

local, and tribal governments. 2. U.S.C. 1534.

This final rule will not impose a Federal mandate on State, local and tribal governments or on the private sector. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

*H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*I. Review Under the Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies of those guidelines.

*J. Review Under Executive Order 13211*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on

energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

*K. Congressional Notification*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804.

**List of Subjects in 10 CFR Part 820**

Administrative practice and procedure, Government contracts, Penalties, Radiation protection.

Issued in Washington, DC.

**Glenn S. Podonsky,**

Chief Health, Safety and Security Officer,  
Office of Health, Safety and Security.

■ For the reasons stated in the preamble, DOE hereby amends Chapter III of title 10 of the Code of Federal Regulations to read as follows:

**PART 820—PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES**

■ 1. The authority citation for part 820 continues to read as follows:

**Authority:** 42 U.S.C. 2201; 2282(a); 7191; 28 U.S.C. 2461 note; 50 U.S.C. 2410.

■ 2. Section 820.20 is amended by revising paragraphs (c) and (d) and by adding new paragraphs (e) and (f) to read as follows:

**§ 820.20 Purpose and scope.**

\* \* \* \* \*

(c) *Exemptions.* With respect to a violation occurring under a contract entered into before August 8, 2005, the following contractors, and subcontractors and suppliers to that prime contract only, are exempt from the assessment of civil penalties under this subpart with respect to the activities specified below:

(1) The University of Chicago for activities associated with Argonne National Laboratory;

(2) The University of California for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;

(3) American Telephone and Telegraph Company and its subsidiaries for activities associated with Sandia National Laboratories;

(4) University Research Association, Inc. for activities associated with FERMI National Laboratory;

(5) Princeton University for activities associated with Princeton Plasma Physics Laboratory;

(6) The Associated Universities, Inc. for activities associated with the Brookhaven National Laboratory; and

(7) Battelle Memorial Institute for activities associated with Pacific Northwest Laboratory.

(d) *Nonprofit educational institutions.* With respect to a violation occurring under a contract entered into before August 8, 2005, any educational institution that is considered nonprofit under the United States Internal Revenue Code shall receive automatic remission of any civil penalty assessed under this part.

(e) *Limitation for not-for-profits.* With respect to any violation occurring under a contract entered into on or after August 8, 2005, in the case of any not-for-profit contractor, subcontractor, or supplier, the total amount of civil penalties paid under this part may not exceed the total amount of fees paid by DOE to that entity within the U.S. Government fiscal year in which the violation occurs.

(f) *Not-for-profit.* For purposes of this part, a "not-for-profit" contractor, subcontractor, or supplier is one for which no part of the net earnings of the contractor, subcontractor, or supplier inures to the benefit of any natural person or for-profit artificial person.

[FR Doc. E9-6134 Filed 3-19-09; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[TD 9438]

RIN 1545-B150

**Guidance Regarding Foreign Base Company Sales Income; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final and temporary regulations.

**SUMMARY:** This document contains corrections to final and temporary regulations that were published in the **Federal Register** on Monday, December 29, 2008 (73 FR 79334) relating to foreign base company sales income.

**DATES:** The corrections are effective July 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ethan Atticks, (202) 622-3840 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

The final and temporary regulations that are subject to these corrections are under section 954 of the Internal Revenue Code.

**Need for Correction**

As published the final and temporary regulations (TD 9438) contain errors that may prove to be misleading and are in need of correction.

**Correction of Publication**

Accordingly, the publication of the final and temporary regulations (TD 9438) that were the subject of FR Doc. E8-30727 is corrected as follows:

1. On page 79340, column 2, in the preamble under paragraph caption Determination of Hypothetical Effective Tax Rate, the first paragraph, line 8 of the paragraph, the language “effective tax rate of tax.” is corrected to read “effective tax rate.”.

2. On page 79340, column 3, in the preamble under paragraph caption Determination of Hypothetical Effective Tax Rate, lines 2, 3, and 4, the language “In contrast, if a sales affiliate in the country of manufacturing can theoretically receive certain tax relief by” is corrected to read “In contrast, if a manufacturing branch could receive tax relief with respect to sales income derived from sources within the country in which the manufacturing branch is located by”.

