

### Radio Altimeter 5G C-Band Interference, MMEL Restriction

Due to the presence of 5G C-Band wireless broadband interference, dispatch or release is prohibited under MMEL Section 2, CAS Messages, item “WOW FAULT (ADVISORY)” into or out of airports in the contiguous U.S. airspace, unless operating at a 5G C-Band mitigated airport as identified in an FAA Domestic Notice.

#### (j) Additional AD Provisions

The following provisions also apply to this AD:

(1) The Manager, Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the Operational Safety Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: [AMOC@faa.gov](mailto:AMOC@faa.gov).

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

#### (k) Related Information

(1) Refer to Transport Canada AD CF-2023-44, dated June 26, 2023, for related information. This Transport Canada AD may be found in the AD docket at [regulations.gov](http://regulations.gov) under Docket No. FAA-2023-1406.

(2) For more information about this AD, contact Brett Portwood, Continued Operational Safety Technical Advisor, COS Program Management Section, Operational Safety Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712-4137; phone: 817-222-5390; email: [operationalsafety@faa.gov](mailto:operationalsafety@faa.gov).

#### (l) Material Incorporated by Reference

None.

Issued on July 3, 2023.

#### Michael Linegang,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 602

[TD 9977]

RIN 1545-BP84

#### Carryback of Consolidated Net Operating Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations; removal of temporary regulations.

**SUMMARY:** This document contains final regulations that affect corporations filing consolidated returns. These regulations permit consolidated groups that acquire new members that were members of another consolidated group to elect in a year subsequent to the year of acquisition to waive all or part of the pre-acquisition portion of the carryback period for certain losses attributable to the acquired members where there is a retroactive statutory extension of the net operating loss (NOL) carryback period. This document finalizes certain provisions in proposed regulations that were published on July 8, 2020, and removes temporary regulations published on the same date.

#### DATES:

*Effective date:* These final regulations are effective on July 10, 2023.

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

**FOR FURTHER INFORMATION CONTACT:** Stephen R. Cleary at (202) 317-5353 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

##### I. Overview

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

On July 8, 2020, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-125716-18) in the **Federal Register** (85 FR 40927) under section 1502 (2020 proposed regulations). The 2020 proposed regulations provided guidance that, in part, implemented amendments to section 172 under Public Law 115-97, 131 Stat. 2054 (Dec. 22, 2017), commonly known as the Tax Cuts and Jobs Act (TCJA), and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, 134 Stat. 281 (Mar. 27, 2020). Specifically, the 2020 proposed regulations provided guidance for consolidated groups regarding (i) the application of the 80-percent limitation in section 172(a)(2), as originally enacted as part of the TCJA and subsequently amended by the CARES Act, and (ii) the absorption of NOL carrybacks and carryovers.

In connection with the 2020 proposed regulations, the Treasury Department and the IRS published on the same date temporary regulations (TD 9900) in the **Federal Register** (85 FR 40892) under section 1502 (2020 temporary regulations). The Treasury Department and the IRS issued the 2020 temporary regulations to provide guidance to consolidated groups regarding the application of the NOL carryback rules under section 172(b), as amended by (i) section 2303(b) of the CARES Act, and (ii) any similar future statutory amendments to section 172. Specifically, if there is a retroactive statutory extension of the NOL carryback period under section 172 (retroactive statutory extension), the 2020 temporary regulations permit consolidated groups that, before the enactment of the retroactive statutory extension, acquired new members that were members of another consolidated group to elect to waive, in a taxable year subsequent to the taxable year of the acquisition, all or part of the pre-acquisition portion of the carryback period for consolidated net operating losses (CNOLs) attributable to the acquired members. The preamble to the 2020 temporary regulations includes a background discussion of the rules

regarding NOL carrybacks and carryovers under section 172 and the related consolidated return regulations. Part II of this Background describes the 2020 temporary regulations in greater detail.

A correction to the 2020 temporary regulations was published in the **Federal Register** (85 FR 53162) on August 28, 2020. The text of the 2020 temporary regulations also serves as the text of § 1.1502–21(b)(3)(ii)(C) and (D) of the 2020 proposed regulations.

