

(f) Technical data (see § 120.10) and defense services (see § 120.9) directly related to the defense articles enumerated in paragraphs (a) through (e) of this category and classified technical data directly related to items controlled in ECCNs 7A611, 7B611, and 7D611. (See § 125.4 for exemptions.) (MT for technical data and defense services related to articles designated as such.) Technical data directly related to manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

(g)–(w) [Reserved]

(x) Commodities, software, and technology subject to the EAR (see § 120.42 of this subchapter) used in or with defense articles controlled in this category.

Note to paragraph (x): Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technology subject to the EAR (see § 123.1(b) of this subchapter).

Note to Category XII: For purposes of determining whether an item (*i.e.*, system, end item, part, component, accessory, attachment, or software) is specially designed for a military end user, a “military end user” means the national armed services (army, navy, marine, air force, or coast guard), national guard, national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support military end uses. A system or end item is not specially designed for a military end user if the item was developed with knowledge that it is or would be for use by both military end users and non-military end users, or if the item was or is being developed with no knowledge for use by a particular end user. In such instances, documents contemporaneous with the development must establish such knowledge.

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Rose E. Gottemoeller,

Under Secretary, Arms Control and International Security, Department of State.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–118867–10]

RIN 1545–BJ53

Requirements for Type I and Type III Supporting Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the prohibition on certain contributions to Type I and Type III supporting organizations and the requirements for Type III supporting organizations. The regulations reflect changes to the law made by the Pension Protection Act of 2006. The regulations will affect Type I and Type III supporting organizations and their supported organizations.

DATES: Written or electronic comments and requests for a public hearing must be received by May 19, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–118867–10), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8:00 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–118867–10), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, 20224 or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG–118867–10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jonathan Carter at (202) 317–5800 or Mike Repass at (202) 317–4086; concerning submissions of comments and requests for a public hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to

the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by April 19, 2016.

Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collection of information;
- How the quality, utility, and clarity of the information to be collected may be enhanced;
- How the burden of complying with the proposed collection of information may be minimized, including through forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in § 1.509(a)–4(i)(4)(iv)(D) (written record of close cooperation and coordination by the governmental supported organizations) and § 1.509(a)–4(i)(6)(iii)(B) (written record of contributions received by the supported organization). Requiring the supporting organization to collect written records of its governmental supported organizations’ close cooperation and coordination with each other and written records of the contributions its supported organizations directly received in response to solicitations by the supporting organization permits the IRS to determine whether the supporting organization satisfies the requirements to be a functionally integrated or non-functionally integrated Type III supporting organization. The record keepers are Type III supporting organizations.

Estimated number of recordkeepers: 7,872.

Estimated average annual burden hours per recordkeeper: 2 hours.

Estimated total annual recordkeeping burden: 15,744.

Estimated frequency of collection of such information: Annual.

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration

of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

1. Overview

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) regarding organizations described in section 509(a)(3) of the Internal Revenue Code (Code). An organization described in section 501(c)(3) is classified as either a private foundation or a public charity. To be classified as a public charity, an organization must be described in section 509(a)(1), (2), or (3). Organizations described in section 509(a)(3) are known as “supporting organizations.” Supporting organizations achieve their public charity status by providing support to one or more organizations described in section 509(a)(1) or (2), which in this context are referred to as “supported organizations.”

To be described in section 509(a)(3), an organization must satisfy (1) an organizational test, (2) an operational test, (3) a relationship test, and (4) a disqualified person control test. The organizational and operational tests require that a supporting organization be organized and at all times thereafter operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more supported organizations. The relationship test requires a supporting organization to establish one of three types of relationships with one or more supported organizations. A supporting organization that is operated, supervised or controlled by one or more supported organizations is known as a “Type I” supporting organization. The relationship of a Type I supporting organization with its supported organization(s) is comparable to that of a corporate parent-subsidiary relationship. A supporting organization that is supervised or controlled in connection with one or more supported organizations is known as a “Type II” supporting organization. The relationship of a Type II supporting organization with its supported organization(s) involves common supervision or control by the persons supervising or controlling both the supporting organization and the supported organization(s). A supporting organization that is operated in connection with one or more supported organizations is known as a “Type III” supporting organization and is discussed further in the remainder of

this preamble. Finally, the disqualified person control test requires that a supporting organization not be controlled directly or indirectly by certain disqualified persons.

These proposed regulations focus primarily on the relationship test for Type III supporting organizations. Specifically, the proposed regulations reflect statutory changes enacted by sections 1241 through 1243 of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780) (2006) (PPA)), which made the following five changes to the requirements an organization must satisfy to qualify as a Type III supporting organization:

(1) Removed the ability of a charitable trust to rely on the special rule under § 1.509(a)–4(i)(2)(iii) of the regulations then in effect;

(2) Directed the Secretary of the Treasury to promulgate regulations under section 509 that establish a new distribution requirement for Type III supporting organizations that are not “functionally integrated” (a non-functionally integrated (NFI) Type III supporting organization) to ensure that a “significant amount” is paid to supported organizations (for this purpose the term “functionally integrated” means a Type III supporting organization that is not required under Treasury regulations to make payments to supported organizations, because the supporting organization engages in activities that relate to performing the functions of, or carrying out the purposes of, its supported organization(s));

(3) Required a Type III supporting organization to provide annually to each of its supported organizations the information required by the Treasury Department and the IRS to ensure that the supporting organization is responsive to the needs or demands of its supported organization(s);

(4) Prohibited a Type III supporting organization from supporting any supported organization not organized in the United States; and

(5) Prohibited a Type I or Type III supporting organization from accepting a gift or contribution from a person who, alone or together with certain related persons, directly or indirectly controls the governing body of a supported organization of the Type I or Type III supporting organization.

These proposed regulations set forth additional rules on the requirements for Type III supporting organizations, including additional requirements to meet the responsiveness test for all Type III supporting organizations; additional rules regarding the qualification of an organization as a functionally integrated

Type III supporting organization under § 1.509(a)–4(i)(4), including provisions for supporting organizations that support governmental entities; and additional rules regarding the required annual distributions under § 1.509(a)–4(i)(5) by a NFI Type III supporting organization. The proposed regulations also define the term “control” for purposes of section 509(f)(2), which prohibits a Type I supporting organization or a Type III supporting organization from accepting contributions from persons who control the governing body of its supported organization(s).

