

successor form) in accordance with instructions, guidance, or publications published in the Internal Revenue Bulletin (see §§ 601.601(d)(2) and 601.602 of this chapter).

(ii) *Successors*. The term *covered filer* includes any successor (within the meaning of section 381(a) of the Code) to an entity described in paragraph (b)(1)(i) of this section.

(2) *Required reporting period*. The term *required reporting period* means the period—

(i) Beginning in the taxable year of the covered filer during which the first distribution occurs; and

(ii) Ending in the fifth taxable year of the covered filer after the taxable year in which the control distribution occurs.

(3) *Significant distributee*. The term *significant distributee* means:

(i) A holder of stock of a distributing corporation that—

(A) Receives stock of a controlled corporation in a section 355 transaction; and

(B) Owned at least five percent (by vote or value) of the total outstanding stock of the distributing corporation immediately before the first distribution.

(ii) A holder of securities of a distributing corporation that—

(A) Receives stock or securities of a controlled corporation in a section 355 transaction; and

(B) Owned securities in the distributing corporation with a basis of at least \$1,000,000 immediately before the first distribution.

(4) *Specified Federal income tax return*. The term *specified Federal income tax return* means—

(i) Form 1040, *U.S. Individual Income Tax Return*;

(ii) Form 1040-NR, *U.S. Nonresident Alien Income Tax Return*;

(iii) Form 1065, *U.S. Return of Partnership Income*;

(iv) Form 1120, *U.S. Corporation Income Tax Return*;

(v) Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation*;

(vi) Form 1120-S, *U.S. Income Tax Return for an S Corporation*; or

(vii) Any other form listed in instructions, guidance, or publications published in the Internal Revenue Bulletin (see §§ 601.601(d)(2) and 601.602 of this chapter).

(c) *Substantiation information*. Under § 1.6001-1(e), a covered filer must retain its permanent books and records and make those books and records available for inspection by any authorized IRS officers and employees. In connection with the section 355 transaction, the covered filer's books and records, as relevant to the section 355 transaction,

will be considered to be complete and accurate if they contain all information necessary to document and substantiate satisfaction of the requirements under section 355.

(d) *Applicability date*—(1) *In general*. Except as provided in paragraph (d)(2) of this section, the rules of this section apply to taxable years ending after [date of publication of final regulations in the **Federal Register**] with respect to section 355 transactions occurring after January 16, 2025. For rules applicable to prior taxable years, see § 1.355-5 as in effect and contained in 26 CFR part 1, as revised April 1, 2024.

(2) [Reserved]

**Douglas W. O'Donnell,**

*Deputy Commissioner.*

[FR Doc. 2025-00312 Filed 1-13-25; 4:15 pm]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-118988-22]

RIN 1545-BQ87

#### Certain Employee Remuneration in Excess of \$1,000,000 Under Internal Revenue Code Section 162(m)

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document sets forth proposed regulations under section 162(m) of the Internal Revenue Code, which limits the deduction for certain employee remuneration in excess of \$1,000,000 for Federal income tax purposes. These proposed regulations implement the amendments made to section 162(m) by the American Rescue Plan Act of 2021. These proposed regulations would affect publicly held corporations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by March 17, 2025.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-118988-22) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section of this preamble. Once submitted to the Federal eRulemaking

Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG-118988-22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

#### FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Ilya Enkishev at (202) 317-5600; concerning submissions of comments and/or requests for a public hearing, contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by email at [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred) or by telephone at (202) 317-6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Authority

These proposed regulations are issued under the express delegation of authority under section 7805 of the Code. Section 7805(a) directs the Secretary of the Treasury or her delegate to prescribe all needful rules and regulations for the enforcement of the Code, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

##### Background

This document sets forth proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 162(m). Section 162(m)(1) disallows a deduction by any publicly held corporation for applicable employee remuneration that is otherwise deductible with respect to any covered employee to the extent that such remuneration for the taxable year exceeds \$1,000,000.<sup>1</sup> Section 162(m) was added to the Internal Revenue Code (Code) by section 13211(a) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66, 107 Stat. 312, 469). Proposed regulations under section 162(m) were published in the **Federal Register** by the Treasury Department and the IRS on December 20, 1993 (58 FR 66310) (1993 proposed regulations). On December 2, 1994, the Treasury Department and the IRS published in the **Federal Register** amendments to the proposed regulations (59 FR 61884) (1994 proposed regulations). On December 20, 1995, the Treasury Department and the

<sup>1</sup> As a result, for example, such disallowed amounts generally may not be capitalized. See §§ 1.263(a)-1(b) and 1.263A-1(c)(2).

IRS published in the **Federal Register** final regulations under section 162(m) (TD 8650) (60 FR 65534) (1995 regulations).

In 2017, section 162(m) was amended by section 13601 of the Tax Cuts and Jobs Act (TCJA) (Pub. L. 115–97, 131 Stat. 2054, 2155 (2017)). Specifically, section 13601 of TCJA amended the definitions of covered employee, publicly held corporation, and applicable employee remuneration in section 162(m). On December 20, 2019, the Treasury Department and the IRS published in the **Federal Register** proposed regulations relating to the TCJA amendments (84 FR 70356). On December 30, 2020, the Treasury Department and the IRS published in the **Federal Register** final regulations (TD 9932) relating to the TCJA amendments (85 FR 86481) (the current regulations).