3. On page 79341, column 3, in the preamble, the first paragraph, the language “Under the temporary regulations, if a demonstrably greater amount of manufacturing activity with respect to the personal property occurs in jurisdictions without tax rate disparity relative to the sales or purchase branch, the location of the sales or purchase branch will be deemed to be the location of manufacture of the personal property. In that case, the purchase or sales activities with respect to the property purchased or sold by or through the sales or purchase branch of the CFC will not, for purposes of determining FBCSI in connection with the sale of that property, be deemed to have substantially the same tax effect as if a branch were a wholly owned subsidiary corporation of the CFC. Otherwise, the location of manufacture of the personal property will be deemed to be the location of a manufacturing branch (or remainder) that has tax rate disparity relative to the sales or purchase branch. In that case, the purchase or sales activities with respect to the property purchased or sold by or through the sales or purchase branch of

the CFC will be deemed to have substantially the same tax effect as if a branch were a wholly owned subsidiary corporation of the CFC, and that branch will be treated as a separate corporation for purposes of applying the regulations.” is corrected to read “Under the temporary regulations, if a demonstrably greater amount of manufacturing activity with respect to the income derived by a sales or purchase branch with respect to the personal property occurs in jurisdictions without tax rate disparity relative to that sales or purchase branch, the location of that sales or purchase branch will be deemed to be the location of manufacture of the personal property with respect to the income derived by that sales or purchase branch from the purchase or sale of the property. In that case, the use of the purchase or sales branch for purchase or sales activities with respect to the property purchased or sold by or through that sales or purchase branch of the CFC will not, for purposes of determining FBCSI in connection with the income derived by that sales or purchase branch from the purchase or sale of that property, be deemed to have substantially the same tax effect as if a branch were a wholly owned subsidiary corporation of the CFC. Otherwise, the location of manufacture of the personal property with respect to the income derived by that sales or purchase branch from the purchase or sale of that property will be deemed to be the location of a manufacturing branch (or remainder) that has tax rate disparity relative to that sales or purchase branch. In that case, the use of the purchase or sales branch for purchase or sales activities with respect to the property purchased or sold by or through that sales or purchase branch of the CFC will, for purposes of determining FBCSI in connection with the income derived by that sales or purchase branch from the purchase or sale of that property, be deemed to have substantially the same tax effect as if a branch were a wholly owned subsidiary corporation of the CFC, and that branch will be treated as a separate corporation for purposes of applying the regulations.”.

4. On page 79342, column 1, in the preamble under the paragraph caption Clarifying Application of the Rule for Determining the Remainder of the CFC When Activities are Performed in Multiple Locations, the first paragraph, line 18 of the paragraph, the language “the CFC when activities are preformed” is corrected to read “the CFC when activities are performed”.

**§ 1.954-3 [Corrected]**

- 5. On page 79344, column 1, under amendatory instruction paragraph 2, item 3, line 5, the language “*Example (3)*.” is corrected to read “*Examples (3), (6), and (7)*.”.
- 6. On page 79345, column 3, paragraph (a)(4)(iv)(d), *Example 1* (ii), line 3, the language “to sale were undertaken by FS through the” is corrected to read “to sale had been undertaken by FS through the”.
- 7. On page 79346, column 1, paragraph (a)(4)(iv)(d), *Example 2* (ii), line 3, the language “to sale were undertaken by FS through the” is corrected to read “to sale had been undertaken by FS through the”.
- 8. On page 79346, column 1, paragraph (a)(4)(iv)(d), *Example 3* (i), line 11, the language “FS for use outside of FS’s country of” is corrected to read “FS to a related person for use outside of FS’s country of”.
- 9. On page 79346, column 1, paragraph (a)(4)(iv)(d), *Example 3* (ii), line 3, the language “to sale were undertaken by FS through the” is corrected to read “to sale had been undertaken by FS through the”.
- 10. On page 79346, column 2, paragraph (a)(4)(iv)(d), *Example 4* (ii), line 3, the language “to sale were undertaken by FS through the” is corrected to read “to sale had been undertaken by FS through the”.
- 11. On page 79346, column 3, paragraph (a)(4)(iv)(d), *Example 5* (ii), line 3, the language “to sale were undertaken by FS through the” is corrected to read “to sale had been undertaken by FS through the”.
- 12. On page 79346, column 3, paragraph (a)(4)(iv)(d), *Example 6* (ii), line 3, the language “to sale were undertaken by FS through the” is corrected to read “to sale had been undertaken by FS through the”.
- 13. On page 79347, column 1, paragraph (a)(4)(iv)(d), *Example 7* (ii), line 3, the language “to sale were undertaken by FS through the” is corrected to read “to sale had been undertaken by FS through the”.
- 14. On page 79347, column 2, paragraph (a)(4)(iv)(d), *Example 8* (ii), line 1, the language “to sale were undertaken by FS through the” is corrected to read “to sale had been undertaken by FS through the”.
- 15. On page 79347, column 2, paragraph (a)(4)(iv)(d), *Example 8* (ii), line 9, the language “X, it is irrelevant to the substantial” is corrected to read “X, it is not important to the substantial”.
- 16. On page 79347, column 2, paragraph (a)(4)(iv)(d), *Example 9* (ii),