2. Prior Rulemaking

On August 2, 2007, the Treasury Department and the IRS published in the **Federal Register** (72 FR 42335) an advanced notice of proposed rulemaking (ANPRM) (REG–155929–06) in response to the PPA. The ANPRM described proposed rules to implement the changes made by the PPA to the Type III supporting organization requirements and solicited comments regarding those proposed rules.

On September 24, 2009, the Treasury Department and the IRS published in the **Federal Register** (74 FR 48672) a notice of proposed rulemaking (the 2009 NPRM) (REG–155929–06). The 2009 NPRM contained proposed regulations (the 2009 proposed regulations) setting forth the requirements to qualify as a Type III supporting organization under the PPA.

On December 28, 2012, the Treasury Department and the IRS published in the **Federal Register** (77 FR 76382) a Treasury decision (TD 9605) containing final and temporary regulations (the 2012 TD) regarding the requirements to qualify as a Type III supporting organization. Based on the comments received, the 2012 TD made certain changes to the rules proposed in the 2009 NPRM, included in the temporary regulations significant changes to the distribution requirement, and reserved certain topics for further consideration. Also on December 28, 2012, the Treasury Department and the IRS published in the **Federal Register** (77 FR 76426) a notice of proposed rulemaking (the 2012 NPRM) (REG–155929–06) that incorporated the text of the temporary regulations in the 2012 TD by cross-reference. The 2012 TD provided transition relief for Type III supporting organizations in existence on December 28, 2012, that met and continued to meet the test under former § 1.509(a)–4(i)(3)(ii), as in effect prior to December 28, 2012, treating them as functionally integrated until the first day of their second taxable years

beginning after December 28, 2012. The preamble to the 2012 TD also identified issues for possible future rulemaking and requested comments. The IRS received three comments on these issues. The comments were considered in developing these proposed regulations and are available for public inspection at www.regulations.gov or upon request. No public hearing was requested.

The Treasury Department and the IRS published Notice 2014–4, 2014–2 I.R.B. 274, to provide additional transition relief for any Type III supporting organization that (1) supports at least one governmental supported organization to which the supporting organization is responsive within the meaning of § 1.509(a)–4(i)(3) and (2) engages in activities for or on behalf of the governmental supported organization that perform the functions of, or carry out the purposes of, the governmental supported organization and that, but for the involvement of the supporting organization, would normally be engaged in by the governmental supported organization itself. Notice 2014–4 provides that such an organization will be treated as a functionally integrated Type III supporting organization until the earlier of the date final regulations are published under § 1.509(a)–4(i)(4)(iv) in the **Federal Register** or the first day of the organization's third taxable year beginning after December 31, 2013.

On December 23, 2015, the Treasury Department and the IRS published in the **Federal Register** (80 FR 79684) a Treasury Decision (TD 9746) containing final regulations (the 2015 TD) regarding the distribution requirement for NFI Type III supporting organizations. The preamble of those regulations provided that supporting organizations supporting a governmental supported organization could continue to rely on Notice 2014–4 until the date of publication of the notice of proposed rulemaking prescribing the new proposed regulations under § 1.509(a)–(i)(4)(iv). The IRS received three comments in response to Notice 2014–4, which the Treasury Department and the IRS considered in developing these proposed regulations.

Explanation of Provisions and Summary of Comments

This section describes the proposed provisions and addresses comments that the Treasury Department and the IRS received in response to the 2012 TD and Notice 2014–4.

1. Gifts From Controlling Donor— Meaning of Control

Type I and Type III supporting organizations are prohibited from accepting a gift or contribution from a person who, alone or together with certain related persons, directly or indirectly controls the governing body of a supported organization of the Type I or Type III supporting organization, or from persons related to a person possessing such control. Section 509(f)(2) and § 1.509(a)–4(f)(5). For this purpose, related persons include family members and 35-percent controlled entities within the meaning of section 4958(f). Although the 2012 TD reserved § 1.509(a)–4(f)(5)(ii), “Meaning of control,” the preamble to the 2012 TD indicated that the Treasury Department and the IRS intended to issue proposed regulations that would provide such a definition.

These proposed regulations define “control” for this purpose consistently with § 1.509(a)–4(j), which relates to control by disqualified persons for purposes of the disqualified person control test. In general, under the proposed regulations, the governing body of a supported organization is considered “controlled” by a person if that person, alone or by aggregating his or her votes or positions of authority with certain related persons, as described in section 509(f)(2)(B)(ii) and (iii), may require the governing body of the supported organization to perform any act that significantly affects its operations or may prevent the governing body of the supported organization from performing any such act.

2. Type III Supporting Organization Relationship Test

Section 1.509(a)–4(i)(1) provides that for each taxable year, a Type III supporting organization must satisfy (i) a notification requirement, (ii) a responsiveness test, and (iii) an integral part test provided in the regulations. These proposed regulations provide additional rules regarding each of these requirements.

A. Notification Requirement

Section 509(f)(1)(A) provides that an organization shall not be considered a Type III supporting organization unless the organization provides to each supported organization, for each taxable year, such information as the Secretary may require to ensure that the organization is responsive to the needs or demands of the supported organizations.

To satisfy this notification requirement, § 1.509(a)–4(i)(2) requires a

Type III supporting organization to provide to each of its supported organizations for each taxable year: (1) A written notice addressed to a principal officer of the supported organization describing the type and amount of all of the support it provided to the supported organization during the supporting organization's preceding taxable year; (2) a copy of the supporting organization's most recently filed Form 990, “Return of Organization Exempt from Income Tax,” or other annual information return required to be filed under section 6033; and (3) a copy of the supporting organization's governing documents, including any amendments (unless previously provided and not subsequently amended). For NFI Type III supporting organizations, the description of support in the written notice includes all of the distributions described in § 1.509(a)–4(i)(6) to the supported organization.

The proposed regulations amend § 1.509(a)–4(i)(2) to clarify that a supporting organization must deliver the required documents to each of its supported organizations by the last day of the fifth month of the taxable year after the taxable year in which the supporting organization provided the support it is reporting. This proposed change is intended to reduce confusion, but does not substantively change the due date or the content of the required notification. Date of delivery is determined applying the general principles of section 7502.