Section 162(m)(3) provides the definition of “covered employee.” Specifically, section 162(m)(3) defines the term “covered employee” as an “employee of the taxpayer” if (1) the employee is the principal executive officer (PEO) or principal financial officer (PFO) of the taxpayer at any time during the taxable year, or was an individual acting in such a capacity, (2) the total compensation of the employee for the taxable year is required to be reported to shareholders under the Securities Exchange Act of 1934 (Exchange Act) by reason of the employee being among the three highest compensated officers for the taxable year (other than the PEO and PFO), or (3) the individual was a covered employee of the taxpayer (or any predecessor) for any preceding taxable year beginning after December 31, 2016. Section 162(m)(3) also contains flush language providing that a covered employee includes any employee of the taxpayer whose total compensation for the taxable year places the individual among the three highest compensated officers for the taxable year (other than any individual who is the PEO or PFO of the taxpayer at any time during the taxable year, or was an individual acting in such a capacity) even if the compensation of the officer is not required to be reported to shareholders under the Exchange Act.

In 2021, section 162(m) was amended by section 9708 of the American Rescue Plan Act of 2021 (ARP) (Pub. L. 117–2, 135 Stat. 4, 206) to expand the definition of covered employee for taxable years beginning after December 31, 2026. The ARP amended the definition of “covered employee” in section 162(m)(3) by adding section

162(m)(3)(C),<sup>2</sup> which includes any employee who is among the five highest compensated employees for the taxable year other than the PEO or PFO (as identified in section 162(m)(3)(A)) or the three highest compensated executive officers for the taxable year (as identified in section 162(m)(3)(B)). This amendment is effective for taxable years beginning after December 31, 2026. These proposed regulations (proposed regulations) would provide guidance on this amendment.

## Explanation of Provisions

### I. Definition of Employee

These proposed regulations would provide that, for purposes of determining whether an employee is one of the five highest compensated employees as defined in new section 162(m)(3)(C), the term “employee” means an “employee” as defined in section 3401(c). In general, under section 3401(c) and the corresponding regulations, the term “employee” includes a common law employee and an officer of a corporation. Accordingly, for purposes of section 162(m)(3)(C), the term “employee” would include, but not be limited to, executive officers.<sup>3</sup>

The text of section 162(m)(3)(C) does not exclude an individual who is a covered employee as defined in section 162(m)(3)(D). Accordingly, these proposed regulations would provide that a covered employee by reason of section 162(m)(3)(C) includes an individual who is both one of the five highest compensated employees for the current taxable year (regardless of whether the individual is employed on the last day of the taxable year) and also a covered employee on the basis of being a covered employee for a preceding taxable year (as provided in section 162(m)(3)(D)).

### II. Determination of the Five Highest Compensated Employees

These proposed regulations would use “compensation” as defined in paragraph (c)(3) of the current regulations (that is, compensation that would (but for section 162(m)) be allowable as a deduction) to determine whether an employee is one of the five highest compensated employees as defined in new section 162(m)(3)(C). The Treasury Department and the IRS expect this approach to be easily

<sup>2</sup> The addition of section 162(m)(3)(C) resulted in pre-ARP section 162(m)(3)(C) being redesignated as section 162(m)(3)(D).

<sup>3</sup> This interpretation is consistent with the description of section 162(m)(3)(C) by the Joint Committee on Taxation in *General Explanation of the Tax Legislation Enacted in the 117th Congress*. JCS–1–23, 129 (Dec. 2023).

administrable because taxpayers currently track compensation to determine their tax liability for the taxable year.

Because section 162(m)(3)(B) determines the three highest compensated employees based on the total compensation required to be disclosed under the Exchange Act for executive officers, the Treasury Department and the IRS considered using this approach to determine the five highest compensated employees for purposes of section 162(m)(3)(C). These proposed regulations would not adopt this approach because, unlike the statutory text of section 162(m)(3)(B), section 162(m)(3)(C) does not reference compensation disclosure under the Exchange Act. Furthermore, unlike the covered employees defined in section 162(m)(3)(B), the five highest compensated employees under section 162(m)(3)(C) are not limited to executive officers.

Like the 1995 regulations, § 1.162–33(c)(1)(ii) of the current regulations defines the term “publicly held corporation” to include an affiliated group of corporations, as defined in section 1504 (without regard to section 1504(b)) (affiliated group) that includes a corporation that is a publicly held corporation.<sup>4</sup> This definition was needed in the 1995 regulations because, among other things, the executive officers to whom section 162(m) applied could include officers of subsidiaries,<sup>5</sup> and their remuneration could come from subsidiaries, as well, so failure to include members of the affiliated group would have thwarted Congress’s intent to deny a deduction for all compensation of a covered employee in excess of \$1 million per year.<sup>6</sup> The definition also confirmed that each member of the affiliated group is potentially a “taxpayer” within the meaning of section 162(m)(3).

The Treasury Department and the IRS are now similarly concerned that a publicly held corporation may employ many of its highest compensated employees at subsidiaries, and may even attempt to alter the composition of its five highest compensated employees

<sup>4</sup> These proposed regulations take the same approach as the current regulations of using “publicly held corporation” to mean the affiliated group (as defined in § 1.162–33(c)(1)(ii)) of which the corporation that is a publicly held corporation (as defined in § 1.162–33(c)(1)(i)) is a part, and distinguishing between the two only where necessary.

<sup>5</sup> See 17 CFR 229.402, Instructions to Item 402(a)(3).

<sup>6</sup> See H.R. Conf. Rep. No. 103–213, at 585 (1993) (“Unless specifically excluded, the deduction limitation applies to all remuneration for services.”).

