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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AJ42

[NRC–2014–0120]

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM Underground Maximum Capacity Canister Storage System, Certificate of Compliance No. 1040

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing a direct final rule that would have added the Holtec International HI–STORM Underground Maximum Capacity (UMAX) Canister Storage System, Certificate of Compliance (CoC) No. 1040, to the ''List of approved spent fuel storage casks.'' The NRC is taking this action because it has received at least one significant adverse comment in response to a companion proposed rule that was concurrently published with the direct final rule.

DATES: Effective November 19, 2014, the NRC withdraws the direct final rule published at 79 FR 53281 on September 9, 2014.

ADDRESSES: Please refer to Docket ID NRC–2014–0120 when contacting the NRC about the availability of information for this action. You may access publicly-available information related to this action by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0120. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Gregory R. Trussell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6445, email: *Gregory.Trussell@nrc.gov.*

SUPPLEMENTARY INFORMATION: On September 9, 2014 (79 FR 53281), the NRC published in the **Federal Register** a direct final rule amending its regulations in part 72 of Title 10 of the *Code of Federal Regulations* to add the Holtec International HI–STORM UMAX Canister Storage System, CoC No. 1040, to the ''List of approved spent fuel storage casks.'' The direct final rule was to become effective on November 24, 2014. The NRC also concurrently published a companion proposed rule on September 9, 2014 (79 FR 53352).

In the September 9, 2014, proposed rule, the NRC stated that if any significant adverse comments were received, then the NRC would withdraw the direct final rule by publishing a notice in the **Federal Register**. As a result, the direct final rule would not take effect. The NRC received 10 comments from private citizens which raised issues including inspections; seismic concerns; stress corrosion cracking; and aging management, among others. The comments are available at *www.regulations.gov* by searching on Docket ID NRC–2014–0120. The NRC determined that at least one of the comments is significant and adverse as defined in Section I, ''Procedural Background,'' of the direct final rule, because the comment raises an issue serious enough to warrant a substantive response to clarify or complete the record. Therefore, the NRC is withdrawing the direct final rule.

As stated in the September 9, 2014, proposed rule, the NRC will address the comments in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Dated at Rockville, Maryland, this 13 day of November, 2014.

For the U.S. Nuclear Regulatory Commission.

Mark A. Satorius,

Executive Director for Operations.

[FR Doc. 2014–27398 Filed 11–18–14; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9704]

RIN 1545–BK65

Failure To File Gain Recognition Agreements or Satisfy Other Reporting Obligations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations, temporary regulations, and removal of temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the consequences to U.S. and foreign persons for failing to file gain recognition agreements (GRAs) or related documents, or to satisfy other reporting obligations, associated with certain transfers of property to foreign corporations in nonrecognition exchanges. The regulations are necessary to update and clarify the rules that apply when a U.S. or foreign person fails to file a GRA or related documents or to satisfy other reporting obligations. These regulations affect U.S. and foreign persons that transfer property to foreign corporations in nonrecognition exchanges.

DATES: These regulations are effective on November 19, 2014.

Applicability Dates: For dates of applicability, see §§ 1.367(a)–2(f)(4), 1.367(a)–3(g)(1)(x), 1.367(a)–3T(g)(1)(ix), 1.367(a)–7(j), 1.367(a)–8(r)(1)(i) and

(r)(3), 1.367(e)–2(g), and 1.6038B–1(g)(6).

FOR FURTHER INFORMATION CONTACT: Shane M. McCarrick, (202) 317–6937 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in the regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1487.

The collections of information are in §§ 1.367(a)–2(f)(2), 1.367(a)–3(f)(2), 1.367(a)–7(e)(2), 1.367(a)–8(p)(2), 1.367(e)–2(f)(2), 1.6038B–1(c)(4)(ii), and 1.6038B–1(e)(4). The collections of information are mandatory. The likely respondents are domestic corporations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

Books and records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR part 1. On January 31, 2013, the IRS and the Department of the Treasury (Treasury Department) published a notice of proposed rulemaking (REG–140649–11) in the **Federal Register** (78 FR 6772–01) under sections 367 and 6038B of the Internal Revenue Code (Code) (proposed regulations) relating to the consequences to U.S. and foreign persons for failing to file GRAs or related documents, or to satisfy other reporting obligations, associated with certain transfers of property to foreign corporations in nonrecognition exchanges. No public hearing was requested or held. The IRS and the Treasury Department received written comments on the proposed regulations, which are available at www.regulations.gov. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. In addition, this Treasury decision amends and removes a portion of the temporary §§ 1.367(a)–3 and 1.367(a)–7 regulations that were published on March 19, 2013 (T.D. 9615, 2013–1 C.B. 1026). The comments and revisions are discussed in this preamble.

Summary of Comments and Explanation of Revisions

1. Satisfaction of Section 6038B Reporting if a GRA Is Filed

The proposed regulations under section 6038B require a U.S. person that transfers property (U.S. transferor) to file a Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation, with respect to a transfer of stock or securities in all cases in which a GRA is filed in order to avoid penalties under section 6038B. However, the proposed regulations do not require the U.S. transferor to report on the Form 926 any specific information regarding the transferred stock or securities. The IRS and the Treasury Department have determined that, similar to the information that must be provided for other types of transferred property, the U.S. transferor should report on the Form 926 the fair market value, adjusted tax basis, and gain recognized with respect to the transferred stock or securities, as well as any other information that Form 926, its accompanying instructions, or other applicable guidance require to be submitted with respect to the transfer of the stock or securities. Section 1.6038B–1(b)(2)(iv) of these final regulations is thus modified accordingly.

2. Application to Previously Filed Requests

The proposed regulations under § 1.367(a)–8(p) only apply to requests for relief submitted on or after the date the proposed regulations are adopted as final regulations. One comment requested that these final regulations permit U.S. transferors to request relief under § 1.367(a)–8(p) of the proposed regulations for certain failures to file a GRA document or comply with the GRA provisions that are the subject of requests for relief submitted before the date the proposed regulations are finalized. According to the commentator, not permitting U.S. transferors to do so could result in disparate treatment for similarly situated U.S. transferors.

The IRS and the Treasury Department have determined that it is appropriate to provide relief for certain failures to file or to comply that were not willful and that were the subject of requests for relief submitted under § 1.367(a)–8(p) of the existing final regulations (or submitted under § 1.367(a)–8T(e)(10), as contained in 26 CFR part 1 revised as of April 1, 2008, or § 1.367(a)–8(c)(2), as contained in 26 CFR part 1 revised as of April 1, 2006) before November 19, 2014 (previously filed requests). Accordingly, § 1.367(a)–8(r)(3) of these final regulations provides a procedure under which U.S. transferors may resubmit certain previously filed requests (including requests that were denied). By submitting a previously filed request under this procedure, a U.S. transferor agrees that these final regulations under § 1.6038B–1 will apply to any transfer that is the subject of the request. This is intended to provide parity between similarly situated U.S. transferors and promote the policies underlying the proposed regulations by ensuring that a U.S. transferor that establishes its failure was not willful under § 1.367(a)–8(p) is still subject to penalties under section 6038B if its failure was not due to reasonable cause.

3. Promptly Filing an Amended Return as a Requirement to Seeking Relief

One comment was received regarding the procedures described in § 1.367(a)–8(p)(2) of the proposed regulations for establishing that failures to file GRA documents, or failures to comply, were not willful. The comment requested that these final regulations excuse Coordinated Industry Case (CIC) taxpayers from the requirement under § 1.367(a)–8(p)(2) of filing an amended return promptly after discovering a failure to file or a failure to comply. Instead, the commentator suggested that these final regulations allow CIC taxpayers to submit the materials required under § 1.367(a)–8(p)(2) when the taxpayers effect a ''qualified amended return'' under Rev. Proc. 94–69, 1994–2 CB 804 (generally providing special procedures for certain taxpayers to show additional tax due or make adequate disclosure with respect to an item or position on a tax return prior to an audit).

According to the commentator, it is possible that an amended return filed to correct the failure to file or failure to comply will differ from the return that is ultimately audited when the taxpayer effects a qualified amended return under Rev. Proc. 94–69. The commentator stated that this could result in an inefficient use of resources in situations in which a CIC taxpayer, when preparing the amended return, includes not only adjustments related to the failure to file or failure to comply, but also all other adjustments as to which the taxpayer is aware.