B. Responsiveness Test

Section 1.509(a)–4(i)(3)(i) provides that a supporting organization meets the responsiveness test if it is “responsive to the needs or demands of a supported organization.” To meet this responsiveness test, an organization must satisfy: (1) A relationship test described in § 1.509(a)–4(i)(3)(ii) under which the officers, directors, or trustees of the organization have a specified relationship with the officers, directors, or trustees (and in some cases the members) of the supported organization; and (2) a significant voice test described in § 1.509(a)–4(i)(3)(iii) under which the officers, directors, or trustees of the supported organization, by reason of this relationship, have a significant voice in the investment policies of the supporting organization, the timing of grants, the manner of making grants, and the selection of grant recipients by the supporting organization, and in otherwise directing the use of the income or assets of the supporting organization. The preamble to the 2012 TD stated that, in determining the appropriate distribution amount for NFI

Type III supporting organizations, the Treasury Department and the IRS considered the required relationship between a supporting organization and its supported organizations, and that the Treasury Department and the IRS intended to issue proposed regulations in the future that would amend the responsiveness test by requiring a Type III supporting organization to be responsive to all of its supported organizations.

In response to this proposal in the preamble to the 2012 TD, one commenter stated that a supporting organization should not be required to be responsive to all of its supported organizations because the resulting administrative burden would effectively limit the total number of organizations a supporting organization could support. The commenter suggested alternatives under which a supporting organization would be responsive to only a subset of its supported organizations that would vary from year to year.

The Treasury Department and the IRS note that the distinguishing characteristic of Type III supporting organizations, and the basis for their public charity classification, is that they are responsive to and significantly involved in the operations of their publicly supported organizations. See § 1.509(a)–4(f)(4). The Treasury Department and the IRS believe that, unless a Type III supporting organization is responsive to each of its supported organizations, the supported organizations cannot exercise the requisite level of oversight and engagement with the supporting organization. Limiting the responsiveness requirement to fewer than all of the supported organizations may result in the necessary oversight and accountability being present for less than all of a supporting organization's operations. Therefore, the proposed regulations revise § 1.509(a)–4(i)(3)(i) to require a supporting organization to be responsive to the needs and demands of each of its supported organizations in order to meet the responsiveness test.

To illustrate how concerns about potential administrative burdens may be addressed consistent with the responsiveness test, the proposed regulations include a new example. The proposed example is intended to demonstrate one way in which a Type III supporting organization that supports multiple organizations may satisfy the responsiveness test in a manner that can be cost-effective. The example shows that a supporting organization can, with respect to each of its supported organizations, meet a different subset of

the required relationships with the supporting organization's officers, directors, or trustees listed in § 1.509(a)–4(i)(3)(ii). It also shows how a supporting organization can organize and hold regular meetings, provide information, and encourage communication to help ensure that the supported organizations have a significant voice in the operations of the supporting organization.

Another commenter requested additional guidance regarding the ability of trusts to satisfy the significant voice requirement of the responsiveness test. The new Example 3 provides further illustration of how Type III supporting organizations, including charitable trusts, might satisfy the significant voice requirement of the responsiveness test. The Treasury Department and the IRS note that although the examples in the regulations relating to the responsiveness test may involve a Type III supporting organization that is organized as either a corporation or a trust, the applicable law and relevant regulatory provisions, as modified by the proposed regulations, are applicable to all Type III supporting organizations in the same manner, whether organized as a corporation or a trust. The Treasury Department and the IRS anticipate that Type III supporting organizations may be able to demonstrate they satisfy the responsiveness test in a variety of ways, and that the determination will be based on all the facts and circumstances.

As a result of the proposed changes to the responsiveness test, the proposed regulations also include conforming changes to examples and other regulatory provisions.

C. Integral Part Test—Functionally Integrated Type III Supporting Organizations

Section 1.509(a)–4(i)(1) provides that, for each taxable year, a Type III supporting organization must satisfy the integral part test. The integral part test is satisfied under § 1.509(a)–4(i)(1)(iii) by maintaining significant involvement in the operations of one or more supported organizations and providing support on which the supported organizations are dependent. To satisfy this test, a Type III supporting organization must meet the requirements either for a functionally integrated Type III supporting organization or for an NFI Type III supporting organization, as set forth in § 1.509(a)–4(i)(4) or (5), respectively.

A Type III organization is functionally integrated under § 1.509(a)–4(i)(4) if (1) it engages in activities substantially all of which directly further the exempt

purposes of one or more supported organizations and otherwise meets the requirements described in paragraph (i)(4)(ii) of that section, (2) it is the parent of each of its supported organizations as described in paragraph (i)(4)(iii) of that section, or (3) it supports a governmental supported organization and otherwise meets the requirements of paragraph (i)(4)(iv) of that section. The direct furtherance test is not addressed by these regulations.

i. Parent of Each Supported Organization

Under the current regulations, a supporting organization is the parent of a supported organization if the supporting organization exercises a substantial degree of direction over the policies, programs, and activities of the supported organization and a majority of the officers, directors, or trustees of the supported organization is appointed or elected, directly or indirectly, by the governing body, members of the governing body, or officers (acting in their official capacities) of the supporting organization. See § 1.509(a)–4(i)(4)(iii). This definition was adopted by the 2012 TD; however, the preamble to the 2012 TD stated that the Treasury Department and the IRS had determined that the definition of parent was insufficiently specific. It further stated that the Treasury Department and the IRS intended to issue proposed regulations that would provide a new definition of parent.

As noted in the preamble to the 2009 NPRM, the classification of a parent organization as functionally integrated was intended to “apply to supporting organizations that oversee or facilitate the operation of an integrated system, such as hospital systems.” To more fully accomplish this purpose, the proposed regulations amend § 1.509(a)–4(i)(4)(iii) to clarify that in order for a supporting organization to qualify as the parent of each of its supported organizations, the supporting organization and its supported organizations must be part of an integrated system (such as a hospital system), and the supporting organization must engage in activities typical of the parent of an integrated system. Examples of these activities include (but are not limited to) coordinating the activities of the supported organizations and engaging in overall planning, policy development, budgeting, and resource allocation for the supported organizations. The Treasury Department and the IRS request comments on what activities are typical of the parent of an integrated system, and whether additional

activities should be explicitly listed as examples.