The 2020 proposed regulations, other than proposed § 1.1502–21(b)(3)(ii)(C) and (D), were adopted as final regulations on October 27, 2020. *See* TD 9927 (85 FR 67966).

The IRS received one comment in response to the 2020 temporary regulations. A copy of the comment is available for public inspection at <https://www.regulations.gov> (type IRS–2020–0020 in the search field on the <https://www.regulations.gov> homepage) or upon request. No public hearing was requested or held.

As described in greater detail in the Summary of Comment and Explanation of Revisions, the Treasury Department and the IRS have considered the commenter's recommendations and concluded that their adoption would necessitate conforming changes to the split-waiver election provisions set forth in § 1.1502–21(b)(3)(ii)(B) (general split-waiver election), which are beyond the scope of this guidance. Therefore, the Treasury Department and the IRS have determined that, aside from non-substantive revisions to incorporate the rules regarding retroactive statutory extensions into § 1.1502–21(b), improve readability, and make other perfecting edits, § 1.1502–21(b)(3)(ii)(C) and (D) of the 2020 proposed regulations should be adopted as final regulations without change, and that the 2020 temporary regulations should be removed. The Treasury Department and the IRS continue to study the commenter's recommendations for purposes of potential future guidance.

## II. 2020 Temporary Regulations

On prior occasions, enacted legislation has amended section 172 to retroactively extend the carryback period for NOLs. *See* Worker, Homeownership, and Business Assistance Act of 2009, Public Law 111–92, 123 Stat. 2984 (November 6, 2009); Job Creation and Worker Assistance Act of 2002, Public Law 107–147, 116 Stat. 21 (March 9, 2002). Most recently, section 2303(b) of the CARES Act added section 172(b)(1)(D) to the Code. Section 172(b)(1)(D) requires (in the absence of a waiver under section 172(b)(3)) a five-

year carryback period for an NOL that arises in a taxable year beginning after December 31, 2017, and before January 1, 2021.

Such retroactive statutory extensions of NOL carryback periods uniquely impact a consolidated group (acquiring group) that acquires one or more corporations (acquired member) before the enactment of the retroactive statutory extension of the carryback period. During the past two decades, the Treasury Department and the IRS have provided an acquiring group with certain additional elections for waiving carrybacks of losses into another consolidated group of which an acquired member previously was a member (former group). *See* 75 FR 35643 (June 23, 2010) (2010 split-waiver regulations); 67 FR 38000 (May 31, 2002) (2002 split-waiver regulations). These additional elections, while responsive to particular retroactive statutory extensions, have reflected common policy objectives of providing affected groups with the ability to waive all or a portion of the NOL carryback period of acquired members extended by retroactive statutory extensions applicable before, but enacted after, the acquisition(s).

The Treasury Department and the IRS determined that it is appropriate to provide similar rules with regard to the NOL carryback rules retroactively amended by section 2303(b) of the CARES Act in particular, or by future legislation enacting retroactive statutory amendments to NOL carryback rules more generally. Therefore, the 2020 temporary regulations provided principle-based rules, referred to in these regulations as “amended carryback rules,” applicable to CNOLs arising in taxable years to which amended carryback rules become applicable after the acquisition of a member. Under these rules, an acquiring group possesses the opportunity to waive, on a taxable-year-by-taxable-year basis, all or a portion of the carryback period with regard to CNOLs attributable to acquired members for pre-acquisition years during which the acquired members were members of a former group.

The 2020 temporary regulations provide two types of split-waiver elections for consolidated groups that (i) include one or more acquired members, and (ii) have CNOLs that, under amended carryback rules, become eligible to be carried back for a greater number of years than under statutory law in effect at the time of the acquisition (default carryback period). One type of election (amended statute split-waiver election) permits an