(as defined in section 162(m)(3)(C)) by transferring highly compensated employees to a subsidiary or by adopting a holding company structure, thereby thwarting Congress's intent to expand significantly the number of covered employees whose compensation is subject to section 162(m).<sup>7</sup> Accordingly, these proposed regulations would provide that any employee of any corporation in the affiliated group may be one of the five highest compensated employees of the publicly held corporation regardless of whether the employee is an employee of or performs services for the publicly held corporation, as defined in § 1.162–33(c)(1)(i).

Consistent with the rule in the current regulations for affiliated groups that contain more than one publicly held corporation (as defined in § 1.162–33(c)(1)(i)), these proposed regulations would provide that in such an affiliated group, each publicly held corporation has its own set of five highest compensated employees (as defined in section 162(m)(3)(C)). Because, as explained in the preceding paragraph, those individuals may be employees of a corporation in the affiliated group that is not a publicly held corporation, the affiliated group is divided into smaller affiliated groups for this purpose, each consisting of a publicly held corporation and certain affiliated non-publicly held corporations, if any. These proposed regulations provide rules for dividing up the affiliated group for this purpose.

Similar to the current regulations, these proposed regulations would provide that, if an employee of a publicly held corporation (as defined in § 1.162–33(c)(1)(i)) is paid compensation by more than one member of an affiliated group, then compensation paid to the employee by each member of the affiliated group is aggregated in determining whether the employee is one of the five highest compensated employees. These proposed regulations would provide rules similar to the rules in the current regulations, but reflecting the rules described in the preceding paragraphs, for situations in which an individual performs services for members of an affiliated group that contains more than one publicly held corporation, and might also contain one or more corporations that are not publicly held corporations. Specifically, these proposed regulations would provide that whether the individual is one of the

five highest compensated employees of a publicly held corporation is determined separately with respect to each publicly held corporation in the group, excluding compensation taken into account with respect to another publicly held corporation of the affiliated group. Section 1.162–33(c)(2)(i)(D)(4) of the proposed regulations also explains how that determination is made.

For purposes of section 162(m), an affiliated group includes a foreign corporation. Pursuant to the 1995 regulations and the current regulations, compensation includes remuneration paid by a member of an affiliated group that is a foreign corporation to the extent it is otherwise allowable as a deduction under chapter 1 of the Code. Accordingly, such compensation would be taken into account under these proposed regulations, among other things, to determine whether an individual is one of the five highest compensated employees. Compensation and other expenses of a foreign corporation normally may be taken as a deduction by the foreign corporation in computing its U.S. income tax, and thus may be actually be disallowed by section 162(m), only if they are incurred in connection with a trade or business carried on in the United States.<sup>8</sup> However, if the foreign corporation is a controlled foreign corporation as defined in section 957,<sup>9</sup> a pro rata share of certain types of income less associated deductions may be taken into account by a United States shareholder of the corporation under subpart F (sections 951 through 965). To assist taxpayers with compliance, section 1.162–33(c)(3)(iii) of the proposed regulations would add an explicit rule to the definition of compensation regarding remuneration paid by a controlled foreign corporation that is a member of a publicly held corporation's affiliated group. This rule is not a substantive change to the 1995 regulations and the current regulations. Comments are requested on the application of these proposed rules to controlled foreign corporations, and whether these proposed rules should apply to controlled foreign corporations that are not members of an affiliated group.

These proposed regulations would also provide that an “employee” of a

publicly held corporation includes an individual who, under section 3401(c), is an “employee” of a person other than the publicly held corporation (such as a related but unaffiliated organization or certified professional employer organization) but nevertheless functions as an employee of the publicly held corporation in that the individual performs substantially all the individual's services during the taxable year for the publicly held corporation. Consequently, these proposed regulations would provide that, in such circumstance, to the extent allowable as a deduction to the publicly held corporation, amounts paid to the individual or to a third party to obtain the services performed by the individual are considered “compensation.” Absent such a rule, the adoption of the section 3401(c) definition by these proposed regulations could permit avoidance of section 162(m) through the use of third-party payors, which is not a concern under sections 162(m)(3)(A) and (B) due to their inclusion of all individuals acting as executive officers and the application of the executive compensation disclosure rules under the Exchange Act.

### III. Amendment to the Current Regulations

These proposed regulations also include a technical correction that would amend the reference to Example 22 in the conclusion to the facts in Example 23 (section 1.162–33(c)(1)(vi)(W)(2)) in the current regulations. The correct reference is to Example 20 of the current regulations. These proposed regulations would make that correction.

### Proposed Applicability Date

These regulations generally are proposed to apply to compensation that is otherwise deductible for taxable years beginning after the later of December 31, 2026, or the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. The amendment to the conclusion of Example 23 in section 1.162–33(c)(1)(vi)(W)(2) of the current regulations is proposed to apply to taxable years ending on or after January 16, 2025.

### Statement of Availability of IRS Documents

For copies of recently issued revenue procedures, revenue rulings, notices and other guidance published in the Internal Revenue Bulletin, please visit the IRS website at [www.irs.gov](http://www.irs.gov) or contact the Superintendent of Documents, U.S.

<sup>7</sup> See, for example, the Joint Committee on Taxation estimate that the amendment would raise \$7.8 billion through Fiscal Year 2031. JCX–14–21, 3 (March 9, 2021).

<sup>8</sup> See section 882(c)(1).

<sup>9</sup> In relevant part, section 957(a) defines a controlled foreign corporation as a foreign corporation of which more than 50% (vote or value) is owned by United States shareholders as defined in section 951(b). Publicly held corporations as defined in section 162(m)(2) can be treated as United States shareholders.