The proposed regulations retain the requirement that the governing body, members of the governing body, or officers of the supporting organization must appoint or elect a majority of the officers, directors, or trustees of the supported organization. The Treasury Department and the IRS intend, as stated in the 2009 NPRM, the use of the phrase “appointed or elected, directly or indirectly” to mean the supporting organization could qualify as a parent of a second-tier (or lower) subsidiary. Thus, for example, if the directors of supporting organization A appoint a majority of the directors of supported organization B, which in turn appoints a majority of the directors of supported organization C, the directors of supporting organization A will be treated as appointing the majority of the directors of both supported organization B and supported organization C.

The preamble to the 2012 TD stated that the Treasury Department and the IRS intended that the new definition of parent would specifically address the power to remove and replace officers, directors, or trustees of the supported organization. The Treasury Department and the IRS interpret the existing requirement under § 1.509(a)–4(i)(4)(iii) that the parent organization have the power to appoint or elect a majority of the officers, directors, or trustees of each supported organization to include the requirement that the parent organization also have the power to remove and replace such officers, directors, or trustees, or otherwise have an ongoing power to appoint or elect with reasonable frequency. The Treasury Department and the IRS request comments on whether § 1.509(a)–4(i)(4)(iii) should be amended to provide further clarification on this issue.

ii. Supporting a Governmental Supported Organization

The 2009 NPRM proposed an exception to the general rules for qualifying as a functionally integrated Type III supporting organization if the supporting organization supported only one governmental entity, which was defined as an entity the assets of which are subject to the appropriations process of a federal, state, local, or Indian tribal government. The 2009 NPRM also provided that in order to be considered functionally integrated, a substantial part of the supporting organization’s total activities had to directly further the exempt purpose(s) of its supported organization, and that exempt purposes are not directly furthered by

fundraising, grantmaking, or investing and managing non-exempt-use assets. The Treasury Department and IRS received multiple comments regarding this proposal. The 2012 TD stated the Treasury Department and the IRS were continuing to consider the public comments on the 2009 NPRM regarding this governmental entity exception and reserved § 1.509(a)–4(i)(4)(iv) for future guidance on how a Type III supporting organization can qualify as functionally integrated by supporting a governmental entity.

These proposed regulations take the prior comments into consideration and provide rules to qualify as functionally integrated both for new and existing Type III supporting organizations that support governmental supported organizations. These proposed rules also define the term “governmental supported organization.”

One commenter stated that the definition of a governmental supported organization in the 2009 NPRM was too complicated and difficult to understand and administer. This commenter proposed using the existing definition of a governmental unit in section 170(b)(1)(A)(v) and (c)(1).

The Treasury Department and the IRS agree with the commenter that for simplicity and administrability the term “governmental supported organization” should be defined by using an existing Code definition of a governmental unit. The proposed regulations define a governmental supported organization as a governmental unit described in section 170(c)(1), or an organization described in section 170(c)(2) and (b)(1)(A) (other than in clauses (vii) and (viii)) that is an instrumentality of one or more governmental units described in section 170(c)(1). The Treasury Department and the IRS further note that a governmental unit described in section 170(c)(1) includes all of the agencies, departments, and divisions of the governmental unit, and all such agencies, departments, and divisions will be treated as one governmental supported organization for purposes of § 1.509(a)–4(i)(4)(iv). The Treasury Department and the IRS specifically request comments on the proposed definition of governmental supported organization.

Two commenters said that the 2009 NPRM’s limit of only one governmental supported organization was too strict and instead recommended allowing a supporting organization to qualify for this exception if it supports at least one governmental supported organization, as Notice 2014–4 provides. One commenter noted that the 2009 NPRM’s limit of only one governmental

supported organization would adversely affect existing supporting organizations that support an additional supported organization that is not itself a governmental entity, but that has a substantial operational connection with the governmental supported organization. Another commenter said that the test in Notice 2014–4 was not sufficient because it did not cover activities, such as fundraising and grant making, that the governmental supported organization could not otherwise perform.

In response to these comments, the Treasury Department and the IRS propose a new test for Type III supporting organizations that support only governmental supported organizations to qualify as functionally integrated. The Treasury Department and the IRS agree it would be appropriate to treat a Type III supporting organization that supports two or more governmental supported organizations as functionally integrated, provided that the governmental supported organizations are themselves connected geographically or operationally, which will help ensure that the supported organizations provide sufficient input to and oversight of the supporting organization. Thus, the proposed regulations provide that a supporting organization that supports more than one governmental supported organization may be considered functionally integrated if all of its governmental supported organizations either: (1) Operate within the same geographic region (defined as a city, county, or metropolitan area); or (2) work in close coordination or collaboration with one another to conduct a service, program, or activity that the supporting organization supports. To satisfy the close cooperation or coordination requirement, the proposed regulations require a supporting organization to maintain on file a letter from each of the governmental supported organizations (or a joint letter from all of them) describing their collaborative or cooperative efforts with respect to the particular service, program, or activity. In addition, the proposed regulations incorporate the 2009 NPRM proposed requirement that a substantial part of the supporting organization’s total activities must directly further the exempt purposes of its governmental supported organization(s). The Treasury Department and the IRS believe that using a substantial part requirement, instead of the substantially all requirement in § 1.509(a)–4(i)(4)(iv)(A), is appropriate when supporting

organizations support only governmental supported organizations operating in the same geographic region or working in close collaboration because the input from and oversight by the governmental supported organizations minimize the potential for abuse.