acquiring group to relinquish that part of the carryback period during which an acquired member was a member of a former group (for the portion of a CNOL attributable to the acquired member), even though the acquiring group did not file a split-waiver election for the year in which the acquired member became a member of the acquiring group (as required by § 1.1502–21(b)(3)(ii)(B)). *See* § 1.1502–21T(b)(3)(ii)(C)(2)(v). The other type of election (extended split-waiver election) applies solely to the extended carryback period (that is, the additional carryback years provided under amended carryback rules). Through an extended split-waiver election, an acquiring group can ensure that amended carryback CNOLs are carried back to taxable years of former groups only to the extent those losses would have been carried back under prior law (that is, limiting CNOL carrybacks to the default carryback period). *See* § 1.1502–21T(b)(3)(ii)(C)(2)(ix). These two additional types of split-waiver elections provide relief, and are subject to conditions and procedures, consistent with the applicable split-waiver elections set forth in the 2002 and 2010 split-waiver regulations.

## Summary of Comment and Explanation of Revisions

The Treasury Department and the IRS received one comment that recommended two changes to the split-waiver election provisions set forth in the 2020 temporary regulations (2020 split-waiver elections).

As discussed in the preamble to the 2020 temporary regulations, a general split-waiver election and the 2020 split-waiver elections may be made only with respect to the portion of the carryback period for which the acquired member was a member of a former group. Thus, such an election would not be effective with respect to any portion of the carryback period during which the acquired member was a stand-alone corporation. The commenter recommended that split-waiver elections be available whenever a portion of a CNOL attributable to an acquired member would be carried back to a separate return year, regardless of whether the acquired member was a member of a former group or a stand-alone corporation in that carryback year.

The commenter also suggested that, although the rules governing split-waiver elections are too narrow insofar as they exclude acquisitions of stand-alone corporations, such rules also are too broad insofar as they apply to situations in which the acquired member was the common parent of a former group (whole-group

acquisitions). See § 1.1502–21(b)(3)(ii)(B) (allowing the acquiring group to make a general split-waiver election with respect to the portion of the carryback period for which the acquired member was “a member of another group”); § 1.1502–21T(b)(3)(ii)(C)(2)(v) and (ix) (allowing the acquiring group to make a 2020 split-waiver election with respect to the portion of the carryback period for which the acquired member was “a member of any former group”); § 1.1502–1(b) (defining the term “member” to include the common parent of the group).

For example, assume that P is the common parent of Group 1 in Years 1 and 2. At the beginning of Year 3, Group 2 acquires all the stock of P. In Year 6, Group 2 incurs a CNOL, a portion of which is attributable to P. In Year 7, Congress amends section 172 by extending the carryback period for NOLs arising in Year 6 to five years. Group 2 would be eligible to make either a general split-waiver election (if it filed the requisite statement with its Federal income tax return for Year 3) or one of the 2020 split-waiver elections. The commenter contended that a split-waiver election should not be available in such a situation because disputes regarding NOL carrybacks should not arise between the former group and the acquiring group (which controls the former group after the acquisition).

The changes recommended by the commenter, if adopted, would necessitate revisions not only to the 2020 split-waiver elections, but also to the general split-waiver election provisions in § 1.1502–21(b)(3)(ii)(B). Both the general split-waiver election and the 2020 split-waiver elections may be made only with respect to the portion of the carryback period for which the acquired member was a member of a former group. Moreover, both the general split-waiver election and the 2020 split-waiver elections may apply to situations in which the acquired member was the common parent of a former group (that is, whole-group acquisitions). Consequently, after considering the comment, the Treasury Department and the IRS have determined that the scope of the changes suggested by the commenter exceed the scope of § 1.1502–21(b)(3)(ii)(C) and (D) of the 2020 proposed regulations.

Thus, as noted in part I of the Background, the Treasury Department and the IRS have concluded that the split-waiver election provisions provided by the 2020 proposed

regulations should be adopted without substantive change. The Treasury Department and the IRS continue to study the commenter’s recommendations for purposes of potential future guidance. Accordingly, the final regulations contained in this Treasury decision adopt the provisions of § 1.1502–21(b)(3)(ii)(C) and (D) of the 2020 proposed regulations without substantive change.