line 3, the language “to sale were undertaken by FS1 or FS2” is corrected to read “to sale had been undertaken by FS1 or FS2”.

■ 17. On page 79347, column 3, paragraph (a)(4)(iv)(d), *Example 10* (ii), line 3, the language “to sale were undertaken by FS through the” is corrected to read “to sale had been undertaken by FS through the”.

■ 18. On page 79348, column 1, paragraph (a)(4)(iv)(d), *Example 11* (ii), line 3, the language “to sale were undertaken by FS through the” is corrected to read “to sale had been undertaken by FS through the”.

■ 19. On page 79348, column 1, paragraph (b)(2)(i)(d), the language “[Reserved]. For further guidance, see § 1.954–3(b)(2)(i)(d).” is corrected to read “[Reserved].”.

■ 20. On page 79348, column 2, following the language “*Example (3)*. [Reserved]. For further guidance, see § 1.954–3(b)(4) *Example (3)*.”, the language “*Example (6)*. [Reserved].” is added on the next line.

■ 21. On page 79348, column 2, following the new language “*Example (6)*. [Reserved].”, the language “*Example (7)*. [Reserved].” is added on the next line.

■ 22. On page 79348, column 2, paragraph (d), the last two lines, the language “subsequent taxable years of the taxpayer.” is corrected to read “subsequent taxable years.”.

#### § 1.954–3T [Corrected]

■ 23. On page 79349, column 2, in paragraph (b)(1)(ii)(c)(2), *Example (i)*, line 18, the language “effective rate imposed in Country M on the” is corrected to read “effective rate of tax imposed in Country M on the”.

■ 24. On page 79349, column 3, paragraph (b)(1)(ii)(c)(3)(i), a new sentence is added after the first sentence to read “This paragraph (b)(1)(ii)(c)(3) is applied separately with respect to the income derived by each purchasing or selling branch (or similar establishment) or purchasing or selling remainder of the controlled foreign corporation as provided under paragraphs (b)(1)(i) and (b)(1)(ii) of this section and §§ 1.954–3(b)(1)(i) and (b)(1)(ii).”.

■ 25. On page 79350, column 2, line 2, in paragraph (b)(1)(ii)(c)(3)(iii), the language “construction with respect to that” is corrected to read “construction with respect to the income derived by a purchasing or selling branch (or similar establishment) or the purchasing or selling remainder of the controlled foreign corporation in connection with the purchase or sale of that”.

■ 26. On page 79350, column 2, line 15, in paragraph (b)(1)(ii)(c)(3)(iii), the

language “any, and that would, after applying” is corrected to read “any, that would, after applying”.

■ 27. On page 79350, column 2, the second full sentence, in paragraph (b)(1)(ii)(c)(3)(iii), the language “The tested sales location is the location where the branch (or similar establishment) or the remainder of the controlled foreign corporation purchases or sells the personal property.” is corrected to read “The tested sales location is the location of the purchasing or selling branch (or similar establishment) or the remainder of the controlled foreign corporation by or through which the purchasing or selling activities are carried on with respect to the personal property.”.