Two commenters stated that activities such as fundraising, grant-making, and managing non-exempt-use assets should be considered activities that directly further the exempt purposes of a governmental supported organization. The Treasury Department and the IRS note that the integral part test's definition of "directly further" in § 1.509(a)-4(i)(4)(ii)(C) generally excludes fundraising, making grants, and investing and managing non-exempt-use assets. The Treasury Department and the IRS excluded these items because they determined that a Type III supporting organization should qualify as functionally integrated only if the supporting organization itself conducts activities that perform the functions of or carry out the purposes of the supported organization (as distinguished from providing financial support for the activities carried out by the supported organization). The Treasury Department and the IRS do not believe a different definition of "directly further" should apply to supporting organizations that support governmental supported organizations. Accordingly, the proposed regulations do not adopt this comment. However, under the proposed rules, these types of organizations would be considered functionally integrated if a substantial part, but not substantially all, of their total activities directly further the exempt purposes of their governmental supported organization(s). Accordingly, these proposed regulations allow these organizations to conduct more fundraising and other financial activities, if certain requirements are met, than is permitted under the substantially all test of § 1.509(a)-4(i)(4)(ii).

In response to comments, the proposed regulations also provide a special rule for existing Type III supporting organizations, provided that they support no more than one additional supported organization that is not a governmental supported organization. A Type III supporting organization in existence on or before February 19, 2016 is treated as functionally integrated if: (1) It supports one or more governmental supported organizations and no more than one supported organization that is not a governmental supported organization; (2) it designated each of its supported

organizations as provided in § 1.509(a)-4(d)(4) on or before February 19, 2016; and (3) a substantial part of its total activities directly furthers the exempt purposes of its governmental supported organization(s).

The proposed regulations also further extend the transition relief provided in Notice 2014-4 and extended by the 2015 TD. Under the proposed regulations, a Type III supporting organization in existence on or before February 19, 2016 that continues to meet the requirements of Notice 2014-4 is treated as functionally integrated until the earlier of the first day of the organization's first taxable year beginning after the date final regulations under § 1.509(a)-4(i)(4)(iv) are published or the first day of the organization's second taxable year beginning after February 19, 2016.

D. Integral Part Test—Non-Functionally Integrated Type III Supporting Organizations

Section 1.509(a)-4(i)(5) generally provides that an NFI Type III supporting organization meets the integral part test if it satisfies the distribution requirement of paragraph (i)(5)(ii) of that section and the attentiveness requirement of paragraph (i)(5)(iii) of that section. Section 1.509(a)-4(i)(5)(ii) provides that, with respect to each taxable year, a supporting organization must distribute to or for the use of one or more supported organizations an amount equaling or exceeding its "distributable amount". Section 1.509(a)-4(i)(6) provides the amount of a distribution made to a supported organization is the amount of cash or the fair market value of the property distributed.

For clarity and consistency, the proposed regulations revise § 1.509(a)-4(i)(5)(ii) to state that a supporting organization must make distributions as described in § 1.509(a)-4(i)(6) to satisfy the distribution requirement, and revise section 1.509(a)-4(i)(6) to describe in detail what distributions count towards the distribution requirement.

i. Reduction of Distributable Amount for Taxes Subtitle A Imposes

Section 1.509(a)-4(i)(5)(ii)(B) provides that the distributable amount is equal to the greater of 85 percent of an organization's adjusted net income for the immediately preceding taxable year (as determined by applying the principles of section 4942(f) and § 53.4942(a)-2(d)) or its minimum asset amount for the immediately preceding taxable year, reduced by the amount of taxes imposed on the supporting organization under subtitle A of the

Code during the immediately preceding taxable year. See § 1.509(a)-4(i)(5)(ii)(B).

The Treasury Department and the IRS believe that, because the taxes under subtitle A of the Code are imposed on a supporting organization's unrelated business taxable income (pursuant to section 511) and the activity that produces the unrelated business taxable income does not further the supported organization's exempt purposes, these taxes should not be treated as an amount distributed to a supported organization. Therefore, the proposed regulations remove the provision in § 1.509(a)-4(i)(5)(ii)(B) that reduces the distributable amount by the amount of taxes subtitle A of the Code imposed on a supporting organization during the immediately preceding taxable year.

ii. Distributions That Count Toward Distribution Requirement

As noted above, § 1.509(a)-4(i)(6) provides details on the distributions by a supporting organization that count toward satisfying the distribution requirement imposed in § 1.509(a)-4(i)(5)(ii). The current regulations provide that distributions include but are not limited to: (1) Any amount paid to a supported organization to accomplish the supported organization's exempt purposes; (2) any amount paid by the supporting organization to perform an activity that directly furthers the exempt purposes of the supported organization within the meaning of § 1.509(a)-4(i)(4)(ii), but only to the extent such amount exceeds any income derived by the supporting organization from the activity; (3) any reasonable and necessary administrative expenses paid to accomplish the exempt purposes of the supported organization(s), which do not include expenses incurred in the production of investment income; (4) any amount paid to acquire an exempt-use asset described in § 1.509(a)-4(i)(8)(ii); and (5) any amount set aside for a specific project that accomplishes the exempt purposes of a supported organization to which the supporting organization is responsive.

The preamble to the 2012 TD stated that the list in § 1.509(a)-4(i)(6) is not exhaustive and other distributions may count toward the distribution requirement. The preamble further stated the Treasury Department and the IRS intended to propose regulations that more fully describe the expenditures (including expenditures for administrative and additional charitable activities) that do and do not count toward the distribution requirement.

The Treasury Department and the IRS believe that the non-exclusive list in the current regulations creates uncertainty

for supporting organizations and the IRS about what counts toward the distribution requirement. Therefore, the proposed regulations revise and clarify the list in § 1.509(a)–4(i)(6) of what counts toward the distribution requirement and make it an exclusive list.

The 2012 TD clarified that reasonable and necessary administrative expenses paid to accomplish the exempt purposes of supported organizations, and not expenses incurred in the production of investment income, count toward the distribution requirement. For example, if a supporting organization conducts exempt activities that are for the benefit of, perform the functions of, or carry out the purposes of its supported organization(s) and also conducts nonexempt activities (such as investment activities or unrelated business activities), then the supporting organization's administrative expenses (such as salaries, rent, utilities and other overhead expenses) must be allocated between the exempt and nonexempt activities on a reasonable and consistently-applied basis. The administrative expenses attributable to the exempt activities are treated as distributions to its supported organization(s) if such expenses are reasonable and necessary. The administrative expenses and operating costs attributable to the nonexempt activities are not treated as distributions to the supported organization(s). The proposed regulations retain this provision, but also provide additional guidance on fundraising expenses.