Although no substantive changes are made to the rules of § 1.1502–21(b)(3)(ii)(C) and (D) of the 2020 proposed regulations, the final regulations make the following non-substantive changes to incorporate those rules into § 1.1502–21(b) and to improve readability: (1) the provisions of § 1.1502–21(b)(3)(ii)(A) have been redesignated as § 1.1502–21(b)(3)(ii); (2) the provisions of § 1.1502–21(b)(3)(ii)(B) have been redesignated as § 1.1502–21(b)(4); (3) the provisions of § 1.1502–21(b)(3)(ii)(C) and (D) of the 2020 proposed regulations have been redesignated as § 1.1502–21(b)(5) and (6); (4) the provisions of § 1.1502–21(b)(3)(iii) have been redesignated as § 1.1502–21(b)(7); (5) the provisions of § 1.1502–21(b)(3)(iv) and (v) have been removed; and (6) corresponding perfecting edits have been made.

**Special Analyses**

*I. Regulatory Planning and Review*

Pursuant to the Memorandum of Agreement, *Review of Treasury Regulations under Executive Order 12866* (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6(b) of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

*II. Paperwork Reduction Act*

The collections of information in these final regulations are in § 1.1502–21(b)(5)(v)(A) and (B). The information is required to inform the IRS on whether, and to what extent, an acquiring group makes either of the elections described in these final regulations.

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

associated with OMB control number 1545–0123.

In general, if the acquiring group makes an election under § 1.1502–21(b)(5), the acquiring group is required to attach a separate statement to its Form 1120 as provided in § 1.1502–21(b)(5)(v)(A) and (B), respectively. This statement must be filed as provided in § 1.1502–21(b)(5)(vi).

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

	Number of respondents (estimated)
<b>Amended Statute Split-Waiver Election &amp; Extended Split-Waiver Election</b>	
Form 1120 .....	17,500

Source: RAAS:CDW.

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

It is estimated that 17,500 consolidated entities will be required to attach a statement under these final regulations. The burden estimates associated with the information collections in these final regulations are included in aggregated burden estimates for the OMB control number 1545–0123. The burden estimates provided in the OMB control numbers in the following table are aggregate amounts that relate to the entire package of forms associated with the OMB control number, and will in the future include, but not isolate, the estimated burden of those information collections associated with these final regulations. To guard against over-counting the burden that consolidated tax provisions imposed prior to § 1.1502–21, the Treasury Department and the IRS urge readers to recognize that these burden estimates have also been cited by regulations that rely on the applicable OMB control numbers in order to collect information from the applicable types of filers.

Form	Type of filer	OMB No(s).	Status
Form 1120 .....	Corporation .....	1545–0123	Published in the <b>Federal Register</b> on 12/22/2022. Public Comment period closed on 01/19/2023. Approved by OMB through 12/31/2023.
			Link: <a href="https://www.federalregister.gov/documents/2022/12/20/2022-27628/comment-request-us-business-income-tax-returns">https://www.federalregister.gov/documents/2022/12/20/2022-27628/comment-request-us-business-income-tax-returns</a> .

Source: RAAS:CDW.

### III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act. This certification is based on the fact that these final regulations apply only to corporations that file consolidated Federal income tax returns, and that such corporations almost exclusively consist of larger businesses. Specifically, based on data available to the IRS, corporations that file consolidated Federal income tax returns represent only approximately two percent of all filers of Forms 1120, *U.S. Corporation Income Tax Return*. However, these consolidated Federal income tax returns account for approximately 95 percent of the aggregate amount of receipts provided on all Forms 1120. Therefore, these final regulations will not create additional obligations for, or impose an economic impact on, small entities, and a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

### IV. Section 7805(f)

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business. No comments on that notice of proposed rulemaking were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

### V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. These final

regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

### VI. Executive Order 13132: Federalism

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

### VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Management and Budget's Office of Information and Regulatory Affairs has designated this rule as not a "major rule," as defined by 5 U.S.C. 804(2).

### Drafting Information

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

### List of Subjects

#### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### 26 CFR Part 602

Reporting and recordkeeping requirements.

### Adoption of Amendments to the Regulations

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

#### PART 1—INCOME 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 1.1502–21 is amended by:

■ 1. Removing the language “paragraph (b)(3)(iii)” in paragraph (b)(2)(iii) and adding the language “paragraph (b)(7)” in its place.