Government Publishing Office, Washington, DC 20402.

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 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that section 162(m)(1) applies only to publicly held corporations (for example, corporations that list securities on a national securities exchange and are rarely small entities) and only impacts those publicly held corporations that compensate certain employees in excess of \$1,000,000 in a taxable year.

III. Section 7805(f)

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

IV. Unfunded Mandates Reform Act

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

V. Executive Order 13132: Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This

proposed rule does not have federalism implications, does not impose substantial direct compliance costs on State and local governments, and does not preempt State law within the meaning of the Executive order.

Comments and Requests for a Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the ADDRESSES section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments submitted will be made available at www.regulations.gov or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically by sending an email to publichearings@irs.gov. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Ilya Enkishev, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 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 1.162–33 is amended by:

- a. Revising paragraphs (c)(1)(vi)(W)(2) and (c)(2)(i)(C);
■ b. Adding paragraphs (c)(2)(i)(D) and (c)(2)(vii)(CC) through (EE);
■ c. Redesignating paragraphs (c)(3)(iii) and (iv) as paragraphs (c)(3)(v) and (vi);
■ d. Adding new paragraphs (c)(3)(iii) and (iv) and adding paragraphs (c)(3)(vi)(D) and (E);

- e. Revising paragraph (h)(2)(ii)(C); and
■ f. Adding paragraphs (h)(2)(i)(F) and G.

The revisions and additions read as follows:

§ 1.162–33 Certain employee remuneration in excess of \$1,000,000 not deductible for taxable years beginning after December 31, 2017.

\* \* \* \* \*
(c) \* \* \*
(1) \* \* \*
(vi) \* \* \*
(W) \* \* \*

(2) Conclusion. The result is the same as in paragraph (c)(1)(vi)(T) of this section (Example 20). Even though Corporations P, Q, and R each are publicly held corporations, they comprise an affiliated group. Because Employee C is a covered employee of both Corporations P and Q, the amount disallowed as a deduction is prorated separately between Corporations P and R and between Corporations Q and R.

\* \* \* \* \*
(2) \* \* \*
(i) \* \* \*

(C) Any individual who was a covered employee of the publicly held corporation (or any predecessor of a publicly held corporation, within the meaning of paragraph (c)(2)(ii) of this section) for any preceding taxable year beginning after December 31, 2016, other than an individual who was a covered employee in that year solely on account of paragraph (c)(2)(i)(D) of this section. For taxable years beginning prior to January 1, 2018, covered employees are identified in accordance with the rules in § 1.162–27(c)(2).

(D) The five highest compensated employees of the publicly held corporation for the taxable year regardless of whether the individual is serving at the end of the publicly held corporation’s taxable year, other than any individual described in paragraph (c)(2)(i)(A) or (B) of this section, determined in accordance with the rules in this paragraph (c)(2)(i)(D). See paragraph (c)(3)(iv) of this section for a special rule treating certain employees of a person other than the publicly held corporation as employees of the publicly held corporation.

(1) Compensation. The amount of compensation used to identify the five most highly compensated employees for the taxable year for purposes of paragraph (c)(2)(i)(D) of this section is the amount of compensation as defined in paragraph (c)(3) of this section, provided that, in determining compensation for purposes of applying this paragraph (c)(2)(i)(D), references to “covered employee” or “covered

employee (as defined in paragraphs (c)(2)(i) through (v) of this section)” in paragraph (c)(3) of this section shall be replaced with references to “employee.”

(2) *Employee.* For purposes of this paragraph (c)(2)(i)(D), the term “employee” means an employee as defined in section 3401(c).

(3) *Determining the employees eligible to be the five highest compensated employees with respect to an affiliated group with one publicly held corporation.* In the case of an affiliated group (as defined in paragraph (c)(1)(ii) of this section) that includes one publicly held corporation (as defined in paragraph (c)(1)(i) of this section), an employee of any member of the affiliated group is eligible to be one of the five highest compensated employees of the publicly held corporation regardless of whether the individual is an employee of the publicly held corporation itself or performs services for the publicly held corporation itself.

(4) *Determining the employees eligible to be the five highest compensated employees with respect to an affiliated group with more than one publicly held corporation.* In the case of an affiliated group (as defined in paragraph (c)(1)(ii) of this section) that includes more than one publicly held corporation (as defined in paragraph (c)(1)(i) of this section), the group of employees eligible to be the five highest compensated employees is determined separately with respect to the parent corporation (as defined below) and each publicly held corporation (as defined in paragraph (c)(1)(i) of this section) that is not the parent corporation (an additional publicly held corporation). For this purpose, the parent corporation is the highest corporation in the chain or chains of includible corporations (that comprise the affiliated group) that is a publicly held corporation as defined in paragraph (c)(1)(i) of this section. In the case of an affiliated group in which more than one member may be the parent corporation (such as where a common parent that is not publicly held owns multiple publicly held corporations), the affiliated group must choose which member to treat as the parent corporation for the taxable year. With respect to the parent corporation, an employee of any member of the affiliated group, excluding a member of an affiliated group of an additional publicly held corporation (as defined below), is eligible to be one of its five highest compensated employees regardless of whether the individual is an employee of the parent corporation itself or performs services for the parent corporation itself. Similarly, with respect to an additional publicly held

corporation, any employee of the affiliated group of the additional publicly held corporation is eligible to be one of its five highest compensated employees regardless of whether the individual is an employee of the additional publicly held corporation itself or performs services for the additional publicly held corporation itself. For this purpose, an affiliated group of an additional publicly held corporation means, with respect to any corporation, the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and if section 1504(b) did not apply. These rules similarly apply to all additional publicly held corporations, beginning at the bottom of each chain of corporations and proceeding up until all members of the affiliated group that may be so allocated have been allocated to one (and only one) affiliated group of an additional publicly held corporation. If the affiliated group includes only publicly held corporations (as defined in paragraph (c)(1)(i) of this section), the affiliated group used to determine the employees eligible to be each publicly held corporation’s five highest compensated employees is that publicly held corporation itself.