The 2012 TD did not specifically address whether fundraising expenses count toward the distribution requirement. The proposed regulations specify that reasonable and necessary administrative expenses paid to accomplish the exempt purposes of a supported organization generally do not include fundraising expenses the supporting organization incurs. However, under the proposed regulations, reasonable and necessary expenses incurred by the supporting organization to solicit contributions that a supported organization receives directly from donors count toward the distribution requirement, but only to the extent that the amount of such expenses does not exceed the amount of contributions actually received by the supported organization as a result of the solicitation activities of the supporting organization. The Treasury Department and the IRS believe this rule would provide greater consistency with the treatment of contributions that supporting organizations receive directly and then distribute to their

supported organizations (net of the supporting organizations' solicitation expenses). To ensure that a supporting organization has the information it needs to calculate the allowable expenses, the proposed regulations require the supporting organization to obtain written substantiation from the supported organization of the amount of contributions the supported organization actually received as a result of the supporting organization's solicitations.

One commenter requested that program related investments (PRIs) count toward the distribution requirement. The preamble to the 2012 TD stated the 2012 final and temporary regulations did not specifically address whether or not PRIs may count toward the distribution requirement or are excluded in calculating a supporting organization's distributable amount for a taxable year. The Treasury Department and the IRS recognize that private foundations may use PRIs in a variety of ways to accomplish their exempt purposes and that PRIs thus are treated as qualifying distributions under section 4942. However, because supporting organizations must be operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of their supported organizations, they differ from private foundations. For purposes of meeting the integral part test, the Treasury Department and the IRS do not believe that PRIs should be treated as distributions to supported organizations. The Treasury Department and the IRS believe that other provisions relating to the distribution requirement, such as the availability of set asides and the potential for carry-forwards of excess distributions, provide significant flexibility for supporting organizations to meet the current and future needs of their supported organizations. For these reasons, the proposed regulations do not adopt this comment.

Effective Date and Reliance

These regulations are proposed to be effective on the date the Treasury decision adopting these rules as final or temporary regulations is published in the **Federal Register**. However, taxpayers may rely on the provisions of the proposed regulations until final or temporary regulations are issued.

Statement of Availability of IRS Documents

The IRS Notice 2014–4 cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S.

Government Printing Office, Washington, DC 20402, or by visiting the IRS Web site at <http://www.irs.gov>.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

In connection with the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the collection of information contained in the proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the proposed regulations will not impact a substantial number of small entities.

Based on IRS Statistics of Income data for 2013, there are 1,052,495 active nonprofit charitable organizations recognized by the IRS under section 501(c)(3), of which only 7,872 organizations self-identified as Type III supporting organizations. The universe of organizations that would be affected by the collection of information under proposed § 1.509(a)–4(i)(4)(iii) and § 1.509(a)–4(i)(6)(iii) is a subset of all Type III supporting organizations. Thus, the number of organizations that would be affected by the collection of information under proposed § 1.509(a)–4(i)(4)(iii) and (i)(6)(iii), which is expected to be significantly less than 7,872, would not be substantial. Moreover, the time to complete the recordkeeping requirements is expected to be no more than 2 hours for each organization, which would not have a significant economic impact. Therefore, the collection of information under proposed § 1.509(a)–4(i)(4)(iii) and (i)(6)(iii) would not have a significant economic impact.

Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic comments or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The Treasury Department and

the IRS request comments on all aspects of the proposed rules. All comments that are submitted by the public will be available for public inspection and copying at *www.regulations.gov* or upon request. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Jonathan Carter and Mike Repass, Office of Associate Chief Counsel (Tax-Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be 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 1.509(a)–4 is amended by:

- 1. Revising paragraphs (f)(5)(ii), (i)(2)(i) introductory text, (i)(2)(i)(A), (i)(2)(iii), and (i)(3)(i);
- 2. Adding *Example 3* to paragraph (i)(3)(iv);
- 3. Revising paragraphs (i)(4)(ii)(A)(1), (i)(4)(ii)(B), (i)(4)(iii) and (iv), (i)(5)(ii)(A) and (B), (i)(5)(iii)(A), *Example 4* of paragraph (i)(5)(iii)(D), the third sentence of paragraph (i)(6) introductory text, and paragraphs (i)(6)(iii) and (v) introductory text and (l).

The revisions and additions read as follows:

§ 1.509(a)–4 Supporting organizations.

* * * * *

- (f) * * *
- (5) * * *

(ii) *Meaning of control.* For purposes of paragraph (f)(5)(i) of this section, the governing body of a supported organization will be considered *controlled* by a person described in paragraph (f)(5)(i)(A) of this section if that person, alone or by aggregating the person’s votes or positions of authority with persons described in paragraph (f)(5)(i)(B) or (C) of this section, may

require the governing body of the supported organization to perform any act that significantly affects its operations or may prevent the governing body of the supported organization from performing any such act. The governing body of a supported organization will generally be considered to be controlled directly or indirectly by one or more persons described in paragraph (f)(5)(i)(A), (B), or (C) of this section if the voting power of such persons is 50 percent or more of the total voting power of such governing body or if one or more of such persons have the right to exercise veto power over the actions of the governing body of the supported organization. However, all pertinent facts and circumstances will be taken into consideration in determining whether one or more persons do in fact directly or indirectly control the governing body of a supported organization.

* * * * *

(i) * * *

(2) * * * (i) *Annual notification.* For each taxable year (the Reporting Year), a Type III supporting organization must provide the following documents to each of its supported organizations:

(A) A written notice addressed to a principal officer of the supported organization describing the type and amount of all of the support (including all of the distributions described in paragraph (i)(6) of this section if applicable) the supporting organization provided to the supported organization during the supporting organization’s taxable year immediately preceding the Reporting Year (and during any other taxable year of the supporting organization ending after December 28, 2012, for which such support information has not previously been provided);

* * * * *

(iii) *Due date.* The notification documents required by this paragraph (i)(2) shall be delivered or electronically transmitted by the last day of the fifth calendar month of the Reporting Year.