■ 28. On page 79350, column 2, the last line, in paragraph (b)(1)(ii)(c)(3)(iii), the language “(b)(1)(ii)(c)(3)(v) *Examples 4, 5, and 6 of*” is corrected to read “(b)(1)(ii)(c)(3)(v) *Examples 3, 4, 5, and 6 of*”.

■ 29. On page 79350, column 3, lines 13, 14, and 15, in paragraph (b)(1)(ii)(c)(3)(iii), the language “apply with respect to the sales income related to that property and the use of the purchasing or selling branch (or” is corrected to read “apply with respect to the income derived by the tested sales location in connection with the purchase or sale of that property and the use of that purchasing or selling branch (or”.

■ 30. On page 79351, column 1, line 4, in paragraph (b)(1)(ii)(c)(3)(v), *Example 1 (i)*, the language “branches. Employees of FS located in” is corrected to read “branches. The activities of the remainder of FS in Country M do not independently satisfy § 1.954–3(a)(4)(i). Employees of FS located in”.

■ 31. On page 79351, column 2, paragraph (b)(1)(ii)(c)(3)(v), *Example 3 (ii)*, lines 14, 15, 16, and 17, the language “(b)(1)(ii)(c)(3)(iii) of this section The tested sales location is Country M because the remainder of FS performs the selling activities with respect to Product X. The” is corrected to read “(b)(1)(ii)(c)(3)(iii) of this section. The tested sales location is Country M because the selling activities with respect to Product X are carried on by the remainder of FS. The”.

■ 32. On page 79351, column 3, paragraph (b)(1)(ii)(c)(3)(v), *Example 4*, the paragraph heading, the language “*Manufacturing activities performed by multiple branches, no branch independently satisfies § 1.954–3(a)(4)(i), selling activities performed by remainder of the controlled foreign corporation, remainder contribution includes branch manufacturing activities.*” is corrected to read

“*Manufacturing activities performed by multiple branches, no branch independently satisfies § 1.954–3(a)(4)(i), selling activities carried on by remainder of the controlled foreign corporation, remainder contribution includes branch manufacturing activities.*”.

■ 33. On page 79351, column 3, paragraph (b)(1)(ii)(c)(3)(v), *Example 4 (ii)*, the fourth sentence, the language “The tested sales location is Country M because the remainder of FS performs the selling activities with respect to Product X.” is corrected to read “The tested sales location is Country M because the selling activities with respect to Product X are carried on by the remainder of FS.”.

■ 34. On page 79351, column 3, paragraph (b)(1)(ii)(c)(3)(v), *Example 4 (ii)*, the last sentence, the language “Therefore, the rules of paragraph (b)(1)(ii)(a) of this section will not apply and neither Branch A nor Branch B will be treated as a separate corporation for purposes of paragraph (b)(2)(ii) of this section and § 1.954–3(b)(2)(ii).” is corrected to read “Therefore, the rules of paragraph (b)(1)(ii)(a) of this section will not apply with respect to the income derived by the remainder of FS in connection with the sale of Product X, and neither Branch A nor Branch B will be treated as a separate corporation for purposes of paragraph (b)(2)(ii) of this section and § 1.954–3(b)(2)(ii).”.

■ 35. On page 79351, column 3, paragraph (b)(1)(ii)(c)(3)(v), *Example 5*, the paragraph heading, the language “*Manufacturing activities performed by multiple branches, no branch independently satisfies § 1.954–3(a)(4)(i), selling activities performed by remainder of the controlled foreign corporation and a sales branch.*” is corrected to read “*Manufacturing activities performed by multiple branches, no branch independently satisfies § 1.954–3(a)(4)(i), selling activities carried on by remainder of the controlled foreign corporation and a sales branch.*”.

■ 36. On page 79352, column 1, paragraph (b)(1)(ii)(c)(3)(v), *Example 5 (i)*, the first sentence, the language “The facts are the same as *Example 3*, except that selling activities are also performed by Branch D in Country D, and Country D imposes a 16% effective rate of tax on sales income.” is corrected to read “The facts are the same as *Example 3*, except that sales of Product X are also carried on through Branch D in Country D, and Country D imposes a 16% effective rate of tax on sales income.”.

■ 37. On page 79352, column 1, paragraph (b)(1)(ii)(c)(3)(v), *Example 5 (ii)*, the fifth sentence, the language

“The results with respect to the remainder of FS in this *Example 6* are the same as in *Example 3*.” is corrected to read “The results with respect to income derived by the remainder of FS in connection with the sale of Product X in this *Example 5* are the same as in *Example 3*.”

■ 38. On page 79352, column 1, in paragraph (b)(1)(ii)(c)(3)(v), *Example 5* (ii), the sixth sentence, the language “However, paragraph (b)(1)(ii)(c)(3)(iii) of this section must also be applied with respect to Branch D because Branch D performs selling activities with respect to Product X.” is corrected to read “However, paragraph (b)(1)(ii)(c)(3)(iii) of this section must also be applied with respect to Branch D because the sale of Product X is also carried on through Branch D.”

■ 39. On page 79352, column 1, paragraph (b)(1)(ii)(c)(3)(v), *Example 5* (ii), line 29, the language “rate of tax imposed on the Branch D’s sales” is corrected to read “rate of tax imposed on Branch D’s sales”.

■ 40. On page 79352, column 1, paragraph (b)(1)(ii)(c)(3)(v), *Example 5* (ii), the last sentence, the language “Therefore, the rules of paragraph (b)(1)(ii)(a) of this section will not apply to Branch D and neither Branch A nor Branch D will be treated as a separate corporation for purposes of paragraph (b)(2)(ii) of this section and § 1.954–3(b)(2)(ii).” is corrected to read “Therefore, the rules of paragraph (b)(1)(ii)(a) of this section will not apply with respect to the income derived by Branch D in connection with the sale of Product X and the use of Branch D to sell Product X will not result in a branch being treated as a separate corporation for purposes of paragraph (b)(2)(ii) of this section and § 1.954–3(b)(2)(ii).”

■ 41. On page 79352, column 2, paragraph (b)(1)(ii)(c)(3)(v), *Example 6* (ii), the fourth sentence, the language “The tested sales location is Country M because the remainder of FS performs the selling activities with respect to Product X.” is corrected to read “The tested sales location is Country M because the selling activities with respect to Product X are carried on by the remainder of FS.”

■ 42. On page 79352, column 3, paragraph (b)(2)(i)(b) is corrected to read as follows:

“(b) *Activities treated as performed on behalf of the remainder of corporation.* (1) With respect to purchasing or selling activities performed by or through the branch or similar establishment, such purchasing or selling activities will, with respect to personal property manufactured, produced, constructed,

grown, or extracted by the remainder of the controlled foreign corporation, be treated as performed on behalf of the remainder of the controlled foreign corporation.

(2) With respect to purchasing or selling activities performed by or through the branch or similar establishment, such purchasing or selling activities will, with respect to personal property (other than property described in paragraph (b)(2)(i)(b)(1) of this section) purchased or sold, or purchased and sold, by the remainder of the controlled foreign corporation (or any branch treated as the remainder of the controlled foreign corporation), be treated as performed on behalf of the remainder of the controlled foreign corporation.”

■ 43. On page 79352, column 3, paragraph (b)(2)(i)(c), the language “(c) [Reserved]. For further guidance, see § 1.954–3(b)(2)(i)(c).” is corrected to read “(c) through (e) [Reserved]. For further guidance, see § 1.954–3(b)(2)(i)(c) and (e).”

■ 44. On page 79352, column 3, paragraph (b)(2)(i)(d) is removed.

■ 45. On page 79353, column 1, paragraph (b)(2)(i)(e) is removed.

■ 46. On page 79353, columns 1 and 2, paragraph (b)(2)(ii)(b) is corrected to read as follows:

“(b) *Activities treated as performed on behalf of the remainder of corporation.*

(1) With respect to purchasing or selling activities performed by or through the branch or similar establishment, such purchasing or selling activities will, with respect to personal property manufactured, produced, constructed, grown, or extracted by the remainder of the controlled foreign corporation, be treated as performed on behalf of the remainder of the controlled foreign corporation.

(2) With respect to purchasing or selling activities performed by or through the branch or similar establishment, such purchasing or selling activities will, with respect to personal property (other than property described in paragraph (b)(2)(ii)(b)(1) of this section) purchased or sold, or purchased and sold, by the remainder of the controlled foreign corporation (or any branch treated as the remainder of the controlled foreign corporation), be treated as performed on behalf of the remainder of the controlled foreign corporation.”

■ 47. On page 79353, column 3, paragraph (b)(4), *Examples (4)* through (7), the language “[Reserved]. For further guidance, see § 1.954–3(b)(4) *Examples (4)* through (7).” is corrected to read “[Reserved]. For further

guidance, see § 1.954–3(b)(4) *Examples (4)* and (5).”

■ 48. On page 79353, column 3, paragraph (b)(4), *Example 8* (i), line 13, the language “located in Country M perform only sales” is corrected to read “located in Country M carry on only sales”.

■ 49. On page 79354, column 1, paragraph (b)(4), *Example 9*, the paragraph heading, the language “*Manufacturing activities performed by multiple branches, no branch independently satisfies § 1.954–3(a)(4)(i), selling activities performed by remainder of the controlled foreign corporation, branch manufacturing activities included in remainder contribution.*” is corrected to read “*Manufacturing activities performed by multiple branches, no branch independently satisfies § 1.954–3(a)(4)(i), selling activities carried on by remainder of the controlled foreign corporation, some branch manufacturing activities included in remainder contribution.*”

■ 50. On page 79354, column 1, paragraph (b)(4), *Example 9* (i), the first sentence, the language “FS, a controlled foreign corporation organized in Country M, has two branches, Branch A and Branch B, located in Country A and Country B respectively.” is corrected to read “FS, a controlled foreign corporation organized in Country M, has three branches, Branch A, Branch B, and Branch C, located in Country A, Country B, and Country C respectively.”

■ 51. On page 79354, column 1, paragraph (b)(4), *Example 9* (i), line 33, the language “Country B, provides quality control and” is corrected to read “Country B, provides quality control. Branch C, through the activities of employees of FS located in Country C, provides”.

■ 52. On page 79354, column 1, paragraph (b)(4), *Example 9* (i), the eleventh sentence, the language “Country A imposes an effective rate of tax on sales income of 12%, and Country B imposes an effective rate of tax on sales income of 24%.” is corrected to read “Country A imposes an effective rate of tax on sales income of 12%, Country B imposes an effective rate of tax on sales income of 24%, and Country C imposes an effective rate of tax on sales income of 25%.”

■ 53. On page 79354, column 1, paragraph (b)(4), *Example 9* (i), the twelfth sentence, the language “None of the remainder of FS, Branch A, or Branch B independently satisfies § 1.954–3(a)(4)(i).” is corrected to read “None of the remainder of FS, Branch A, Branch B, or Branch C independently satisfies § 1.954–3(a)(4)(i).”

■ 54. On page 79354, column 1, paragraph (b)(4), *Example 9* (i), the fourteenth sentence, the language “Under the facts and circumstances of the business, the activities of the remainder of FS and Branch A, if considered together, would not provide a demonstrably greater contribution to the manufacture of Product X than the activities of Branch B.” is corrected to read “Under the facts and circumstances of the business, the activities of the remainder of FS and Branch A, if considered together, would not provide a demonstrably greater contribution to the manufacture of Product X than the activities of Branch B and Branch C, if considered together.”.

■ 55. On page 79354, columns 1 and 2, paragraph (b)(4), *Example 9* (ii), the second sentence, the language “The remainder of FS, Branch A, and Branch B each provide a contribution through the activities of employees to the manufacture of Product X.” is corrected to read “The remainder of FS, Branch A, Branch B, and Branch C each provide a contribution through the activities of employees to the manufacture of Product X.”.

■ 56. On page 79354, column 2, paragraph (b)(4), *Example 9* (ii), the fourth sentence, the language “The tested sales location is Country M because the remainder of FS performs the selling activities with respect to Product X.” is corrected to read “The tested sales location is Country M because the selling activities with respect to Product X are carried on by the remainder of FS.”.

■ 57. On page 79354, column 2, paragraph (b)(4), *Example 9* (ii), the fifth sentence, the language “The location of Branch B is the tested manufacturing location because the effective rate of tax imposed on FS’s sales income by Country M (10%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country B (24%); and Branch B is the only manufacturing branch that would, after applying § 1.954-3(b)(1)(ii)(b), be treated as a separate corporation.” is corrected to read “The location of Branch B is the tested manufacturing location because the effective rate of tax imposed on FS’s sales income by Country M (10%) is less than 90% of, and at least 5 percentage points less than the effective rate of tax that would apply to such income in Country B (24%), and Country B has the lowest effective rate of tax among the manufacturing branches that would, after applying § 1.954-3(b)(1)(ii)(b), be treated as a separate corporation.”.

■ 58. On page 79354, column 2, paragraph (b)(4), *Example 9* (ii), line nineteen from the top of the column, the language “Country A will be included in the” is corrected to read “Country A by Branch A, will be included in the”.

■ 59. On page 79354, column 2, paragraph (b)(4), *Example 9* (ii), a new sentence is added between the sixth and seventh sentences to read “The manufacturing activities performed in Country C by Branch C will be included in the contribution of Branch B for purposes of determining the location of manufacture of Product X because the effective rate of tax imposed on the sales income by Country M (10%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country C (25%).”.

■ 60. On page 79354, column 2, paragraph (b)(4), *Example 9* (ii), the seventh sentence, the language “Under the facts and circumstances of the business, the manufacturing activities of the remainder of FS and Branch A, considered together, would not provide a demonstrably greater contribution to the manufacture of Product X than the activities of Branch B.” is corrected to read “Under the facts and circumstances of the business, the manufacturing activities of the remainder of FS and Branch A, considered together, would not provide a demonstrably greater contribution to the manufacture of Product X than the activities of Branch B and Branch C, considered together.”

**Guy R. Traynor,**

*Federal Register Liaison, Publications & Regulations Br., Associate Chief Counsel, Procedure & Administration.*

[FR Doc. E9-5894 Filed 3-19-09; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### 29 CFR Part 2550

RIN 1210-AB13

#### Investment Advice—Participants and Beneficiaries

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Final rule; delay of effective date and applicability date.

**SUMMARY:** This document delays the effective and applicability dates of final rules under the Employee Retirement Income Security Act, and parallel provisions of the Internal Revenue Code

of 1986, relating to the provision of investment advice to participants and beneficiaries in individual account plans, such as 401(k) plans, and beneficiaries of individual retirement accounts (and certain similar plans). These rules were published in the **Federal Register** on January 21, 2009. This document postpones the effective and applicability dates of these final rules from March 23, 2009 until May 22, 2009, to allow additional time for the Department to evaluate questions of law and policy concerning the rules.

**DATES:** The effective and applicability date of the rule amending 29 CFR part 2550, published January 21, 2009, at 74 FR 3822, is delayed until May 22, 2009.

**FOR FURTHER INFORMATION CONTACT:** Fred Wong, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), (202) 693-8500. This is not a toll-free number.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

On January 21, 2009, the Department of Labor published final rules on the provision of investment advice to participants and beneficiaries of participant-directed individual account plans and to beneficiaries of individual retirement accounts (74 FR 3822). The rules contain regulations implementing a statutory prohibited transaction exemption under ERISA Sec. 408(b)(14) and Sec. 408(g) and an administrative class exemption granting additional relief. As published, these rules were to be effective on March 23, 2009. Paragraph (g) of Sec. 2550.408g-1 provided that the rule would apply to covered transactions occurring on or after March 23, 2009.

By memorandum dated January 20, 2009, Rahm Emanuel, Assistant to the President and Chief of Staff, directed Agency Heads to consider extending for 60 days the effective date of regulations that have been published in the **Federal Register** but not yet taken effect. The memorandum further advised that, where such regulations are extended, agencies should allow 30 days for interested persons to comment on issues of law and policy raised by the rules. In accordance with that memorandum, and taking into account the considerations listed in the Memorandum of January 21, 2009, from Peter R. Orszag, Director of the Office of Management and Budget, the Department published in the **Federal Register** on February 4, 2009, a document seeking comment on a proposed 60 day extension to the effective dates for these rules until May 22, 2009, and a proposed conforming amendment to the applicability date of