■ 2. Revising paragraph (b)(3).

■ 3. Adding paragraphs (b)(4) through (7).

■ 4. Removing the language “(b)(3)(ii)(B)” in paragraph (h)(5) and adding the language “(b)(4)” in its place.

■ 5. Revising paragraph (h)(9).

The additions and revisions read as follows:

#### § 1.1502–21 Net operating losses.

\* \* \* \* \*

(b) \* \* \*

(3) *Election to relinquish entire carryback period*—(i) *In general.* A group may make an irrevocable election under section 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. Except as provided in paragraphs (b)(4) and (5) of this section, the election may not be made separately for any member (whether or not it remains a member), and must be made in a separate statement titled “THIS IS AN ELECTION UNDER § 1.1502–21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT.” The statement must be filed with the group's income tax return for the consolidated return year in which the loss arises. If the consolidated return year in which the loss arises begins before January 1, 2003, the statement making the election must be signed by the common parent. If the consolidated return year in which the loss arises begins after December 31, 2002, the election may be made in an unsigned statement.

(ii) *Groups that include insolvent financial institutions.* For rules applicable to relinquishing the entire carryback period with respect to losses attributable to insolvent financial

institutions, *see* § 301.6402–7 of this chapter.

(4) *General split-waiver election.* If one or more members of a consolidated group becomes a member of another consolidated group, the acquiring group may make an irrevocable election to relinquish, with respect to all consolidated net operating losses attributable to the member, the portion of the carryback period for which the corporation was a member of another group, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver. This election is not a yearly election and applies to all losses that would otherwise be subject to a carryback to a former group under section 172. The election must be made in a separate statement titled “THIS IS AN ELECTION UNDER § 1.1502–21(b)(4) TO WAIVE THE PRE-[insert first taxable year for which the member (or members) was not a member of another group] CARRYBACK PERIOD FOR THE CNOLs attributable to [insert names and employer identification number of members].” The statement must be filed with the acquiring consolidated group’s original income tax return for the year the corporation (or corporations) became a member. If the year in which the corporation (or corporations) became a member begins before January 1, 2003, the statement must be signed by the common parent and each of the members to which it applies. If the year in which the corporation (or corporations) became a member begins after December 31, 2002, the election may be made in an unsigned statement.

(5) *Split-waiver elections to which amended carryback rules apply—(i) In general.* An acquiring group may make either (but not both) an amended statute split-waiver election or an extended split-waiver election with respect to a particular amended carryback CNOL. These elections are available only if the statutory amendment to the carryback period referred to in paragraph (b)(5)(ii)(D) of this section occurs after the date of acquisition of an acquired member. A separate election is available for each taxable year to which amended carryback rules apply. An acquiring group may make an amended statute split-waiver election or an extended split-waiver election only if the acquiring group, with regard to that election—

(A) Satisfies the requirements in paragraph (b)(5)(iii) of this section; and

(B) Follows the procedures in paragraphs (b)(5)(v) and (vi) of this section, as relevant to that election.

(ii) *Definitions.* The definitions provided in this paragraph (b)(5)(ii) apply for purposes of paragraphs (b)(5) and (6) of this section.

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

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

(C) *Amended carryback CNOL.* The term *amended carryback CNOL* means the portion of a CNOL attributable to an acquired member (determined pursuant to paragraph (b)(2)(iv)(B) of this section) arising in a taxable year to which amended carryback rules apply.

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

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

(F) *Amended statute split-waiver election statement.* The term *amended statute split-waiver election statement* has the meaning provided in paragraph (b)(5)(v)(A) of this section.

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

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

(I) *Extended split-waiver election.* The term *extended split-waiver election* means, with respect to any amended carryback CNOL, an irrevocable election made by an acquiring group to relinquish solely the portion of the extended carryback period (and no part of the default carryback period) for that

loss during which an acquired member was a member of any former group.

(J) *Extended split-waiver election statement.* The term *extended split-waiver election statement* has the meaning provided in paragraph (b)(5)(v)(B) of this section.