* * * * *

(3) * * * (i) *General rule.* A supporting organization meets the responsiveness test only if it is responsive to the needs or demands of each of its supported organizations. Except as provided in paragraph (i)(3)(v) of this section, in order to meet this test, a supporting organization must satisfy the requirements of paragraphs (i)(3)(ii) and (iii) of this section with respect to each of its supported organizations.

* * * * *

(iv) * * *

Example 3. Z is described in section 501(c)(3). Z’s organizational documents provide that it supports ten different organizations, each of which is described in section 509(a)(1). One of the directors of S (one of the supported organizations) is a voting member of Z’s board of directors and participates in Z’s regular board meetings. Officers of Z hold regular face-to-face or telephonic meetings during the year to which officers of all the supported organizations are invited. Z’s meetings with the supported organizations may be held jointly or separately. Prior to the meetings, Z makes available to the supported organizations (including by email) up-to-date information about its activities including its assets and liabilities, receipts and distributions, and investment policies and returns. In the meetings, officers of each of the supported organizations have an opportunity to ask questions and discuss with officers of Z the projected needs of their organizations, as well as Z’s investment and grant making policies and practices. In addition to holding these meetings with the supported organizations, Z provides the contact information of one of its officers to each of the supported organizations and encourages them to contact that officer if they have questions, or if they wish to schedule additional meetings to discuss the projected needs of their organization and how Z should distribute its income and invest its assets. Z provides the information required under paragraph (i)(2) of this section and a copy of its annual audited financial statements to the principal officers of the supported organizations. Z meets the relationship test of paragraph (i)(3)(ii)(B) or (C) of this section with respect to each of its supported organizations. Based on these facts, Z also satisfies the significant voice requirement of paragraph (i)(3)(iii) of this section, and therefore meets the responsiveness test of this paragraph (i)(3) with respect to each of its ten supported organizations.

* * * * *

- (4) * * *
- (ii) * * *
- (A) * * *

(1) Directly further the exempt purposes of one or more supported organizations by performing the functions of, or carrying out the purposes of, such supported organization(s); and

* * * * *

(B) *Meaning of substantially all.* For purposes of paragraph (i)(4)(ii)(A) of this section, in determining whether substantially all of a supporting organization’s activities directly further the exempt purposes of one or more supported organization(s), all pertinent facts and circumstances will be taken into consideration.

* * * * *

(iii) *Parent of supported organization(s).* For purposes of paragraph (i)(4)(i)(B) of this section, in order for a supporting organization to qualify as the parent of each of its

supported organizations, the supporting organization and its supported organizations must be part of an integrated system (such as a hospital system), the supporting organization must engage in activities typical of the parent of an integrated system, and a majority of the officers, directors, or trustees of each supported organization must be appointed or elected, directly or indirectly, by the governing body, members of the governing body, or officers (acting in their official capacities) of the supporting organization. For purposes of this paragraph (i)(4)(iii), examples of activities typical of the parent of an integrated system of supported organizations include (but are not limited to) coordinating the activities of the supported organizations and engaging in overall planning, policy development, budgeting, and resource allocation for the supported organizations.

(iv) *Supporting a governmental supported organization*—(A) *In general.* A supporting organization satisfies the requirements of this paragraph (i)(4)(iv) if—

(1) The supporting organization supports only governmental supported organizations, and, if the supporting organization supports more than one governmental supported organization, all of the governmental supported organizations either—

(i) Operate within the same geographic region; or

(ii) Work in close coordination or collaboration with one another to conduct a service, program, or activity that the supporting organization supports; and

(2) A substantial part of the supporting organization's total activities are activities that directly further, as defined by paragraph (i)(4)(ii)(C) of this section, the exempt purposes of its governmental supported organization(s).

(B) *Governmental supported organization defined.* For purposes of paragraph (i)(4)(iv)(A) of this section, the term *governmental supported organization* means a supported organization that is—

(1) A governmental unit described in section 170(c)(1); or

(2) An organization described in section 170(c)(2) and (b)(1)(A) (other than in clauses (vii) and (viii)) that is an instrumentality of one or more governmental units described in section 170(c)(1).

(C) *Geographic region defined.* For purposes of paragraph (i)(4)(iv)(A)(1) of this section, the term *geographic region* means a city, county, or metropolitan area.

(D) *Close cooperation or coordination.* To satisfy the close cooperation or coordination requirement of paragraph (i)(4)(iv)(A)(1) of this section, the supporting organization shall maintain on file a letter from each of the governmental supported organizations (or a joint letter from all of them) describing their collaborative or cooperative efforts with respect to the particular service, program, or activity.

(E) *Exception for organizations supporting a governmental supported organization on or before February 19, 2016.* A Type III supporting organization in existence on or before February 19, 2016 will be treated as meeting the requirements of this paragraph (i)(4)(iv) if it met and continues to meet the following requirements—

(1) It supports one or more governmental supported organizations described in paragraph (i)(4)(iv)(B) of this section and does not support more than one supported organization that is not a governmental supported organization;

(2) Each of the supported organizations is designated by the supporting organization as provided in paragraph (d)(4) of this section on or before February 19, 2016; and

(3) A substantial part of the supporting organization's total activities are activities that directly further, as defined by paragraph (i)(4)(ii)(C) of this section, the exempt purposes of its governmental supported organization(s).

(F) *Transition rule for supporting organizations in existence on or before February 19, 2016.* Until the earlier of the first day of the organization's first taxable year beginning after the date final regulations are published in the **Federal Register** under this paragraph (i)(4)(iv) or the first day of the organization's second taxable year beginning after February 19, 2016, a Type III supporting organization in existence on or before February 19, 2016 will be treated as meeting the requirements of this paragraph (i)(4)(iv) if it met and continues to meet the following requirements—

(1) It supports at least one supported organization that is a governmental entity to which the supporting organization is responsive within the meaning of paragraph (i)(3) of this section; and

(2) It engages in activities for or on behalf of the governmental supported organization described in paragraph (i)(4)(iv)(F)(1) of this section that perform the functions of, or carry out the purposes of, that governmental supported organization and that, but for the involvement of the supporting

organization, would normally be engaged in by the governmental supported organization itself.