(5) *Determining the five highest compensated employees in an affiliated group.* In determining whether an employee is one of the five highest compensated employees with respect to the parent corporation (as defined in paragraph (c)(2)(i)(D)(4) of this section) for the taxable year, compensation paid by each member of the affiliated group (as defined in paragraph (c)(1)(ii) of this section) in the taxable year, excluding any member of an affiliated group of an additional publicly held corporation (as defined in paragraph (c)(2)(i)(D)(4) of this section), is aggregated. In determining whether an employee is one of the five highest compensated employees with respect to a publicly held corporation (as defined in paragraph (c)(1)(i) of this section) in an affiliated group of an additional publicly held corporation, compensation paid by each member of the affiliated group of the additional publicly held corporation in the taxable year is aggregated.

(6) *Application of proration rules.* The proration rules in paragraph (c)(1)(ii)(B) of this section generally apply in the same way to covered employees determined under this paragraph (c)(2)(i)(D), except that a publicly held corporation or publicly held payor corporation refers to the portion of the affiliated group of which the publicly held corporation (as defined in

paragraph (c)(1)(i) of this section) is a part, as determined under paragraph (c)(2)(i)(D)(4) of this section.

\* \* \* \* \*

(vii) \* \* \*

(CC) *Example 29 (Individual as one of the five highest compensated employees of a publicly held corporation that includes the affiliated group)—(1) Facts.* Corporation CO is a publicly held corporation for its 2026 and 2027 taxable years. Corporation CP is a foreign corporation and is a wholly-owned subsidiary of Corporation CO. Corporation CP is a controlled foreign corporation, but the only income it has is effectively connected with a U.S. trade or business. Corporation CO is a partner in Partnership CQ (a partnership for Federal tax purposes). Under the partnership agreement, Corporation CO has a 50% distributive share of the partnership’s income, gain, loss, deductions, and credits. These allocations comply with section 704(b) and its regulations. Employee E.O. is an employee of Corporation CO. In 2026, Employee E.O. is a covered employee of Corporation CO because Employee E.O. is one of the three highest compensated executive officers of Corporation CO. In 2027, Employee E.O. is not an executive officer of Corporation CO but performs services for and receives compensation from Corporations CO for services as its employee. Furthermore, in 2027, Employee E.O. performs services for and receives compensation from Corporation CP and Partnership CQ (Employee E.O. is not a partner of Partnership CQ). In 2027, the total compensation paid to Employee E.O. is \$3,600,000, of which Corporation CO pays \$1,500,000, Corporation CP pays \$900,000, and Partnership CQ pays \$1,200,000. For the 2027 taxable year, the total compensation paid to any employee of Corporations CO and CP did not exceed \$2,500,000.

(2) *Conclusion (Compensation paid by Corporation CO).* The \$1,500,000 in compensation paid by Corporation CO is taken into account to determine whether Employee E.O. is one of the five highest compensated employees of Corporation CO for its 2027 taxable year.

(3) *Conclusion (Compensation paid by Corporation CP).* Corporations CO and CP are an affiliated group as defined in paragraph (c)(1)(ii) of this section. Therefore, the \$900,000 in compensation paid by Corporation CP is taken into account to determine whether Employee E.O. is one of the five highest compensated employees of Corporation CO for its 2027 taxable year. Because a publicly held corporation includes an

affiliated group for purposes of paragraph (c)(3) of this section, the result would be the same even if there were intermediary privately held subsidiaries between Corporations CO and CP as long as all these corporations comprised an affiliated group.

(4) *Conclusion (Compensation paid by Partnership CQ)*. Under paragraph (c)(3)(ii) of this section, Corporation CO's \$600,000 distributive share of Partnership CQ's deduction (50% of \$1,200,000) is compensation that is taken into account to determine whether Employee E.O. is one of the five highest compensated employees of Corporation CO for its 2027 taxable year. Because a publicly held corporation includes an affiliated group for purposes of paragraph (c)(3) of this section, the result would be the same even if there were an intermediary privately held subsidiary between Corporation CO and Partnership CQ (so that, instead of Corporation CO, an intermediary subsidiary was a partner in Partnership CQ), as long as Corporation CO and the intermediary subsidiary comprised an affiliated group.

(5) *Conclusion (Employee E.O. as a covered employee)*. Because the aggregate compensation taken into account with respect to Employee E.O. is \$3,000,000 (\$1,500,000 + \$900,000 + \$600,000), Employee E.O. is a covered employee of Corporation CO for its 2027 taxable year by reason of being one of its five highest compensated employees for the taxable year as provided in paragraph (c)(2)(i)(D) of this section (even though Employee E.O. is also a covered employee of Corporation CO for its 2027 taxable year by reason of being a covered employee for its 2026 taxable year (as provided in paragraph (c)(2)(i)(C) of this section)).