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

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

(A) The acquiring group has not filed a valid election described in paragraph (b)(4) of this section with respect to the acquired member on or before the effective date of the amended carryback rules;

(B) The acquiring group has not filed a valid election described in section 172(b)(3) and paragraph (b)(3)(i) of this section with respect to a CNOL of the acquiring group from which the amended carryback CNOL is attributed to the acquired member;

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

(D) A former group does not claim any carryback (as provided in paragraph (b)(5)(iv) of this section) to any taxable year in the carryback period (in the case of an amended statute split-waiver election) or in the extended carryback period (in the case of an extended split-waiver election) with respect to the amended carryback CNOL on a return or other filing filed on or before the date the acquiring group files the election.

(iv) *Claim for a carryback.* For purposes of paragraph (b)(5)(iii)(D) of this section, a carryback is claimed with respect to an amended carryback CNOL if there is a claim for refund, an amended return, an application for a tentative carryback adjustment, or any other filing that claims the benefit of the NOL in a taxable year prior to the taxable year of the loss, whether or not subsequently revoked in favor of a claim based on the period provided for in the amended carryback rules.

(v) *Procedures for making an amended statute split-waiver election or an extended split-waiver election—(A) Amended statute split-waiver election.* An amended statute split-waiver election must be made in a separate amended statute split-waiver election

statement titled “THIS IS AN ELECTION UNDER SECTION 1.1502–21(b)(5)(i) TO WAIVE THE PRE-[insert first day of the first taxable year for which the acquired member was a member of the acquiring group] CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members]”. The amended statute split-waiver election statement must be filed as provided in paragraph (b)(5)(vi) of this section.

(B) *Extended split-waiver election.* An extended split-waiver election must be made in a separate extended split-waiver election statement titled “THIS IS AN ELECTION UNDER SECTION 1.1502–21(b)(5)(i) TO WAIVE THE PRE-[insert first day of the first taxable year for which the acquired member was a member of the acquiring group] EXTENDED CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members]”. The extended split-waiver election statement must be filed as provided in paragraph (b)(5)(vi) of this section.

(vi) *Time and manner for filing statement—(A) In general.* Except as otherwise provided in paragraph (b)(5)(vi)(B) or (C) of this section, an amended statute split-waiver election statement or extended split-waiver election statement must be filed with the acquiring group’s timely filed consolidated return (including extensions) for the year during which the amended carryback CNOL is incurred.

(B) *Amended returns.* This paragraph (b)(5)(vi)(B) applies if the date of the filing required under paragraph (b)(5)(vi)(A) of this section is not at least 150 days after the date of the statutory amendment to the carryback period referred to in paragraph (b)(5)(ii)(D) of this section. Under this paragraph (b)(5)(vi)(B), an amended statute split-waiver election statement or extended split-waiver election statement may be attached to an amended return filed by the date that is 150 days after the date of the statutory amendment referred to in paragraph (b)(5)(ii)(D) of this section.

(C) *Certain taxable years beginning before January 1, 2021.* This paragraph (b)(5)(vi)(C) applies to taxable years beginning before January 1, 2021, for which the date of the filing required under paragraph (b)(5)(vi)(A) of this section precedes November 30, 2020. Under this paragraph (b)(5)(vi)(C), an amended statute split-waiver election

statement or extended split-waiver election statement may be attached to an amended return filed by November 30, 2020.

(6) *Examples.* The following examples illustrate the rules of paragraph (b)(5) of this section. For purposes of these examples: All affiliated groups file consolidated returns; all corporations are includible corporations that have calendar taxable years; each of P, X, and T is a corporation having one class of stock outstanding; each of P and X is the common parent of a consolidated group (P Group and X Group, respectively); neither the P Group nor the X Group includes an insolvent financial institution or an insurance company; no NOL is a farming loss; there are no other relevant NOL carrybacks to the X Group’s consolidated taxable years; except as otherwise stated, the X Group has sufficient consolidated taxable income determined under § 1.1502–11 (CTI) to absorb the stated NOL carryback by T; T has sufficient SRLY register income within the X Group to absorb the stated NOL carryback by T; all transactions occur between unrelated parties; and the facts set forth the only relevant transactions.

(i) *Example 1: Computation and absorption of amended carrybacks—(A) Facts.* In Year 1, T became a member of the X Group. On the last day of Year 5, P acquired all the stock of T from X. At the time of P’s acquisition of T stock, the default carryback period was zero taxable years. The P Group did not make an irrevocable split-waiver election under paragraph (b)(4) of this section to relinquish, with respect to all CNOLs attributable to T while a member of the P Group, the portion of the carryback period for which T was a member of the X Group (that is, a former group). In Year 7, the P Group sustained a \$1,000 CNOL, \$600 of which was attributable to T pursuant to paragraph (b)(2)(iv)(B) of this section. In that year, P did not make an irrevocable general waiver election under section 172(b)(3) and paragraph (b)(3)(i) of this section with respect to the \$1,000 CNOL when the P Group filed its consolidated return for Year 7. In Year 8, legislation was enacted that amended section 172 to require a carryback period of five years for NOLs arising in a taxable year beginning after Year 5 and before Year 9.

(B) *Analysis.* As a result of the amended carryback rules enacted in Year 8, the P Group’s \$1,000 CNOL in Year 7 must be carried back to Year 2. Therefore, T’s \$600 attributed portion of the P Group’s Year 7 CNOL (that is, T’s amended carryback CNOL) must be carried back to taxable years of the X

Group. See paragraphs (b)(1) and (b)(2)(i) of this section. To the extent T’s amended carryback CNOL is not absorbed in the X Group’s Year 2 taxable year, the remaining portion must be carried to the X Group’s Year 3, Year 4, and Year 5 taxable years, as appropriate. See *id.* Any remaining portion of T’s amended carryback CNOL is carried to consolidated return years of the P Group. See paragraph (b)(1) of this section.

(ii) *Example 2: Amended statute split-waiver election—(A) Facts.* The facts are the same as in paragraph (b)(6)(i)(A) of this section (*Example 1*), except that, following the change in statutory carryback period in Year 8, the P Group made a valid amended statute split-waiver election under paragraph (b)(5)(i) of this section to relinquish solely the carryback of T’s amended carryback CNOL.

(B) *Analysis.* Because the P Group made a valid amended statute split-waiver election, T’s amended carryback CNOL is not eligible to be carried back to any taxable years of the X Group (that is, a former group). However, the amended statute split-waiver election does not prevent T’s Year 7 amended carryback CNOL from being carried back to years of the P group (that is, the acquiring group) during which T was a member. See paragraph (b)(5)(ii)(E) of this section. As a result, the entire amount of T’s amended carryback CNOL is eligible to be carried back to taxable Year 6 of the P Group. Any remaining CNOL may then be carried over within the P Group. See paragraph (b)(1) of this section.

(iii) *Example 3: Computation and absorption of extended carrybacks—(A) Facts.* The facts are the same as in paragraph (b)(6)(i)(A) of this section (*Example 1*), except that the X Group had \$300 of CTI in Year 4 and \$200 of CTI in Year 5 and, at the time of the P Group’s acquisition of T, the default carryback period was two years. Therefore, T’s \$600 attributed portion of the P Group’s Year 7 CNOL was required to be carried back to the X Group’s Year 5 taxable year, and the X Group was able to offset \$200 of CTI in Year 5.

(B) *Analysis.* As a result of the amended carryback rules, the X Group must offset its \$300 of CTI in Year 4 against T’s amended carryback CNOL. See paragraphs (b)(1) and (b)(2)(i) of this section. The remaining \$100 (\$600–\$300–\$200) of T’s amended carryback CNOL is carried to taxable years of the P Group. See paragraph (b)(1) of this section.

(iv) *Example 4: Extended split-waiver election—(A) Facts.* The facts are the

same as in paragraph (b)(6)(iii)(A) of this section (*Example 3*), except that, following the change in law in Year 8, the P Group made a valid extended split-waiver election under paragraph (b)(5)(i) of this section to relinquish the extended carryback period for T's amended carryback CNOL for years in which T was a member of the X Group.