The IRS and the Treasury Department decline to adopt this comment. The commentator's concerns exist in other international contexts (for example, § 1.1503(d)–1(c)(2)), and it would be inappropriate to create differing

procedures for requesting relief under different provisions. However, the IRS and the Treasury Department intend to study the issue.

4. Modifying the Reported Fair Market Value of Transferred Stock

One comment requested that these final regulations provide a mechanism under which taxpayers may modify the fair market value of transferred stock or securities reported on a previously filed GRA. According to the commentator, taxpayers often determine the fair market value of stock or securities before the date that the stock or securities are transferred to a foreign corporation; these determinations are based on projected financial information that may, in some cases, deviate from the actual financial information on the date of the transfer.

The IRS and the Treasury Department decline to adopt the comment. The IRS and the Treasury Department have determined that the proposed regulations adequately address the commentator's concerns. First, because a GRA is filed when a taxpayer files its tax return (rather than at the time of an outbound transfer of stock or securities), a taxpayer has, not including extensions, at least two and a half months following a transfer to reconcile projected financial information with actual financial information. Furthermore, a taxpayer may file an extension if it needs additional time to comply with the requirements of § 1.367(a)–8. Finally, a taxpayer that fails to materially comply with the requirements of § 1.367(a)–8, including the requirement to include the fair market value of the transferred stock or securities in the GRA pursuant to § 1.367(a)–8(c)(3)(i)(B), may be eligible to correct the GRA by seeking relief based on a claim that the failure was not willful.

5. Extension of Relief for Failures That Are Not Willful to Other Section 367(a) Reporting Obligations

The IRS and the Treasury Department have determined that it is appropriate to extend the relief for failures that are not willful to certain other reporting obligations under section 367(a) that were not covered by the proposed regulations. This Treasury decision therefore revises § 1.367(a)–2 (providing an exception to gain recognition under section 367(a)(1) for assets transferred outbound for use in the active conduct of a trade or business outside of the United States) and § 1.367(a)–7 (regarding application of section 367(a) to an outbound transfer of assets by a domestic target corporation in an exchange described in section 361) so that a taxpayer may, solely for purposes of section 367(a), be deemed not to have failed to comply with reporting obligations under §§ 1.367(a)–2 and 1.367(a)–7 by demonstrating that the failure was not willful. The temporary § 1.367(a)–7 regulations regarding reasonable cause relief are therefore removed. Because the cases in which relief is sought under § 1.367(a)–2 and many of the cases in which relief is sought under § 1.367(a)–7 are also subject to reporting under section 6038B and the regulations thereunder, the penalty imposed under section 6038B for failure to satisfy a reporting obligation should generally be sufficient to encourage proper reporting and compliance.

6. Withdrawal of GRA Directive

On July 26, 2010, the Deputy Commissioner International (LMSB) issued directive LMSB–4–0510–017 (Directive). The Directive permits taxpayers to remedy, without having to demonstrate reasonable cause, unfiled or deficient GRA documents associated with a timely filed initial GRA or a timely filed document purporting to be an initial GRA. The Directive explained that the means to best ensure compliance with the GRA provisions was under study and that, pending the study, the Directive would be effective ''until further notice.'' Because this Treasury decision provides comprehensive guidance that is designed to ensure compliance with the GRA provisions, the Deputy Commissioner (International), Large Business & International will revoke the Directive effective on November 19, 2014.

7. Including an Original Form 8838 With a Request for Relief

Under § 1.367(a)–8(p)(2)(i) of the proposed regulations, a U.S. transferor who seeks relief for a failure to file or failure to comply with the GRA rules must, among other requirements, file an original Form 8838, Consent to Extend the Time to Assess Tax Under Section 367—Gain Recognition Agreement, with an amended return. The Form 8838 must, with respect to the gain realized but not recognized on the initial transfer, extend the period of limitations on the assessment of tax to the period specified in § 1.367(a)–8(p)(2)(i) of the proposed regulations. The IRS and the Treasury Department recognize that in certain cases (for example, certain cases in which a U.S. transferor seeks relief for an unfiled annual certification), the U.S. transferor will already have filed an original Form 8838 that extends the period of limitations through the required time period. These final regulations therefore provide that, in these cases, a U.S. transferor need not file another Form 8838 with the amended return; rather, the U.S. transferor must attach a copy of the previously filed Form 8838 to the amended return. A similar modification is made to these final regulations under § 1.367(e)–2 concerning outbound liquidations and certain foreign-to-foreign liquidations described in section 332.

8. Failure To Comply and Extension of Period of Limitations

Section 1.367(a)–8(j)(8) of the existing regulations provides that a failure to comply with the GRA provisions will extend the period of limitations on assessment of tax until the close of the third full taxable year ending after the date on which the Director of Field Operations or Area Director receives actual notice of the failure to comply from the U.S. transferor. The same provision is included in the proposed regulations. Section 1.367(e)–2(e)(4)(ii)(B) of the proposed regulations provides a similar rule with respect to a liquidation document.

The IRS and the Treasury Department have determined that the running of the extended period of limitations arising under §§ 1.367(a)–8(j)(8) and 1.367(e)–2(e)(4)(ii)(B) should be based on when the taxpayer furnishes to the Director of Field Operations International, Large Business & International (or any successor to the roles and responsibilities of such person) the information that should have been provided under the §§ 1.367(a)–8 or 1.367(e)–2 regulations, as applicable. Thus, in these final regulations, §§ 1.367(a)–8(j)(8) and 1.367(e)–2(e)(4)(ii)(B) are modified accordingly.

In addition, §§ 1.367(a)&8(c)(2)(iii), 1.367(e)–2(b)(2)(i)(C)(*1*), and 1.367(e)–2(b)(2)(iii)(D) of these final regulations are revised to clarify that when a taxpayer files a GRA under § 1.367(a)–8 or a liquidation document under § 1.367(e)–2, the taxpayer agrees to extend the period of limitations on assessment of tax, in the circumstances provided in §§ 1.367(a)–8(j)(8) and 1.367(e)–2(e)(4)(ii)(B), as applicable. This agreement is deemed consented to and signed by the Secretary for purposes of section 6501(c)(4).

9. Reporting Requirement in § 1.367(a)–3(c)(6)(i)(F)(3)

Section 1.367(a)–3(a) of the existing final regulations provides the general rule that a U.S. person must recognize gain on certain transfers of stock or

securities to a foreign corporation. In relevant part, § 1.367(a)–3(c) of the existing final regulations contains an exception for certain transfers of stock or securities of a domestic corporation. Specifically, § 1.367(a)–3(c)(1) provides that, except as provided in § 1.367(a)–3(e) (providing rules for transfers of stock or securities by a domestic corporation to a foreign corporation pursuant to an exchange described in section 361), a transfer of stock or securities of a domestic corporation by a U.S. person to a foreign corporation that would otherwise be subject to gain recognition under section 367(a)(1) pursuant to § 1.367(a)–3(a) will not be subject to section 367(a)(1) if certain requirements are satisfied. In particular, the domestic corporation the stock or securities of which are transferred (referred to as the U.S. target company) must comply with each of the reporting requirements in § 1.367(a)–3(c)(6) and each of the four conditions set forth in § 1.367(a)–3(c)(1)(i) through (iv) must be satisfied. The condition set forth in § 1.367(a)–3(c)(1)(iv) requires that the active trade or business test (as defined in § 1.367(a)–3(c)(3)) be satisfied. To satisfy the active trade or business test, the substantiality test (as defined in § 1.367(a)–3(c)(3)(iii)) must be satisfied (among other requirements). The substantiality test is satisfied if, at the time of the transfer, the fair market value of the transferee foreign corporation is at least equal to the fair market value of the U.S. target company.

Pursuant to the reporting requirement contained in § 1.367(a)–3(c)(6)(i)(F)(*3*), the U.S. target company must submit a statement demonstrating that the value of the transferee foreign corporation *exceeds* the value of the U.S. target company on the acquisition date. The standard that applies for purposes of the reporting requirement of § 1.367(a)–3(c)(6)(i)(F)(*3*) is intended to be the same as the standard that applies for purposes of the substantiality test. Accordingly, this Treasury decision revises § 1.367(a)–3(c)(6)(i)(F)(*3*) so that the U.S. target company must submit a statement demonstrating that the value of the transferee foreign corporation equals or exceeds the value of the U.S. target company on the acquisition date.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant impact on a substantial number of small entities. This certification is based on the fact that these regulations merely provide for a change in the standard, or clarify or provide the standard, that will be used to determine whether a taxpayer that has failed to file a GRA or satisfy other reporting obligations under section 367 will be entitled to avoid full gain recognition under section 367(a)(1) or 367(e)(2), as applicable. Accordingly a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of these regulations is Shane M. McCarrick of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.367(a)–2 is amended by adding new paragraph (f) to read as follows:

§ 1.367(a)–2 Exception for transfers of property for use in the active conduct of a trade or business.

* * * * *

(f) *Failure to comply with reporting requirements of section 6038B*—(1) *Failure to comply.* For purposes of the exception to the application of section 367(a)(1) provided in paragraph (a) of § 1.367(a)–2T, a failure to comply with the reporting requirements of section 6038B and the regulations thereunder (failure to comply) has the meaning set forth in § 1.6038B–1(f)(2).

(2) *Relief for certain failures to comply that are not willful*—(i) *In general.* A failure to comply described in paragraph (f)(1) of this section will be deemed not to have occurred for purposes of satisfying the requirements of this section if the taxpayer demonstrates that the failure was not willful using the procedure set forth in this paragraph (f)(2). For this purpose, willful is to be interpreted consistent with the meaning of that term in the context of other civil penalties, which would include a failure due to gross negligence, reckless disregard, or willful neglect. Whether a failure to comply was a willful failure will be determined by the Director of Field Operations International, Large Business & International (or any successor to the roles and responsibilities of such position, as appropriate) (Director) based on all the facts and circumstances. The taxpayer must submit a request for relief and an explanation as provided in paragraph (f)(2)(ii)(A) of this section. Although a taxpayer whose failure to comply is determined not to be willful will not be subject to gain recognition under this section, the taxpayer will be subject to a penalty under section 6038B if the taxpayer fails to demonstrate that the failure was due to reasonable cause and not willful neglect. See § 1.6038B–1(b)(1) and (f). The determination of whether the failure to comply was willful under this section has no effect on any request for relief made under § 1.6038B–1(f).

(ii) *Procedures for establishing that a failure to comply was not willful*—(A) *Time and manner of submission.* A taxpayer's statement that the failure to comply was not willful will be considered only if, promptly after the taxpayer becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to comply. The amended return must be filed with the Internal Revenue Service at the location where the taxpayer filed its original return. The taxpayer may submit a request for relief from the penalty under section 6038B as part of the same submission. See § 1.6038B–1(f).

(B) *Notice requirement.* In addition to the requirements of paragraph (f)(2)(ii)(A) of this section, the taxpayer must comply with the notice requirements of this paragraph (f)(2)(ii)(B). If any taxable year of the taxpayer is under examination when the amended return is filed, a copy of the

amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the taxpayer is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

(3) For illustrations of the application of the willfulness standard of this paragraph (f), see the examples in § 1.367(a)–8(p)(3).

(4) Paragraph (f) applies to requests for relief submitted on or after November 19, 2014.

■ **Par. 3.** Section 1.367(a)–3 is amended:

■ 1. In paragraphs (c)(6)(i)(F)(*3*)(*i*) and (c)(6)(i)(F)(*3*)(*ii*), by adding the language ''equals or'' before the word ''exceeds.''

■ 2. By revising paragraph (c)(6)(ii).

■ 3. By adding paragraph (f).

■ 4. By adding paragraph (g)(1)(x).

The additions and revisions read as follows:

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

* * * * *

(c) * * *

(6) * * *

(ii) Except as provided in paragraph (f) of this section, for purposes of this paragraph (c)(6), a U.S. income tax return will be considered timely filed if it is filed on or before the last date prescribed for filing (taking into account any extensions of time therefor) for the taxable year in which the transfer occurs.

* * * * *

(f) *Failure to file statements*—(1) *Failure to file.* For purposes of the exceptions to the application of section 367(a)(1) provided in paragraphs (c) and (d)(2)(vi)(B) of this section, there is a failure to file a statement described in paragraph (c)(6), (c)(7), or (d)(2)(vi)(C) of this section (failure to file) if the statement is not filed with a timely filed U.S. income tax return or is not completed in all material respects.

(2) *Relief for certain failures to file that are not willful*—(i) *In general.* A failure to file described in paragraph (f)(1) of this section will be deemed not to have occurred for purposes of satisfying the requirements of the applicable regulation if the taxpayer demonstrates that the failure was not willful using the procedure set forth in this paragraph (f)(2). For this purpose, willful is to be interpreted consistent with the meaning of that term in the context of other civil penalties, which would include a failure due to gross negligence, reckless disregard, or willful neglect. Whether a failure to file was a willful failure will be determined by the Director of Field Operations International, Large Business & International (or any successor to the roles and responsibilities of such position, as appropriate) (Director) based on all the facts and circumstances. The taxpayer must submit a request for relief and an explanation as provided in paragraph (f)(2)(ii)(A) of this section. Although a taxpayer whose failure to file is determined not to be willful will not be subject to gain recognition under this section, the taxpayer will be subject to a penalty under section 6038B if the taxpayer fails to satisfy the reporting requirements, if any, under that section and does not demonstrate that the failure was due to reasonable cause and not willful neglect. See § 1.6038B–1(b) and (f). The determination of whether the failure to file was willful under this section has no effect on any request for relief made under § 1.6038B–1(f).

(ii) *Procedures for establishing that a failure to file was not willful*—(A) *Time and manner of submission.* A taxpayer's statement that the failure to file was not willful will be considered only if, promptly after the taxpayer becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to file. The amended return must be filed with the Internal Revenue Service at the location where the taxpayer filed its original return. The taxpayer may submit a request for relief from the penalty under section 6038B as part of the same submission. See § 1.6038B–1(f).

(B) *Notice requirement.* In addition to the requirements of paragraph (f)(2)(ii)(A) of this section, the taxpayer must comply with the notice requirements of this paragraph (f)(2)(ii)(B). If any taxable year of the taxpayer is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the taxpayer is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

(3) For illustrations of the application of the willfulness standard of this paragraph (f), see the examples in § 1.367(a)–8(p)(3).

(g) * * *

(1) * * *

(x) Paragraphs (c)(6)(ii) and (f) of this section apply to statements that are required to be filed on or after November 19, 2014, as well as to requests for relief submitted on or after November 19, 2014.

* * * * *

■ **Par. 4.** Section 1.367(a)–3T is amended:

■ 1. In paragraph (d)(2)(vi)(B)(*1*)(*ii*), by removing the language ''its U.S. income tax return'' and adding the language ''its timely filed U.S. income tax return'' in its place.

■ 2. In the first and second sentences of paragraph (g)(1)(ix), by removing the language ''(d)(2)(vi)(B)'' and adding the language ''(d)(2)(vi)(B)(*1*)(*i*), (d)(2)(vi)(B)(*1*)(*iii*), and (d)(2)(vi)(B)(*2*),'' in its place.

■ 3. By adding two new sentences at the end of paragraph (g)(1)(ix).

The additions read as follows:

§ 1.367(a)–3T Treatment of transfers of stock or securities to foreign corporations (temporary).

* * * * *

(g) * * *

(1) * * *

(ix) * * * Paragraph (d)(2)(vi)(B)(*1*)(*ii*) of this section applies to statements that are required to be filed on or after November 19, 2014. See paragraph (d)(2)(vi)(B)(*1*)(*ii*) of this section, as contained in 26 CFR part 1 revised as of April 1, 2014, for statements required to be filed on or after March 18, 2013, and before November 19, 2014.

* * * * *

■ **Par. 5.** Section 1.367(a)–7 is amended:

■ 1. In paragraph (a), by removing the language ''reasonable cause'' and adding the language ''not willful'' in its place.

■ 2. By revising paragraph (e)(2).

■ 3. By revising paragraph (j).

The revisions read as follows:

§ 1.367(a)–7 Outbound transfers of property described in section 361(a) or (b).

* * * * *

(e) * * *

(2) *Relief for certain failures to comply that are not willful*—(i) *In general.* A control group member or U.S. transferor's failure to comply with any requirement of this section will be deemed not to have occurred for purposes of satisfying the requirements of this section if the control group member or U.S. transferor (or the foreign acquiring corporation on behalf of the U.S. transferor), as applicable,

demonstrates that the failure was not willful using the procedure set forth in paragraph (e)(2)(ii) of this section. For this purpose, willful is to be interpreted consistent with the meaning of that term in the context of other civil penalties, which would include a failure due to gross negligence, reckless disregard, or willful neglect. Whether the failure to comply was a willful failure will be determined by the Director of Field Operations International, Large Business & International (or any successor to the roles and responsibilities of such person) (Director) based on all the facts and circumstances. The control group member or U.S. transferor (or the foreign acquiring corporation on behalf of the U.S. transferor), as applicable, must submit a request for relief and an explanation as provided in paragraph (e)(2)(ii) of this section. Although a U.S transferor whose failure to comply is determined not to be willful will not be subject to gain recognition under this section, the U.S. transferor will be subject to a penalty under section 6038B if the U.S. transferor fails to demonstrate that the failure was due to reasonable cause and not willful neglect. See § 1.6038B–1(b) and (f). The determination of whether the failure to comply was willful under this section has no effect on any request for relief made under § 1.6038B–1(f).

(ii) *Procedures for establishing that a failure to comply was not willful*—(A) *Time and manner of submission.* A control group member or U.S. transferor's statement that the failure to comply was not willful will be considered only if, promptly after the control group member or U.S. transferor, as applicable, becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to comply. The amended return must be filed with the Internal Revenue Service at the location where the taxpayer filed its original return. The U.S. transferor may submit a request for relief from the penalty under section 6038B as part of the same submission. See § 1.6038B–1(f).

(B) *Notice requirement.* In addition to the requirements of paragraph (e)(2)(ii)(A) of this section, a control group member or U.S. transferor, as applicable, must comply with the notice requirements of this paragraph (e)(2)(ii)(B). If any taxable year of the control group member or U.S. transferor, as applicable, is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the control group member or U.S transferor, as applicable, is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

(iii) For illustrations of the application of the willfulness standard of this paragraph (e)(2), see the examples in § 1.367(a)–8(p)(3).

* * * * *

(j) *Effective/applicability dates.* Except for paragraph (e)(2) of this section, this section applies to transfers occurring on or after April 18, 2013. Paragraph (e)(2) applies to requests for relief submitted on or after November 19, 2014. Paragraph (e)(2) of this section also applies to requests for relief submitted before November 19, 2014 if the statute of limitations on the assessment of tax has not expired for any year to which the request relates and the control group member or U.S. transferor, as applicable, resubmits the request under paragraph (e)(2) of this section and notes, on the request, that the request is being submitted pursuant to the third sentence of this paragraph (j). See paragraph (e)(2) of this section, as contained in 26 CFR part 1 revised as of April 1, 2014, for requests for relief submitted after April 17, 2013, and before November 19, 2014, that are not resubmitted under paragraph (e)(2) of this section.

§ 1.367(a)–7T [Removed]

■ **Par. 6.** Section 1.367(a)–7T is removed.

■ **Par. 7.** Section 1.367(a)–8 is amended:
■ 1. By revising the eleventh sentence of paragraph (a).
■ 2. By redesignating paragraphs (b)(1)(v) through (xv) as (b)(1)(vii) through (xvii), respectively.
■ 3. By redesignating paragraph (b)(1)(iv) as paragraph (b)(1)(v).
■ 4. By adding new paragraphs (b)(1)(iv) and (vi).
■ 5. By revising redesignated paragraphs (b)(1)(xiii), (xiv), and (xv).
■ 6. By revising paragraph (c)(2)(iii).
■ 7. By revising paragraph (d)(1).
■ 8. By revising paragraph (j)(8).
■ 9. By revising paragraph (p).
■ 10. By adding a sentence at the end of paragraph (r)(1)(i).
■ 11. By adding paragraph (r)(3).

The revisions and additions read as follows:

§ 1.367(a)–8 Gain recognition agreement requirements.

(a) *Scope.** * * Paragraph (p) of this section provides relief for certain failures to file an initial gain recognition agreement (as defined in paragraph (b)(1)(vi) of this section) or to comply with the requirements of this section with respect to a gain recognition agreement (as described in paragraph (c) of this section).* * *

(b) * * *

(1) * * *

(iv) A *gain recognition agreement document* means any agreement, statement, schedule, or form required to be filed under this section, including an initial gain recognition agreement (as defined in paragraph (b)(1)(vi) of this section), a new gain recognition agreement described in paragraph (c)(5) of this section, a Form 8838 extending the period of limitations on assessment of tax described in paragraph (f) of this section, and an annual certification described in paragraph (g) of this section.

* * * * *

(vi) An *initial gain recognition agreement* means the gain recognition agreement entered into under paragraph (c) of this section with respect to the initial transfer.

* * * * *

(xiii) A *timely filed return* means a Federal income tax return filed on or before the last date prescribed for filing (taking into account any extensions of time therefor) such return.

(xiv) *Transferee foreign corporation.* Except as provided in this paragraph (b)(1)(xiv), the *transferee foreign corporation* is the foreign corporation to which the transferred stock or securities are transferred in an initial transfer. In the case of an indirect stock transfer, the transferee foreign corporation has the meaning set forth in § 1.367(a)–3(d)(2)(i). The transferee foreign corporation also includes a corporation designated as the transferee foreign corporation in the case of a new gain recognition agreement entered into under this section.

(xv) *Transferred corporation.* Except as provided in this paragraph (b)(1)(xv), the *transferred corporation* is the corporation the stock or securities of which are transferred in the initial transfer. In the case of an indirect stock transfer, the transferred corporation has the meaning set forth in § 1.367(a)–3(d)(2)(ii). The transferred corporation also includes a corporation designated as the transferred corporation in the case of a new gain recognition

agreement entered into under this section.

* * * * *

(c) * * *

(2) * * *

(iii) A statement that the U.S. transferor agrees to comply with all the conditions and requirements of this section, including to recognize gain under the gain recognition agreement in accordance with paragraph (c)(1)(i) of this section, to extend the period of limitations on assessment of tax as provided in paragraph (f) of this section, to file the certification described in paragraph (g) of this section, and, as provided in paragraph (j)(8) of this section, to treat a failure to comply (as described in paragraph (j)(8) of this section) as extending the period of limitations on assessment of tax for the taxable year in which gain is required to be reported.

* * * * *

(d) *Filing requirements*—(1) *General rule.* An initial gain recognition agreement must be timely filed in order for the U.S. transferor to avoid recognizing gain under section 367(a)(1) with respect to the transferred stock or securities by reason of the applicable exceptions provided under § 1.367(a)–3. Except as provided in paragraph (p) of this section, an initial gain recognition agreement is timely filed only if—

(i) The initial gain recognition agreement and any other gain recognition agreement document required to be filed with the initial gain recognition agreement are included with a timely filed return of the U.S. transferor for the taxable year during which the initial transfer occurs; and

(ii) Each gain recognition agreement document identified in paragraph (d)(1)(i) of this section is completed in all material respects.

* * * * *

(j) * * *

(8) *Failure to comply.* A U.S. transferor fails to comply in any material respect with any requirement of this section, or the terms of the gain recognition agreement as described in paragraph (c)(1) of this section. A failure to comply under this paragraph (j)(8) will extend the period of limitations on assessment of tax for the taxable year in which gain is required to be reported until the close of the third full taxable year ending after the date on which the U.S. transferor furnishes to the Director of Field Operations International, Large Business & International (or any successor to the roles and responsibilities of such person) (Director) the information that should have been provided under this section. Except as provided in paragraph (p) of this section, for purposes of this paragraph (j)(8), a failure to comply includes—

(i) If there is a gain recognition event in a taxable year, a failure to report gain or pay any additional tax or interest due under the terms of the gain recognition agreement; and

(ii) A failure to file a gain recognition agreement document, other than an initial gain recognition agreement or a document required to be filed with the initial gain recognition agreement. For this purpose, there is a failure to file a gain recognition agreement document if—

(A) The gain recognition agreement document is not timely filed as required under this section, or

(B) The gain recognition agreement document is not completed in all material respects.

* * * * *

(p) *Relief for certain failures to file or failures to comply that are not willful*—(1) *In general.* This paragraph (p) provides relief if there is a failure to file an initial gain recognition agreement as required under paragraph (d)(1) of this section (failure to file), or a failure to comply that is a triggering event under paragraph (j)(8) of this section (failure to comply). A failure to file or failure to comply will be deemed not to have occurred for purposes of paragraph (d)(1) of this section or paragraph (j)(8) of this section if the U.S. transferor demonstrates that the failure was not willful using the procedure set forth in this paragraph (p). For this purpose, willful is to be interpreted consistent with the meaning of that term in the context of other civil penalties, which would include a failure due to gross negligence, reckless disregard, or willful neglect. Whether a failure to file or failure to comply was willful will be determined by the Director (as described in paragraph (j)(8) of this section) based on all the facts and circumstances. The U.S. transferor must submit a request for relief and an explanation as provided in paragraph (p)(2)(i) of this section. Although a U.S. transferor whose failure to file or failure to comply is determined not to be willful will not be subject to gain recognition under paragraph (b), (c), or (e) of § 1.367(a)–3 or paragraph (c)(1) of this section, as applicable, the U.S. transferor will be subject to a penalty under section 6038B if the U.S. transferor fails to satisfy the reporting requirements under that section and does not demonstrate that the failure was due to reasonable cause and not willful neglect. See § 1.6038B–1(b)(2) and (f). The determination of whether the failure to file or failure to comply was willful under this section has no effect on any request for relief made under § 1.6038B–1(f).

(2) *Procedures for establishing that a failure to file or failure to comply was not willful*—(i) *Time and manner of submission.* A U.S. transferor's statement that a failure to file or failure to comply was not willful will be considered only if, promptly after the U.S. transferor becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to file or failure to comply. The U.S. transferor must file, with the amended return, a Form 8838 extending the period of limitations on assessment of tax with respect to the gain realized but not recognized on the initial transfer to the later of: The close of the eighth full taxable year following the taxable year during which the initial transfer occurred (date one); or the close of the third full taxable year ending after the date on which the required information is provided to the Director (date two). However, the U.S. transferor is not required to file a Form 8838 with the amended return if both date one is later than date two and a Form 8838 was previously filed extending the period of limitations on assessment of tax with respect to the gain realized but not recognized on the initial transfer to date one. If a Form 8838 is not required to be filed with the amended return pursuant to the previous sentence, a copy of the previously filed Form 8838 must be filed with the amended return. The amended return and either a Form 8838 or a copy of the previously filed Form 8838, as the case may be, must be filed with the Internal Revenue Service at the location where the U.S. transferor filed its original return. The U.S. transferor may submit a request for relief from the penalty under section 6038B as part of the same submission. See § 1.6038B–1(f).

(ii) *Notice requirement.* In addition to the requirements of paragraph (p)(2)(i) of this section, the U.S. transferor must comply with the notice requirements of this paragraph (p)(2)(ii). If any taxable year of the U.S. transferor is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the

U.S. transferor is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

(3) *Examples.* The following examples illustrate the application of this paragraph (p). All of the examples are based solely on the following facts and any additional facts stated in the particular example. DC, a domestic corporation, wholly owns FS and FA, each a foreign corporation. In Year 1, pursuant to a transaction qualifying both as an exchange under section 351 and a reorganization under section 368(a)(1)(B), DC transferred all the FS stock to FA solely in exchange for voting stock of FA (FS Transfer). The fair market value of the FS stock exceeded DC's tax basis in the stock at the time of the FS transfer. Absent the application of section 367 to the transaction, DC's exchange of the FS stock for the stock of FA qualified as a tax-free exchange under sections 351(a) and section 354. Immediately after the transaction, both FA and FS were controlled foreign corporations (as defined in section 957). Furthermore, DC was a section 1248 shareholder (as defined in § 1.367(b)–2(b)) with respect to FA and FS, and a 5-percent shareholder with respect to FA for purposes of § 1.367(a)–3(b)(ii). Thus, DC was required to recognize gain under section 367(a)(1) by reason of the FS Transfer unless DC timely filed an initial gain recognition agreement (GRA) as required by paragraph (d)(1) of this section and complies in all material respects with the requirements of this section throughout the term of the GRA. The application of section 6038B is not addressed in these examples. DC may be subject to a penalty under section 6038B even if DC demonstrates under this section that a failure to file or failure to comply was not willful. See § 1.6038B–1(b) and (f) for the application of section 6038B.

Example 1. Taxpayer failed to file a GRA due to accidental oversight. (i) *Facts.* DC filed its tax return for the year of the FS Transfer, reporting no gain with respect to the exchange of the FS stock. DC, through its tax department, was aware of the requirement to file a GRA in order for DC to avoid recognizing gain with respect to the FS Transfer under section 367(a)(1), and had the experience and competency to properly prepare the GRA. DC had filed many GRAs over the years and had never failed to timely file a GRA. However, although DC prepared the GRA with respect to the FS Transfer, it was not filed with DC's tax return for the year of the FS Transfer due to an accidental oversight. During the preparation of the following year's tax return, DC discovered that the GRA was not filed. DC filed an amended return to file the GRA and complied with the procedures set forth under paragraph (p)(2) of this section promptly after it became aware of the failure.

(ii) *Result.* Because DC failed to file a GRA with its timely filed tax return for the year of the FS Transfer, there is a failure to timely file the GRA as required by paragraph (d)(1) of this section. However, based on the facts of this *Example 1,* including that the failure to timely file the GRA was an isolated and accidental oversight, the failure to timely file is not a willful failure to file. Accordingly, the timely filed requirement of paragraph (d)(1) of this section is considered to be satisfied, and DC is not required to recognize the gain realized on the FS Transfer under section 367(a)(1).

Example 2. Taxpayer's course of conduct is taken into account in determination. (i) *Facts.* DC filed its tax return for the year of the FS Transfer, reporting no gain with respect to the exchange of the FS stock, but failed to file a GRA. DC, through its tax department, was aware of the requirement to file a GRA in order for DC to avoid recognizing gain with respect to the FS Transfer under section 367(a)(1). DC had not consistently and in a timely manner filed GRAs in the past, and also had an established history of failing to timely file other tax and information returns for which it was subject to penalties. In a year subsequent to Year 1, DC transferred stock of another foreign subsidiary with respect to which DC had a built-in gain (FS2) to FA in a transaction that qualified as both a reorganization under section 368(a)(1)(B) and an exchange described under section 351 (FS2 Transfer). DC was required to recognize gain on the FS2 Transfer under section 367(a)(1) unless DC timely filed a GRA as required by paragraph (d)(1) of this section and complied with the requirements of this section during the term of the GRA. DC reported no gain on the FS2 Transfer on its tax return, but failed to file a GRA. At the time of the FS2 Transfer, DC was already aware of its failure to file the GRA required for the prior FS Transfer, but had not implemented any safeguards to ensure that it would timely file GRAs for future transactions. DC filed an amended return to file the GRA for the FS2 Transfer and complied with the procedures set forth under paragraph (p)(2) of this section promptly after it became aware of the failure. DC asserts that its failure to timely file a GRA with respect to the FS2 Transfer was due to an isolated oversight similar to the one that occurred with respect to the FS Transfer. At issue is DC's failure to timely file a GRA for the FS2 Transfer.

(ii) *Result.* Because DC failed to file a GRA with its timely filed tax return for the year of the FS2 Transfer, there is a failure to timely file the GRA as required by paragraph (d)(1) of this section. DC's course of conduct is taken into account in determining whether its failure to timely file a GRA for the FS2 Transfer was willful. Based on the facts of this *Example 2,* including DC's history of failing to file required tax and information returns in general and GRAs in particular, and its failure to implement safeguards to ensure that it would timely file GRAs, the failure to timely file a GRA with respect to the FS2 Transfer rises to the level of a willful failure to timely file. Accordingly, DC is ineligible for relief under paragraph (p) of this section, the GRA is not considered timely filed for purposes of paragraph (d)(1) of this section, and DC must recognize the full amount of the gain realized on the FS2 Transfer.

Example 3. GRA not completed in all material respects. (i) *Facts.* DC timely filed its tax return for the year of the FS Transfer, reporting no gain with respect to the exchange of the FS stock. DC was aware of the requirement to file a GRA to avoid recognizing gain under section 367(a)(1), including the requirement to provide the basis and fair market value of the transferred stock. However, DC filed a purported GRA that did not contain the fair market value of the FS stock. Instead, the GRA was filed with the statement that the fair market value information was ''available upon request.'' Other than the omission of the fair market value of the FS stock, the GRA contained all other information required by this section.

(ii) *Result.* Because DC omitted the fair market value of the FS stock from the GRA, the GRA was not completed in all material respects. Accordingly, there is a failure to timely file the GRA. Furthermore, because DC knowingly omitted such information, DC's omission is a willful failure to timely file a GRA. Accordingly, DC is ineligible for relief under paragraph (p) of this section, the GRA is not considered timely filed for purposes of paragraph (d)(1) of this section, and DC must recognize the full amount of the gain realized on the FS Transfer. The same result would arise if DC had included the fair market value of the FS stock, but knowingly omitted its tax basis from the GRA.

Example 4. Taxpayer knew of GRA filing requirement, but intentionally chose not to file. (i) *Facts.* When DC filed its tax return for the tax year of the FS Transfer, it was aware of the requirement to file a GRA to avoid recognizing gain under section 367(a)(1). However, because DC anticipated selling Business A in the following tax year, which was expected to produce a capital loss that could be carried back to fully offset the gain recognized on the FS Transfer, DC intentionally chose not to file a GRA. DC recognized the gain from the FS Transfer under section 367(a)(1) and reported the gain on its timely filed tax return. At the end of the following year, a large class action lawsuit was filed against Business A and, consequently, DC was unable to sell the business. As a result, DC did not realize the expected capital loss, and it was not able to offset the gain from the FS Transfer. DC now seeks to file a GRA for the FS Transfer.

(ii) *Result.* Because DC failed to file a GRA with its timely filed tax return for the year of the FS Transfer, there is a failure to timely file the GRA as required by paragraph (d)(1) of this section. Furthermore, because DC intentionally chose not to file a GRA for the FS Transfer, its actions constitute a willful failure to timely file a GRA. Accordingly, DC is ineligible for relief under paragraph (p) of this section, the GRA is not considered timely filed for purposes of paragraph (d)(1) of this section, and DC must recognize the

full amount of the gain realized on the FS Transfer in Year 1.

* * * * *

(r) *Effective/applicability dates*—(1) * * * (i) * * * The eleventh sentence of paragraph (a) and paragraphs (b)(1)(iv), (b)(1)(vi), (b)(1)(xiii), (d)(1), (j)(8), and (p) of this section will apply to gain recognition agreement documents that are required to be filed on or after November 19, 2014, as well as to requests for relief submitted on or after November 19, 2014.

* * * * *

(3) *Applicability to requests for relief submitted before* November 19, 2014. The eleventh sentence of paragraph (a) and paragraphs (b)(1)(iv), (b)(1)(vi), (b)(1)(xiii), (d)(1), (j)(8), and (p) of this section will apply to requests for relief submitted before November 19, 2014 if—

(i) The statute of limitations on the assessment of tax has not expired for any year to which the request relates; and

(ii) The U.S. transferor resubmits the request under paragraph (p) of this section, notes on the request that the request is being submitted pursuant to this paragraph (r)(3), and acknowledges on the request that the last sentence of § 1.6038B–1(g)(6) provides a special rule regarding the application of § 1.6038B–1 to any transfer that is the subject of the request.

■ **Par. 8.** Section 1.367(e)–2 is amended:

■ 1. By revising the ninth sentence and adding two new sentences before the last sentence of paragraph (a).

■ 2. By revising paragraph (b)(1)(i).

■ 3. In paragraph (b)(2)(i)(A)(*2*), by removing the language ''its U.S. income tax returns'' and adding the language ''its timely filed U.S. income tax returns'' in its place.

■ 4. In paragraph (b)(2)(i)(A)(*3*), by removing the language ''its U.S. income tax return'' and adding the language ''its timely filed U.S. income tax return'' in its place.

■ 5. By revising paragraph (b)(2)(i)(C)(*1*).

■ 6. In the first sentence of paragraph (b)(2)(i)(E)(*3*), by removing the language ''its U.S. income tax return'' and adding the language ''its timely filed U.S. income tax return'' in its place.

■ 7. In paragraph (b)(2)(i)(E)(*4*)(*ii*), by removing the language ''its U.S. income tax return'' and adding the language ''its timely filed U.S. income tax return'' in its place.

■ 8. In paragraph (b)(2)(i)(E)(*5*)(*ii*), by removing the language ''its U.S. income tax return'' and adding the language ''its timely filed U.S. income tax return'' in its place.

■ 9. In the first sentence of paragraph (b)(2)(iii)(A), by removing the language ''its U.S. income tax return'' and adding the language ''its timely filed U.S. income tax return'' in its place.

■ 10. By adding a sentence at the end of paragraph (b)(2)(iii)(D).

■ 11. In paragraph (c)(2)(i)(B)(*3*), by removing the language ''their U.S. income tax returns'' and adding the language ''their timely filed U.S. income tax returns'' in its place.

■ 12. By revising paragraph (e).

■ 13. By adding paragraphs (f) and (g).

The revisions and additions read as follows:

§ 1.367(e)–2 Distributions described in section 367(e)(2).

(a) *Purpose and scope*—(1) *In general.* * * * Paragraph (e) of this section provides rules regarding failures to file statements or other documents required under this section or failures to comply with the requirements of this section. Paragraph (f) of this section provides relief for certain failures to file or comply. Finally, paragraph (g) of this section specifies the effective/applicability dates for the rules of this section. * * *

* * * * *

(b) *Distribution by a domestic corporation*—(1) *General rule*—(i) *Recognition of gain and loss.* If a domestic corporation (domestic liquidating corporation) makes a distribution of property in complete liquidation under section 332 to a foreign corporation (foreign distributee corporation) that meets the stock ownership requirements of section 332(b) with respect to stock in the domestic liquidating corporation, then—

(A) Section 337(a) and (b)(1) will not apply; and

(B) The domestic liquidating corporation will recognize gain or loss on the distribution of property to the foreign distributee corporation, except as provided in paragraph (b)(2) of this section.

* * * * *

(2) * * *

(i) * * *

(C) * * *

(*1*) A declaration that the distribution to the foreign distributee corporation is one to which the rules of this paragraph (b)(2)(i) apply and a certification that the domestic liquidating corporation and the foreign distributee corporation agree to comply with all the conditions and requirements of this section, including, as provided in paragraph (e)(4)(ii)(B) of this section, to treat a failure to comply (as described in paragraph (e)(4)(i) of this section) as extending the period of limitations on assessment of tax for the taxable year in which gain is required to be reported.

* * * * *

(iii) * * *

(D) * * * The required statement shall also state that the domestic liquidating corporation agrees, as provided in paragraph (e)(4)(ii)(B) of this section, to treat a failure to comply (as described in paragraph (e)(4)(i) of this section) as extending the period of limitations on assessment of tax for the taxable year in which gain is required to be reported.

* * * * *

(e) *Failures to file or failures to comply*—(1) *Scope.* This paragraph (e) provides rules regarding a failure to file an initial liquidation document with respect to one or more liquidating distributions by a domestic liquidating corporation that, absent such failure, would qualify for nonrecognition treatment under paragraph (b)(2)(i) or (iii) of this section, or with respect to one or more liquidating distributions by a foreign liquidating corporation that, absent such failure, would qualify for nonrecognition treatment under paragraph (c)(2)(i)(B) of this section (failure to file). This paragraph (e) also provides rules regarding failures to comply in all material respects with the terms of this section with respect to one or more liquidating distributions for which nonrecognition treatment was initially claimed under paragraph (b)(2)(i), (b)(2)(iii), or (c)(2)(i)(B) of this section, as applicable (failure to comply).

(2) *Definitions.* The following definitions apply for purposes of this section.

(i) An *initial liquidation document* means any statement, schedule, or form required to be filed under this section in order for the domestic liquidating corporation or foreign liquidating corporation, as applicable, to initially qualify to claim nonrecognition treatment with respect to one or more liquidating distributions described in this section, including—

(A) The statement and attachments described in paragraph (b)(2)(i)(C) of this section;

(B) The statement described in paragraph (b)(2)(iii)(D) of this section; and

(C) The statement and attachments described in paragraph (c)(2)(i)(C) of this section.

(ii) A *subsequent liquidation document* means any statement, schedule, or form (other than an initial liquidation document) required to be filed under this section in order for the domestic liquidating corporation or

foreign liquidating corporation, as applicable, to continue to qualify for nonrecognition treatment with respect to one or more liquidating distributions described in this section, including—

(A) The schedule described in paragraph (b)(2)(i)(E)(*3*) of this section;

(B) The schedule described in paragraph (b)(2)(i)(E)(*4*)(*ii*) of this section; and

(C) The statement and attachments described in paragraph (b)(2)(i)(E)(*5*) of this section.

(iii) A *timely filed U.S. income tax return* means a Federal income tax return filed on or before the last date prescribed for filing (taking into account any extensions of time therefor) such return.

(3) *Failure to file*—(i) *General rule.* For purposes of this section and except as provided in paragraph (b)(2)(i)(D) or (f) of this section, there is a failure to file an initial liquidation document if—

(A) An initial liquidation document is not filed with the timely filed U.S. income tax return specified under this section, or

(B) An initial liquidation document is not completed in all material respects.

(ii) *Consequences of a failure to file.* If there is a failure to file an initial liquidation document, then nonrecognition treatment under paragraph (b)(2)(i), (b)(2)(iii), or (c)(2)(i)(B) of this section (as appropriate) will not apply.

(4) *Failure to comply*—(i) *General rule.* For purpose of this section and except as provided in paragraph (b)(2)(i)(D) or (f) of this section, a failure to comply includes—

(A) A failure to report gain, or pay any additional tax or interest due, in accordance with the requirements under this section; and

(B) A failure to file a subsequent liquidation document, as determined by applying paragraph (e)(3)(i) of this section, but replacing the term ''initial liquidation document'' with the term ''subsequent liquidation document.''

(ii) *Consequences of a failure to comply.* If there is a failure to comply in any material respect with the terms of paragraph (b)(2)(i), (b)(2)(iii), or (c)(2)(i) of this section, as applicable, then—

(A) Any gain (but not loss) that was not previously recognized by the domestic liquidating corporation or foreign liquidating corporation, as applicable, under paragraph (b)(2)(i), (b)(2)(iii), or (c)(2)(i)(B) of this section must be recognized; and

(B) The period of limitations on assessment of tax for the taxable year in which gain is required to be reported will be extended until the close of the third full taxable year ending after the date on which the domestic liquidating corporation, foreign distributee corporation, or foreign liquidating corporation, as applicable, furnishes to the Director of Field Operations International, Large Business & International (or any successor to the roles and responsibilities of such position, as appropriate) (Director) the information that should have been provided under this section.

(f) *Relief for certain failures to file or failures to comply that are not willful*—(1) *In general.* This paragraph (f) provides relief if there is a failure to file an initial liquidation document as described in paragraph (e)(3)(i) of this section (failure to file), or a failure to comply in any material respect with the terms of this section as described in paragraph (e)(4)(i) of this section (failure to comply). A failure to file or a failure to comply will be deemed not to have occurred for purposes of paragraph (e)(3)(ii) or (e)(4)(ii) of this section if the taxpayer demonstrates that the failure was not willful using the procedure set forth in this paragraph (f). For this purpose, willful is to be interpreted consistent with the meaning of that term in the context of other civil penalties, which would include a failure due to gross negligence, reckless disregard, or willful neglect. Whether a failure to file or failure to comply was willful will be determined by the Director (as described in paragraph (e)(4)(ii)(B) of this section) based on all the facts and circumstances. The taxpayer must submit a request for relief and an explanation as provided in paragraph (f)(2)(i) of this section. Although a taxpayer whose failure to file or failure to comply is determined not to be willful will not be subject to gain or loss recognition under this section, the taxpayer will be subject to a penalty under section 6038B if the taxpayer fails to satisfy the reporting requirements, if any, under that section and does not demonstrate that the failure was due to reasonable cause and not willful neglect. See § 1.6038B–1(e)(4) and (f). The determination of whether the failure to file or failure to comply was willful under this section has no effect on any request for relief made under § 1.6038B–1(f).

(2) *Procedures for establishing that a failure to file or failure to comply was not willful*—(i) *Time and manner of submission.* A taxpayer's statement that a failure to file or failure to comply was not willful will be considered only if, promptly after the taxpayer becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure. In the case of a liquidating distribution described in paragraph (b)(2)(iii) of this section, the taxpayer must file, with the amended return, a Form 8838 extending the period of limitations on assessment of tax with respect to the gain realized but not recognized with respect to the liquidating distribution to the close of the third full taxable year ending after the date on which the required information is provided to the Director. In the case of a liquidating distribution described in paragraph (b)(2)(i) or (c)(2)(i)(B) of this section, the taxpayer must file, with the amended return, a Form 8838 extending the period of limitations on the assessment of tax with respect to the gain realized but not recognized with respect to the liquidating distribution to the later of: the date provided in paragraph (b)(2)(i)(C)(*5*), taking into account paragraph (c)(2)(i)(C) and (D), as applicable (date one); or, the close of the third full taxable year ending after the date on which the required information is provided to the Director (date two). However, the taxpayer is not required to file a Form 8838 with the amended return if both date one is later than date two and a Form 8838 was previously filed extending the period of limitations on assessment of tax with respect to the gain realized but not recognized with respect to the liquidating distribution to date one. If a Form 8838 is not required to be filed pursuant to the previous sentence, a copy of the previously filed Form 8838 must be filed with the amended return. The amended return and either a Form 8838 or a copy of the previously filed Form 8838, as the case may be, must be filed with the Internal Revenue Service at the location where the taxpayer filed its original return. The taxpayer may submit a request for relief from the penalty under section 6038B as part of the same submission. See § 1.6038B–1(f).

(ii) *Notice requirement.* In addition to the requirements of paragraph (f)(2)(i) of this section, the taxpayer must comply with the notice requirements of this paragraph (f)(2)(ii). If any taxable year of the taxpayer is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the taxpayer is under

examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

(3) For illustrations of the application of the willfulness standard of this paragraph (f), see the examples in § 1.367(a)–8(p)(3).

(g) *Effective/applicability dates.* Except as otherwise provided, this section applies to distributions occurring on or after September 7, 1999 or, if the taxpayer so elects, to distributions in taxable years ending after August 8, 1999. The ninth, tenth, and eleventh sentences of paragraph (a) of this section, and paragraphs (b)(1)(i), (b)(2)(i)(A)(*2*), (b)(2)(i)(A)(*3*), (b)(2)(i)(E)(*3*), (b)(2)(i)(E)(*4*)(*ii*), (b)(2)(i)(E)(*5*)(*ii*), (b)(2)(iii)(A), (c)(2)(i)(B)(*3*), (e), and (f) of this section will apply to liquidation documents that are required to be filed on or after November 19, 2014, as well as to requests for relief submitted on or after November 19, 2014.

■ **Par. 9.** Section 1.6038B–1 is amended:

■ 1. By adding a sentence after the first sentence in paragraph (b)(1)(i).

■ 2. By revising paragraph (b)(2)(i)(B)(*1*).

■ 3. By adding paragraph (b)(2)(iii).

■ 4. By adding paragraph (b)(2)(iv).

■ 5. By revising paragraphs (c)(1) through (c)(5).

■ 6. By revising paragraph (e)(4).

■ 7. By removing paragraph (f)(1)(i).

■ 8. By redesignating paragraphs (f)(1)(ii) and (f)(1)(iii) as paragraphs (f)(1)(i) and (f)(1)(ii), respectively.

■ 9. By adding paragraph (f)(2)(iii).

■ 10. By adding paragraph (f)(2)(iv).

■ 11. In paragraph (g)(1), by removing the language ''(g)(5)'' and adding the language ''(g)(6)'' in its place.

■ 12. By adding paragraph (g)(6).

The revisions and additions read as follows:

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *

(b) * * * (1) * * * -(i) * * * In addition, if the U.S. person files a statement under § 1.367(a)–3(d)(2)(vi)(C), a gain recognition agreement under § 1.367(a)–8, or a liquidation document under § 1.367(e)–2(b), such person must comply in all material respects with the requirements of such section pursuant to the terms of the statement, gain recognition agreement, or liquidation document, as applicable, in order to satisfy a reporting obligation under section 6038B. * * *

* * * * *

(2) * * *

(i) * * *

(B) * * *

(*1*) Except as provided in paragraph (b)(2)(iii) of this section, the U.S. transferor (or one or more successors) filed an initial gain recognition agreement under § 1.367(a)–8, and filed Form 926 in accordance with paragraph (b)(2)(iv) of this section; or

* * * * *

(ii) * * *

(iii) *Timely filed initial gain recognition agreement.* Paragraph (b)(2)(i)(B)(*1*) of this section will not apply unless the initial gain recognition agreement is timely filed as determined under § 1.367(a)–8(d)(1), but for purposes of this section, determined without regard to § 1.367(a)–8(p). However, see paragraph (f)(3) of this section for certain relief that may be available.

(iv) *Satisfaction of section 6038B reporting if a gain recognition agreement is timely filed.* If the U.S. transferor is described in paragraph (b)(2)(i)(B)(*1*) of this section and is not otherwise required to file a Form 926 with respect to a transfer of assets other than the stock or securities to the transferee foreign corporation, the requirements of this section are satisfied with respect to the transfer of the stock or securities by completing Part I and Part II of Form 926, noting on the Form 926 that a gain recognition agreement is being filed pursuant to § 1.367(a)–8; reporting on the Form 926 the fair market value, adjusted tax basis, and gain recognized with respect to the transferred stock or securities; submitting on the Form 926 any other information that Form 926, its accompanying instructions, or other applicable guidance require to be submitted with respect to the transfer of the stock or securities; and attaching a signed copy of the Form 926 to its timely filed U.S. income tax return (including extensions) for the year of the transfer. If the U.S. transferor is required to file Form 926 with respect to a transfer of assets in addition to the stock or securities, the requirements of this section are satisfied with respect to the transfer of the stock or securities by noting on the Form 926 that a gain recognition agreement is being filed pursuant to § 1.367(a)–8; reporting on the Form 926 the fair market value, adjusted tax basis, and gain recognized with respect to the transferred stock or securities; and submitting on the Form 926 any other information that Form 926, its accompanying instructions, or other applicable guidance require to be submitted with respect to the transfer of the stock or securities.

* * * * *

(c) * * *

(1) through (4)(i) [Reserved]. For further guidance, see § 1.6038B–1T(c)(1) through (4)(i).

(ii) *Stock or securities.* Describe any stock or securities that are transferred, including the adjusted tax basis and fair market value of the stock or securities, the class or type, amount, and characteristics of the stock or securities, and the name, address, place of incorporation, and general description of the corporation issuing the stock or securities. In addition, if any provision of § 1.367(a)–3 or § 1.367(a)–3T applies to except the transfer of the stock or securities from section 367(a)(1), provide information supporting the claimed application of such provision. However, see paragraph (b)(2) of this section for certain exceptions and special rules for reporting transfers of stock or securities under section 367(a).

(iii) through (5) [Reserved]. For further guidance, see § 1.6038B–1T(c)(4)(iii) through (5).

* * * * *

(e) * * *

(4) *Reporting rules for section 367(e)(2) distributions by domestic liquidating corporations*—(i) *General rule.* Except as provided in paragraph (e)(4)(ii) of this section, if the distributing corporation makes a distribution of property in complete liquidation under section 332 to a foreign distributee corporation that meets the stock ownership requirements of section 332(b) with respect to the stock of the distributing corporation, then the distributing corporation must complete a Form 926 and attach a signed copy of such form to its timely filed U.S. income tax return (including extensions) for the taxable years that include one or more liquidating distributions. The property description contained in Part III of the Form 926 must contain a description, including the adjusted tax basis and fair market value, of all property distributed by the distributing corporation (regardless of whether the distribution of the property qualifies for nonrecognition treatment). The description must also identify the items of property for which nonrecognition treatment is claimed under § 1.367(e)–2(b)(2)(ii) or (iii), as applicable.

(ii) *Special rule.* Except as provided in paragraph (e)(4)(iii) of this section, if the distributing corporation distributes items of property that will be used by the foreign distributee corporation in the conduct of a trade or business in the United States and the distributing corporation does not recognize gain or loss on such distribution under

§ 1.367(e)–2(b)(2)(i) with respect to such property, then the distributing corporation may satisfy the requirements of this section by completing Part I and Part II of Form 926, noting in Part III that the information required by Form 926 is contained in a statement required by § 1.367(e)–2(b)(2)(i)(C)(*2*), and attaching a signed copy of Form 926 to its timely filed U.S. income tax return (including extensions) for each taxable year that includes one or more distributions in liquidation. In addition, if the distributing corporation distributes stock of a domestic subsidiary corporation and does not recognize gain or loss on such distribution under § 1.367(e)–2(b)(2)(iii) with respect to such stock, then the distributing corporation may satisfy the requirements of this section by completing Part I and Part II of Form 926, noting in Part III that the information required by Form 926 is contained in a statement required by § 1.367(e)–2(b)(2)(iii)(D), and attaching a signed copy of Form 926 to its timely filed U.S. income tax return (including extensions) for the taxable years that include one or more distributions of domestic subsidiary stock.

(iii) *Properly filed statement.* Paragraph (e)(4)(ii) will not apply if there is a failure to file an initial liquidation document as determined under § 1.367(e)–2(e)(3)(i), but for purposes of this section, determined without regard to § 1.367(e)–2(f). However, see paragraph (f)(3) of this section for certain relief that may be available.

(f) * * *

(2) * * *

(iii) With respect to an initial gain recognition agreement filed under § 1.367(a)–8, a failure to comply as determined under § 1.367(a)–8(j)(8), but for purposes of this section, determined without regard to the application of § 1.367(a)–8(p).

(iv) With respect to an initial liquidation document filed under § 1.367(e)–2(b)(2), a failure to comply as determined under § 1.367(e)–2(e)(4)(i), but for purposes of this section, determined without regard to the application of § 1.367(e)–2(f).

* * * * *

(g) * * *

(6) The second sentence of paragraph (b)(1)(i) and paragraphs (b)(2)(i)(B)(*1*), (b)(2)(iii), (b)(2)(iv), (c), (e)(4), (f)(2)(iii), and (f)(2)(iv) of this section will apply to documents required to be filed on or after November 19, 2014, as well as to requests for relief submitted on or after November 19, 2014. The second sentence of paragraph (b)(1)(i) and paragraphs (b)(2)(i)(B)(*1*), (b)(2)(iii), (b)(2)(iv), (c), and (f)(2)(iii) of this section will also apply to any transfer that is the subject of a request for relief submitted pursuant to § 1.367(a)–8(r)(3).

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: October 31, 2014.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2014–27365 Filed 11–18–14; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0367]

RIN 1625–AA09

Drawbridge Operation Regulation; Darby Creek, Essington, PA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulation that governs the Conrail railroad bridge over Darby Creek at mile marker 0.25 in Essington, PA. The bridge owner, Conrail, is modifying the existing remote operating system which controls the bridge operations. Cameras will be installed and the remote operating site will move from its current location in Delair, NJ to Mt. Laurel, NJ. The train crew is no longer required to stop and check the waterway for approaching vessel traffic prior to initiating a bridge closure and mariners requesting an opening for the bridge will have to contact the new remote location.

DATES: This rule is effective December 19, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2014–0367. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mrs. Jessica Shea, Fifth Coast Guard District Bridge Administration Division, Coast Guard; telephone 757–398–6422, email *jessica.c.shea2@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR Code of Federal Regulations
Conrail Consolidated Rail Corporation
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section Symbol
U.S.C. United States Code

A. Regulatory History and Information

On August 1, 2014, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Darby Creek, Essington, PA in the **Federal Register** (79 FR 44724). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

The bridge owner, Conrail, requested a change to 33 CFR 117.903 because they modified the sensor and visual equipment on site at their bridge across Darby Creek. They also relocated the remote operation station to a new location. The regulation is changing two aspects of the bridge operation. Specifically, the location of the remote operator and the installation of cameras to verify whether any vessels are transiting the waterway before a bridge closure is initiated. This rule does not change the operating schedule of the bridge.

The scope of the waterway inspection is different between the current on-site train crewmember inspection process and the range of the proposed camera installation. There is also a difference in the time it takes between the inspection and the initiation of the bridge closure operations. Currently, the regulation requires an on-site train crewmember to conduct an inspection of the waterway for vessels by stopping the train approximately 200 feet north of the bridge site when approached from the north and 300 feet south of the bridge site when approached from the south. Once the train is stopped, the train crewmember walks to the bridge site and physically looks up and down the channel. The time it takes to stop the