(6) *Conclusion (Amount disallowed as a deduction)*. Because the compensation paid by all affiliated group members is aggregated for purposes of section 162(m)(1), the aggregate compensation of \$3,000,000 exceeds the limitation in section 162(m)(1) and \$2,000,000 of the compensation paid to Employee E.O. is nondeductible. Corporations CO and CP each are treated as paying a ratable portion of the nondeductible compensation. Thus, two thirds of each corporation's payment will be nondeductible. Taking into account Corporation CO's \$600,000 distributive share of the Partnership CQ's deduction, Corporation CO has an otherwise allowable deduction of \$2,100,000 (\$1,500,000 + \$600,000). Therefore, Corporation CO has a nondeductible compensation expense of \$1,400,000 (\$2,100,000 × \$2,000,000/\$3,000,000). Corporation CP has an otherwise

allowable deduction of \$900,000, of which \$600,000 (\$900,000 × \$2,000,000/\$3,000,000) is a nondeductible compensation expense.

(DD) *Example 30 (Individual as one of the five highest compensated employees of a publicly held corporation that includes the affiliated group and affiliated groups of additional publicly held corporations)*—(1) *Facts*.

Corporations CR, CT, and CV are publicly held corporations for their 2027 taxable years. Corporations CS and CU are privately held for their 2027 taxable years. Corporation CT is a subsidiary of Corporation CS, which is a subsidiary of Corporation CR. Corporation CV is a subsidiary of Corporation CU, which is a subsidiary of Corporation CT. Corporations CR, CS, CT, CU, and CV are members of an affiliated group. Employee EP is an employee of Corporations CR, CS, CU, and CV. In 2027, Employee EP performs services for and receives compensation from Corporations CR, CS, CU, and CV. The total compensation paid to Employee EP from the affiliated group members is \$7,000,000 for the taxable year, of which Corporation CR pays \$1,200,000, Corporation CS pays \$1,800,000, Corporation CU pays \$1,500,000, and Corporation CV pays \$2,500,000.

(2) *Conclusion (Employee EP is eligible to be a covered employee of Corporation CR)*. Because Employee EP is an employee of Corporation CR, Employee EP is eligible to be one of the five highest compensated employees of Corporation CR. Even though Corporations CR, CS, CT, CU, and CV comprise an affiliated group as defined in paragraph (c)(1)(ii) of this section, because Corporations CT and CV are additional publicly held corporations of the affiliated group, the affiliated group contains affiliated groups of these additional publicly held corporations (as defined in paragraph (c)(2)(i)(D)(4) of this section). Compensation paid by the affiliated groups of these additional publicly held corporations is not taken into account to determine whether Employee EP is one of the five highest compensated employees of Corporation CR for its 2027 taxable year. Accordingly, Corporations CT and CU comprise an affiliated group of an additional publicly held corporation (Corporation CT), and compensation paid by Corporation CU is not taken into account to determine whether Employee EP is one of the five highest compensated employees of Corporation CR for its 2027 taxable year. Furthermore, Corporation CV is an affiliated group of an additional publicly held corporation (Corporation

CV), and compensation paid by Corporation CV is not taken into account to determine whether Employee EP is one of the five highest compensated employees of Corporation CR for its 2027 taxable year. Therefore, only the \$1,200,000 in compensation paid by Corporation CR and the \$1,800,000 paid by Corporation CS are taken into account to determine whether Employee EP is one of the five highest compensated employees of Corporation CR for its 2027 taxable year.

(3) *Conclusion (Employee EP is eligible to be a covered employee of Corporation CT)*. Because Corporation CT is a publicly held corporation, Corporations CT and CU comprise an affiliated group of an additional publicly held corporation (as defined in paragraph (c)(2)(i)(D)(4) of this section). Because an employee of any member of the affiliated group is eligible to be one of the five highest compensated employees of the publicly held corporation (regardless of whether the employee performs services for the publicly held corporation), Employee EP is eligible to be a covered employee of Corporation CT, even though Employee EP does not perform services for Corporation CT. Because only compensation paid by a member of the affiliated group of the additional publicly held corporation in the taxable year is taken into account to determine whether an individual is one of the five highest compensated employees with respect to the additional publicly held corporation, only compensation paid by Corporation CU is taken into account to determine whether Employee EP is one of the five highest compensated employees of Corporation CT for its 2027 taxable year. Accordingly, the \$1,500,000 in compensation paid by Corporation CU is taken into account to determine whether Employee EP is one of the five highest compensated employees of Corporation CT for its 2027 taxable year.

(4) *Conclusion (Employee EP is eligible to be a covered employee of Corporation CV)*. Because Employee EP is an employee of Corporation CV, Employee EP is eligible to be one of the five highest compensated employees of Corporation CV. Because Corporation CV is a publicly held corporation, Corporation CV comprises an affiliated group of an additional publicly held corporation (as defined in paragraph (c)(2)(i)(D)(4) of this section). Because only compensation paid by a member of the affiliated group of the additional publicly held corporation in the taxable year is taken into account to determine whether an individual is one of the five highest compensated employees with

respect to the additional publicly held corporation, only compensation paid by Corporation CV is taken into account to determine whether Employee EP is one of the five highest compensated employees of Corporation CV for its 2027 taxable year. Accordingly, the \$2,500,000 in compensation paid by Corporation CV is taken into account to determine whether Employee EP is one of the five highest compensated employees of Corporation CV for its 2027 taxable year.

(5) *Conclusion (Employee EP as covered employee of Corporation CR).* The \$1,200,000 in compensation paid by Corporation CR and the \$1,800,000 in compensation paid by Corporation CS are taken into account to determine whether Employee EP is one of the five highest compensated employees of Corporation CR for its 2027 taxable year. If, pursuant to paragraph (c)(2)(i)(D) of this section, Employee EP is a covered employee of Corporation CR, then Corporation CR's deduction for \$1,200,000 and Corporation CS's deduction for \$1,800,000 for the 2027 taxable year would be subject to the section 162(m)(1) limit. Because the compensation paid by the affiliated group members is aggregated for purposes of section 162(m)(1), the aggregate compensation of \$3,000,000 exceeds the limitation in section 162(m)(1) and \$2,000,000 of the compensation paid to Employee EP would be nondeductible. Corporations CR and CS each are treated as paying a ratable portion of the nondeductible compensation. Corporation CR has an otherwise allowable deduction of \$1,200,000, of which \$800,000 ( $\$1,200,000 \times \$2,000,000 / \$3,000,000$ ) would be a nondeductible compensation expense. Corporation CS has an otherwise allowable deduction of \$1,800,000, of which \$1,200,000 ( $\$1,800,000 \times \$2,000,000 / \$3,000,000$ ) would be a nondeductible compensation expense.

(6) *Conclusion (Employee EP as covered employee of Corporation CT).* The \$1,500,000 in compensation paid by Corporation CU is taken into account to determine whether Employee EP is one of the five highest compensated employees of Corporation CT for its 2027 taxable year. If, pursuant to paragraph (c)(2)(i)(D) of this section, Employee EP is a covered employee of Corporation CT, then Corporation CU's deduction for \$1,500,000 for the 2027 taxable year would be subject to the section 162(m)(1) limit. Accordingly, pursuant to paragraph (c)(2)(i)(D)(6) of this section, Corporation CU would have a nondeductible compensation expense of \$500,000.

(7) *Conclusion (Employee EP as covered employee of Corporation CV).* The \$2,500,000 in compensation paid by Corporation CV is taken into account to determine whether Employee EP is one of the five highest compensated employees of Corporation CV for its 2027 taxable year. If, pursuant to paragraph (c)(2)(i)(D) of this section, Employee EP is a covered employee of Corporation CV, then Corporation CV's deduction for \$2,500,000 for the 2027 taxable year would be subject to the section 162(m)(1) limit. Accordingly, Corporation CV would have a nondeductible compensation expense of \$1,500,000.

(EE) *Example 31 (Individual as one of the five highest compensated employees of a publicly held corporation that includes the affiliated group that chooses a parent corporation)—(1) Facts.* Corporations CX and CY are publicly held corporations for their 2027 taxable years. Corporations CW and CZ are privately held corporations for their 2027 taxable years. Corporations CX and CY are subsidiaries of Corporation CW. Corporations CX and CY each directly own 50% (by vote and value) of Corporation CZ's only class of stock. In 2027, Employee EQ performs services for and receives compensation from Corporations CW, CX, CY, and CZ. The total compensation paid to Employee EQ from all corporations is \$4,700,000 for the taxable year, of which Corporation CW pays \$1,500,000, Corporation CX pays \$900,000, Corporation CY pays \$1,700,000, and Corporation CZ pays \$600,000.

(2) *Conclusion (Employee EQ is eligible to be a covered employee of Corporations CX and CY).* Because Employee EQ is an employee of Corporations CX and CY, Employee EQ is eligible to be one of the five highest compensated employees of these publicly held corporations. Because both Corporations CX and CY are the highest publicly held corporations in the chain of includible corporations that comprise an affiliated group (composed of Corporations CW, CX, CY, and CZ) as defined in paragraph (c)(1)(ii) of this section, the affiliated group may choose to treat either Corporation CX or CY as the parent corporation for the 2027 taxable year. If the affiliated group chooses to treat Corporation CX as the parent corporation, then only compensation paid by Corporations CW, CX, and CZ is taken into account to determine whether Employee EQ is one of the five highest compensated employees of Corporation CX for the 2027 taxable year. Because Corporation CY is an affiliated group of the

additional publicly held corporation composed of one corporation (Corporation CY), only compensation paid by Corporation CY is taken into account to determine whether Employee EQ is one of the five highest compensated employees of Corporation CY. A similar analysis would apply if the affiliated group chose to treat Corporation CY as the parent.

(3) *Conclusion (Employee EQ as a covered employee of Corporation CX).* The \$1,500,000 in compensation paid by Corporation CW, the \$900,000 paid by Corporation CX, and the \$600,000 in compensation paid by Corporation CZ (that is, aggregate compensation of \$3,000,000) are taken into account to determine whether Employee EQ is one of the five highest compensated employees of Corporation CX for its 2027 taxable year. If, pursuant to paragraph (c)(2)(i)(D) of this section, Employee EQ is a covered employee of Corporation CX, then Corporation CW's deduction for \$1,500,000, Corporation CX's deduction for \$900,000, and Corporation CZ's deduction for \$600,000 for the 2027 taxable year would be subject to the section 162(m)(1) limit. Because the compensation paid by the affiliated group members is aggregated for purposes of section 162(m)(1), the aggregate compensation of \$3,000,000 exceeds the limitation in section 162(m)(1) and \$2,000,000 of the compensation paid to Employee EQ would be nondeductible. Corporations CW, CX, and CZ each are treated as paying a ratable portion of the nondeductible compensation. Corporation CW would have a nondeductible compensation expense of \$1,000,000 ( $\$1,500,000 \times \$2,000,000 / \$3,000,000$ ). Corporation CX would have a nondeductible compensation expense of \$600,000 ( $\$900,000 \times \$2,000,000 / \$3,000,000$ ). Corporation CZ would have a nondeductible compensation expense of \$400,000 ( $\$600,000 \times \$2,000,000 / \$3,000,000$ ).

(4) *Conclusion (Employee EQ as a covered employee of Corporation CY).* The \$1,700,000 in compensation paid by Corporation CY is taken into account to determine whether Employee EQ is one of the five highest compensated employees of Corporation CY for its 2027 taxable year. If, pursuant to paragraph (c)(2)(i)(D) of this section, Employee EQ is a covered employee of Corporation CY, then Corporation CY's deduction for \$1,700,000 for the 2027 taxable year would be subject to the section 162(m)(1) limit. Accordingly, Corporation CY would have a nondeductible compensation expense of \$700,000.

(3) \* \* \*

(iii) *Compensation paid by a controlled foreign corporation that is a member of an affiliated group.* For purposes of paragraph (c)(3)(i) of this section, compensation includes a publicly held corporation's pro rata share (as determined under the principles of sections 951(a)(2) and 951A(e)(1)) of the amounts that would be claimed by a controlled foreign corporation (as defined in section 957) that is a member of an affiliated group (as defined in paragraph (c)(1)(ii) of this section) as properly allocable to gross income included under sections 951(a)(1) and 951A(a) under sections 954(b)(5), 951A(c)(2)(A)(ii), and similar provisions, determined without regard to the disallowance of any such expenses by reason of section 162(m) and these regulations, for compensation expenses attributable to the remuneration paid by the controlled foreign corporation to a covered employee of a publicly held corporation for services performed by the covered employee.

(iv) *Amounts paid to individuals performing substantially all their services for a publicly held corporation.* Notwithstanding paragraph (c)(2)(i)(D)(2) of this section, for purposes of paragraph (c)(2)(i)(D) of this section, an employee of a publicly held corporation includes an individual who, pursuant to section 3401(c), is an employee of a person other than the publicly held corporation but performs substantially all the individual's services during the relevant taxable year for the publicly held corporation. Consequently, for purposes of paragraph (c)(3) of this section, compensation includes the aggregate amount allowable as a deduction to the publicly held corporation under chapter 1 of the Internal Revenue Code for the taxable year (determined without regard to section 162(m)(1)) to obtain the services performed by such individual, whether or not the particular services that give rise to the deduction were performed during the relevant taxable year. This rule applies regardless of how the amounts allowable as a deduction are paid or denominated, and regardless of whether the individual is compensated directly or by a third-party payor, including a related organization or certified professional employer organization under section 7705. The disallowance under paragraph (b) of this section likewise is applied to those amounts, however denominated, otherwise allowable as a deduction to obtain those services. Nothing in the previous sentence is intended to imply that such amounts paid to a third party

for services by a covered employee, however denominated, are not already treated as remuneration for those services and thus compensation for purposes of paragraph (c)(3) of this section.

\* \* \* \* \*

(D) *Example 4—(1) Facts.* Corporation U is a publicly held corporation for its 2027 taxable year and is not a member of an affiliated group. Corporation U has a services agreement with unrelated Corporation V. In Corporation U's 2027 taxable year, it pays \$1,500,000 to Corporation V pursuant to the agreement in exchange for the services of an interim chief accountant (Individual E) in the same year. The \$1,500,000 is otherwise deductible for Corporation U's 2027 taxable year. Individual E performs substantially all Individual E's services in 2027 for Corporation U.

(2) *Conclusion.* Pursuant to paragraph (c)(3)(iv) of this section, Individual E is treated as an employee of Corporation U for purposes of this section. The \$1,500,000 paid to Corporation V by Corporation U in 2027 is compensation within the meaning of paragraph (c)(3) of this section and is taken into account to determine whether Individual E is a covered employee as one of the five highest compensated employees of Corporation U for its 2027 taxable year. If, pursuant to paragraph (c)(2)(i)(D) of this section, Individual E is a covered employee of Corporation U, then Corporation U's deduction for \$1,500,000 for the 2027 taxable year is subject to the section 162(m)(1) limit. Because a publicly held corporation includes an affiliated group for purposes of paragraph (c)(3) of this section, the result would be the same even if Corporation U owned a privately held subsidiary, and Individual E performed substantially all Individual E's services for the subsidiary. In addition, the result would also be the same if Individual E performed substantially all Individual E's services for both Corporation U and its subsidiary, as long as Corporation U and its subsidiary comprised an affiliated group (regardless of whether Corporation U or its subsidiary paid the \$1,500,000 to Corporation V). In such case, pursuant to paragraph (c)(1)(ii) of this section, the amount disallowed as a deduction would be prorated between Corporation U and its subsidiary. Furthermore, the result would be the same even if Individual E were an employee of Corporation U (regardless of whether Individual E were also an employee of Corporation V).

(E) *Example 5—(1) Facts.* Corporation W is a publicly held corporation for its

2027 taxable year and is not a member of an affiliated group. Corporation W is a partner in Partnership X (a partnership for Federal tax purposes), that owns all the stock of Corporation Y. Under the partnership agreement, Corporation W has a 50% distributive share of the partnership's income, gain, loss, deductions, and credits. These allocations comply with section 704(b) and its regulations. Individual F is a partner of Partnership X. In 2027, Individual F performs services for the partnership, and the partnership pays \$1,000,000 to Individual F as a guaranteed payment for these services. With respect to the \$1,000,000 paid to Individual F, a deduction of \$500,000 is allocated to Corporation W. