely the portion of the extended carryback period (and no part of the default carryback period) for that loss during which an acquired member was a member of any former group.

(*x*) *Extended split-waiver election statement.* The term *extended split-waiver election statement* has the meaning provided in paragraph (b)(3)(ii)(C)(*5*)(*ii*) of this section.

(*xi*) *Former group.* The term *former group* means a consolidated group of which an acquired member previously was a member.

(*3*) *Conditions for making an amended statute split-waiver election or an extended split-waiver election.* An acquiring group may make an amended statute split-waiver election or an extended split-waiver election (but not both) with respect to an amended carryback CNOL only if—

(*i*) The acquiring group has not filed a valid election described in § 1.1502–21(b)(3)(ii)(B) with respect to the acquired member on or before the effective date of amended carryback rules;

(*ii*) The acquiring group has not filed a valid election described in section 172(b)(3) and § 1.1502–21(b)(3)(i) with respect to a CNOL of the acquiring group from which the amended carryback CNOL is attributed to the acquired member;

(*iii*) Any other corporation joining the acquiring group that was affiliated with the acquired member immediately before the acquired member joined the acquiring group is included in the waiver; and

(*iv*) A former group does not claim any carryback (as provided in paragraph (b)(3)(ii)(C)(*4*) of this section) to any taxable year in the carryback period (in the case of an amended statute split-waiver election) or in the extended carryback period (in the case of an extended split-waiver election) with respect to the amended carryback CNOL on a return or other filing filed on or before the date the acquiring group files the election.

(*4*) *Claim for a carryback.* For purposes of paragraph (b)(3)(ii)(C)(*3*)(*iv*) of this section, a carryback is claimed with respect to an amended carryback CNOL if there is a claim for refund, an amended return, an application for a tentative carryback adjustment, or any other filing that claims the benefit of the NOL in a taxable year prior to the taxable year of the loss, whether or not subsequently revoked in favor of a claim based on the period provided for in the amended carryback rules.

(*5*) *Procedures for making an amended statute split-waiver election or an extended split-waiver election*—(*i*) *Amended statute split-waiver election.* An amended statute split-waiver election must be made in a separate statement entitled ''THIS IS AN ELECTION UNDER SECTION 1.1502–21T(b)(3)(ii)(C)(*2*)(*v*) TO WAIVE THE PRE-[insert first day of the first taxable year for which the acquired member was a member of the acquiring group] CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members]'' (amended statute split-waiver election statement). This statement must be filed as provided in paragraph (b)(3)(ii)(C)(*6*) of this section.

(*ii*) *Extended split-waiver election.* An extended split-waiver election must be made in a separate statement entitled ''THIS IS AN ELECTION UNDER SECTION 1.1502–21T(b)(3)(ii)(C)(*2*)(*ix*) TO WAIVE THE PRE-[insert first day of the first taxable year for which the acquired member was a member of the acquiring group] EXTENDED CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members]'' (extended split-waiver election statement). This statement must be filed as provided in paragraph (b)(3)(ii)(C)(*6*) of this section.

(*6*) *Time and manner for filing statement*—(*i*) *In general.* Except as otherwise provided in paragraph (b)(3)(ii)(C)(*6*)(*ii*) or (*iii*) of this section, an amended statute split-waiver election statement or extended split-waiver election statement must be filed with the acquiring group's timely filed consolidated return (including extensions) for the year during which the amended carryback CNOL is incurred.

(*ii*) *Amended returns.* This paragraph (b)(3)(ii)(C)(*6*)(*ii*) applies if the date of the filing required under paragraph (b)(3)(ii)(C)(*6*)(*i*) of this section is not at least 150 days after the date of the statutory amendment to the carryback period referred to in paragraph (b)(3)(ii)(C)(*2*)(*iv*) of this section. Under this paragraph (b)(3)(ii)(C)(*6*)(*ii*), an amended statute split-waiver election statement or extended split-waiver election statement may be attached to an amended return filed by the date that is 150 days after the date of the statutory amendment referred to in paragraph (b)(3)(ii)(C)(*2*)(*iv*) of this section.

(*iii*) *Certain taxable years beginning before January 1, 2021.* This paragraph (b)(3)(ii)(C)(*6*)(*iii*) applies to taxable years beginning before January 1, 2021, for which the date of the filing required under paragraph (b)(3)(ii)(C)(*6*)(*i*) of this section precedes November 30, 2020. Under this paragraph (b)(3)(ii)(C)(*6*)(*iii*), an amended statute split-waiver election statement or extended split-waiver election statement may be attached to an amended return filed by November 30, 2020.

(D) *Examples.* The following examples illustrate the rules of paragraph (b)(3)(ii)(C) of this section. For purposes of these examples: All affiliated groups file consolidated returns; all corporations are includible corporations that have calendar taxable years; each of P, X, and T is a

corporation having one class of stock outstanding; each of P and X is the common parent of a consolidated group (P Group and X Group, respectively); neither the P Group nor the X Group includes an insolvent financial institution or an insurance company; no NOL is a farming loss; there are no other relevant NOL carrybacks to the X Group's consolidated taxable years; except as otherwise stated, the X Group has sufficient consolidated taxable income determined under § 1.1502–11 (CTI) to absorb the stated NOL carryback by T; T has sufficient SRLY register income within the X Group to absorb the stated NOL carryback by T; all transactions occur between unrelated parties; and the facts set forth the only relevant transactions.

(*1*) *Example 1: Computation and absorption of amended carrybacks*—(*i*) *Facts.* In Year 1, T became a member of the X Group. On the last day of Year 5, P acquired all the stock of T from X. At the time of P's acquisition of T stock, the default carryback period was zero taxable years. The P Group did not make an irrevocable split-waiver election under § 1.1502–21(b)(3)(ii)(B) to relinquish, with respect to all CNOLs attributable to T while a member of the P Group, the portion of the carryback period for which T was a member of the X Group (that is, a former group). In Year 7, the P Group sustained a $1,000 CNOL, $600 of which was attributable to T pursuant to § 1.1502–21(b)(2)(iv)(B). In that year, P did not make an irrevocable general waiver election under section 172(b)(3) and § 1.1502–21(b)(3)(i) with respect to the $1,000 CNOL when the P Group filed its consolidated return for Year 7. In Year 8, legislation was enacted that amended section 172 to require a carryback period of five years for NOLs arising in a taxable year beginning after Year 5 and before Year 9.

(*ii*) *Analysis.* As a result of the amended carryback rules enacted in Year 8, the P Group's $1,000 CNOL in Year 7 must be carried back to Year 2. Therefore, T's $600 attributed portion of the P Group's Year 7 CNOL (that is, T's amended carryback CNOL) must be carried back to taxable years of the X Group. See §§ 1.1502–21(b)(1) and 1.1502–21(b)(2)(i). To the extent T's amended carryback CNOL is not absorbed in the X Group's Year 2 taxable year, the remaining portion must be carried to the X Group's Year 3, Year 4, and Year 5 taxable years, as appropriate. See id. Any remaining portion of T's amended carryback CNOL is carried to consolidated return years of the P Group. See § 1.1502–21(b)(1).

(*2*) *Example 2: Amended statute split-waiver election*—(*i*) *Facts.* The facts are the same as in paragraph (b)(3)(ii)(D)(*1*)(*i*) of this section (*Example 1*), except that, following the change in statutory carryback period in Year 8, the P Group made a valid amended statute split-waiver election under paragraph (b)(3)(ii)(C) of this section to relinquish solely the carryback of T's amended carryback CNOL.

(*ii*) *Analysis.* Because the P Group made a valid amended statute split-waiver election, T's amended carryback CNOL is not eligible to be carried back to any taxable years of the X Group (that is, a former group). However, the amended statute split-waiver election does not prevent T's Year 7 amended carryback CNOL from being carried back to years of the P group (that is, the acquiring group) during which T was a member. See paragraph (b)(3)(ii)(C)(*1*)(*v*) of this section. As a result, the entire amount of T's amended carryback CNOL is eligible to be carried back to taxable Year 6 of the P Group. Any remaining CNOL may then be carried over within the P Group. See § 1.1502–21(b)(1).

(*3*) *Example 3: Computation and absorption of extended carrybacks*—(*i*) *Facts.* The facts are the same as in paragraph (b)(3)(ii)(D)(*1*)(*i*) of this section (*Example 1*), except that the X Group had $300 of CTI in Year 4 and $200 of CTI in Year 5 and, at the time of the P Group's acquisition of T, the default carryback period was two years. Therefore, T's $600 attributed portion of the P Group's Year 7 CNOL was required to be carried back to the X Group's Year 5 taxable year, and the X Group was able to offset $200 of CTI in Year 5.