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

(7) *Short years in connection with transactions to which section 381(a) applies.* If a member distributes or transfers assets to a corporation that is a member immediately after the distribution or transfer in a transaction to which section 381(a) applies, the transaction does not cause the distributor or transferor to have a short year within the consolidated return year of the group in which the transaction occurred that is counted as a separate year for purposes of determining the years to which a net operating loss may be carried.

\* \* \* \* \*

(h) \* \* \*

(9) *Amended carryback rules.*

Paragraphs (b)(5) and (6) of this section apply to any CNOLs arising in a taxable year ending after July 2, 2020. However, taxpayers may apply paragraphs (b)(5) and (6) of this section to any CNOLs arising in a taxable year beginning after December 31, 2017.

\* \* \* \* \*

**§ 1.1502-21T [Removed]**

■ **Par. 3.** Section 1.1502-21T is removed.

**§ 1.1502-78 [Amended]**

■ **Par. 4.** Section 1.1502-78 is amended by removing the language “§ 1.1502-21(b)(3)(ii)(B)” in paragraph (a) and adding the language “§ 1.1502-21(b)(4)” in its place.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

■ **Par. 5.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 6.** In § 602.101, amend the table in paragraph (b) by:

- a. Revising the entry for “§ 1.1502-21”; and
- b. Removing the entry for “§ 1.1502.21T”.

The revision reads as follows:

**§ 602.101 OMB Control Numbers.**

\* \* \* \* \*  
(b) \* \* \*

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
1.1502-21 .....	1545-0123
* * * * *	* * * * *

**Douglas W. O'Donnell,**  
*Deputy Commissioner for Services and Enforcement.*

Approved: June 21, 2023.

**Lily Batchelder,**  
*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2023-14644 Filed 7-10-23; 4:15 pm]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[Docket Number USCG-2023-0461]

RIN 1625-AA08

**Special Local Regulation; Back River, Baltimore County, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary special local regulation for certain waters of Back River. This action is necessary to provide for the safety of life on these navigable waters, located in Baltimore County, MD, during activities associated with an air show event which will be held on three separate occasions between July 14, 2023 and July 16, 2023. This rule prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port, Maryland-National Capital Region or the Coast Guard Event Patrol Commander.

**DATES:** This rule is effective from 6 p.m. on July 14, 2023 through 4 p.m. on July 16, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0461 in the search box and click

“Search.” Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MST2 Hollie Givens, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410-576-2596, email [MDNCRMarineEvents@uscg.mil](mailto:MDNCRMarineEvents@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

- CFR Code of Federal Regulations
- COTP Captain of the Port
- DHS Department of Homeland Security
- FR Federal Register
- NPRM Notice of proposed rulemaking
- PATCOM Patrol Commander
- § Section
- U.S.C. United States Code

**II. Background Information and Regulatory History**

Tiki Lee's Dock Bar of Sparrows Point, MD, and David Schultz Airshows LLC of Clearfield, PA, notified the Coast Guard that they will be conducting the 2023 Tiki Lee's Shootout on the River Airshow from 7 p.m. to 8 p.m. on July 14, 2023, from 2 p.m. to 3 p.m. on July 15, 2023, and from 2 p.m. to 3 p.m. on July 16, 2023. High speed, low-flying civilian and military aircraft air show performers will operate within a designated, marked aerobatics box located on Back River, between Lynch Point to the south and Walnut Point to the north. The event is being held adjacent to Tiki Lee's Dock Bar, 4309 Shore Road, Sparrows Point, in Baltimore County, MD. Hazards from the air show include risks of injury or death resulting from aircraft accidents, dangerous projectiles, hazardous materials spills, falling debris, and from near or actual collisions between waterway users and participants or spectator vessels if normal vessel traffic were allowed to interfere with the event. Additionally, these hazards could affect vessels in a designated navigation channel and adjacent to waterside residential communities if the locations of these activities were not restricted. In response to these potential hazards, on June 1, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; Back River, Baltimore County, MD (88 FR 35802). There, we stated why we issued the NPRM to promulgate the special local regulation, which will be subject to enforcement beginning an hour before each show begins and ending an hour after it ends, and we invited comments on our proposed regulatory action related to this air show. During the comment period,