* * * * *

(5) * * *

(ii) * * * (A) *Annual distribution.* With respect to each taxable year, a supporting organization must make distributions described in paragraph (i)(6) of this section in a total amount equaling or exceeding the supporting organization's distributable amount for the taxable year, as defined in paragraph (i)(5)(ii)(B) of this section, on or before the last day of the taxable year.

(B) *Distributable amount.* Except as provided in paragraphs (i)(5)(ii)(D) and (E) of this section, the distributable amount for a taxable year is an amount equal to the greater of 85 percent of the supporting organization's adjusted net income (as determined by applying the principles of section 4942(f) and § 53.4942(a)–2(d) of this chapter) for the taxable year immediately preceding the taxable year of the required distribution (immediately preceding taxable year) or its minimum asset amount (as defined in paragraph (i)(5)(ii)(C) of this section) for the immediately preceding taxable year.

* * * * *

(iii) * * * (A) *General rule.* With respect to each taxable year, a non-functionally integrated Type III supporting organization must distribute one-third or more of its distributable amount to one or more supported organizations that are attentive to the operations of the supporting organization (within the meaning of paragraph (i)(5)(iii)(B) of this section).

* * * * *

(D) * * *

Example 4. O is an organization described in section 501(c)(3). O is organized to support five private universities, V, W, X, Y, and Z, each of which is described in section 509(a)(1). O meets the responsiveness test described in paragraph (i)(3) of this section with respect to each of its supported organizations. Each year, O distributes an aggregate amount that equals its distributable amount described in paragraph (i)(5)(ii)(B) of this section and distributes an equal amount to each of the five universities. O distributes annually to each of V and W an amount that equals more than 10 percent of each university's total annual support received in its most recently completed taxable year. Based on these facts, O meets the requirements of paragraph (i)(5)(iii) of this section because it distributes two-fifths (more than the required one-third) of its

distributable amount to supported organizations that are attentive to O.

(6) *Distributions that count toward distribution requirement.* * * *

Distributions by the supporting organization that count toward the distribution requirement imposed in paragraph (i)(5)(ii) of this section are limited to the following—

* * * * *

(iii) Any reasonable and necessary—

(A) Administrative expenses paid to accomplish the exempt purposes of the supported organization, which do not include expenses incurred in the production of investment income or the conduct of fundraising activities, except as provided in paragraph (i)(6)(iii)(B) of this section; and

(B) Expenses incurred to solicit contributions that are received directly by a supported organization, but only to the extent the amount of such expenses does not exceed the amount of contributions actually received by the supported organization as a result of the solicitation, as substantiated in writing by the supported organization;

* * * * *

(v) Any amount set aside for a specific project that accomplishes the exempt purposes of a supported organization, with such set-aside counting toward the distribution requirement for the taxable year in which the amount is set aside but not in the year in which it is actually paid, if at the time of the set-aside, the supporting organization—

* * * * *

(1) *Effective/applicability dates.* (1) Paragraphs (a)(6), (f)(5), and (i) of this section are effective on December 28, 2012, except—

(i) Paragraphs (i)(4)(ii)(C), (i)(5)(ii)(C) and (D), (i)(6)(iv), (i)(7)(ii), and (i)(8) of this section are applicable on December 21, 2015; and

(ii) Paragraphs (f)(5)(ii), (i)(2)(i) and (iii), (i)(3)(i), (i)(4)(ii)(A)(1), (i)(4)(ii)(B), (i)(4)(iii) and (iv), (i)(5)(ii)(A) and (B), (i)(5)(iii)(A), (i)(6)(i), (iii) and (v) of this section, *Example 3* of paragraph (i)(3)(iv) of this section, and *Example 4* of paragraph (i)(5)(iii)(D) of this section are effective on the date the Treasury decision adopting these rules as final or temporary regulations is published in the **Federal Register**.

(2) See paragraphs (i)(5)(ii)(B) and (C) and (i)(8) of § 1.509(a)–4T contained in 26 CFR part 1, revised as of April 1, 2015, for certain rules regarding non-functionally integrated Type III supporting organizations effective before December 21, 2015. See paragraphs (i)(5)(ii)(A) and (B) and (i)(5)(iii)(D) of § 1.509(a)–4 (as effective December 21, 2015), for certain rules

regarding non-functionally integrated Type III supporting organizations effective before the date the Treasury decision adopting these rules as final or temporary regulations is published in the **Federal Register**.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–02858 Filed 2–18–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2016–0060, FRL–9942–52–Region 2]

Approval of Air Quality Implementation Plans; Puerto Rico; Infrastructure Requirements for the 1997 and 2008 Ozone, 1997 and 2006 Fine Particulate Matter and 2008 Lead NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve most elements of the five State Implementation Plan (SIP) revision submittals from the Commonwealth of Puerto Rico to demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 1997 and 2008 ozone, 1997 and 2006 fine particulate matter (PM_{2.5}) and 2008 lead National Ambient Air Quality Standards (NAAQS). The plan is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. In this rulemaking action, EPA is proposing to approve, in accordance with the requirements of the CAA, the infrastructure SIP submissions with the exception of some portions of the submittals addressing Prevention of Significant Deterioration (PSD).

DATES: Written comments must be received on or before March 21, 2016.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2016–0060 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not

submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

The **SUPPLEMENTARY INFORMATION** section is arranged as follows:

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- I. Background
- II. Summary of State Submittals
- III. EPA's Approach To Review Infrastructure SIPs
- IV. Summary of EPA's Rationale for Proposing Approval and Disapproval
- V. Proposed Action
- VI. Incorporation by Reference
- VII. Statutory and Executive Order Reviews

I. Background

On July 18, 1997, the Environmental Protection Agency (EPA) promulgated a revised national ambient air quality standard (NAAQS or standards) for ozone (62 FR 38856) and a new NAAQS for fine particle matter (PM_{2.5}) (62 FR 38652). The revised ozone NAAQS was based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. The new PM_{2.5} NAAQS established a health-based annual standard of 15.0 micrograms per cubic meter (µg/m³) based on a 3-year average of annual mean PM_{2.5} concentrations, and a 24-hour standard of 65 µg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations.

On October 17, 2006 (71 FR 61144), effective December 18, 2006, EPA revised the 24-hour average PM_{2.5}