(*ii*) *Analysis.* As a result of the amended carryback rules, the X Group must offset its $300 of CTI in Year 4 against T's amended carryback CNOL. See §§ 1.1502–21(b)(1) and (b)(2)(i). The remaining $100 ($600 − $300 − $200) of T's amended carryback CNOL is carried to taxable years of the P Group. See § 1.1502–21(b)(1).

(*4*) *Example 4: Extended split-waiver election*—(*i*) *Facts.* The facts are the same as in paragraph (b)(3)(ii)(D)(*3*)(*i*) of this section (*Example 3*), except that, following the change in law in Year 8, the P Group made a valid extended split-waiver election under paragraph (b)(3)(ii)(C) of this section to relinquish the extended carryback period for T's amended carryback CNOL for years in which T was a member of the X Group.

(*ii*) *Analysis.* As a result of the P Group's extended split-waiver election, T's amended carryback CNOL is not eligible to be carried back to any portion of the extended carryback period (that is, any taxable year prior to Year 5). See paragraph (b)(3)(ii)(C)(*1*)(*ix*) of this section. As a result, the X Group absorbs $200 of T's $600 loss in Year 5, and the remaining $400 ($600 − $200) is carried to taxable years of the P Group. See § 1.1502–21(b)(1).

(iii) For further guidance, see § 1.1502–21(b)(3)(iii).

(c) For further guidance, see § 1.1502–21(c) through (h)(8).

(d) through (j) [Reserved]

(h)(1) through (8) [Reserved]

(9) *Amended carryback rules*—(i) *Applicability date.* Paragraphs (b)(3)(ii)(C) and (D) of this section apply to any CNOLs arising in a taxable year ending after July 2, 2020. However, taxpayers may apply paragraphs (b)(3)(ii)(C) and (D) of this section to any CNOLs arising in a taxable year beginning after December 31, 2017.

(ii) *Expiration date.* The applicability of paragraphs (b)(3)(ii)(C) and (D) of this section will expire on July 3, 2023.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 3.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 4.** In § 602.101, paragraph (b), the entry for § 1.1502–21T is revised to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * * * *	
1.1502.21T	1545–0123
* * * * * * *	

Douglas W. O'Donnell,

Acting Deputy Commissioner for Services and Enforcement.

Approved: June 23, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2020–14426 Filed 7–2–20; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0199]

RIN 1625–AA00

Safety Zone; Amelia River, Fernandina, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone for navigable waters within a 500-yard radius of the VB–10,000 work barge while transiting the Sector Jacksonville Captain of the Port Zone. Once the VB–10,000 work barge is moored at the Nassau Terminal in Fernandina Beach, FL, the safety zone will be reduced to a 100-yard radius. This safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with a barge of this size and with restricted manuerverability. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Jacksonville.

DATES: This rule is effective without actual notice from July 8, 2020 through July 31, 2020. For the purposes of enforcement, actual notice will be used from July 3, 2020 through July 8, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0199 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Emily Sysko, Sector Jacksonville, Waterways Management, U.S. Coast Guard; telephone 904–714–7616, email *Emily.T.Sysko@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is inpracticable. Due to shifting dates and delays resulting from the COVID–19 pandemic, the Coast Guard did not received a specific date and time for the transit of the VB–10,000 work barge.The barge is expected to arrive at Nassau Termainal in Fernandina Beach, FL on July 3, 2020. It is impracticable to publish an NPRM because we must establish this safety zone prior to the barge getting underway and entering the COTP Jacksonville zone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because action is needed to respond to the potential safety and navigational hazards associated with a large work barge transiting the channel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port (COTP) Jacksonville has determined that potential hazards associated with the VB–10,000 work barge will be a safety concern for anyone within a 500-yard radius of the barge while in transit and within a 100-yard radius of the barge while moored at the Nassau Terminal in Fernandina Beach, FL. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the barge is transiting through the COTP Jacksonville Zone and moored at Nassau Terminal.

IV. Discussion of the Rule

This rule establishes a safety zone around the VB–10,000 work barge. The safety zone will cover all navigable waters within 500 yards of the barge while in transit and all navigable waters within 100 yards of the barge while moored at the Nassau Terminal in Fernandina Beach, FL. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the barge is present. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the time and duration the VB–10,000 work barge will be in the Sector Jacksonville Captain of the Port Zone. Vessel traffic will be able to safely transit around the 500 yard radius safety zone which will be reduced to a 100-yard radius while the barge is moored at the Nassau Terminanl in Fernandina Beach, FL. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels unable to pass safely to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions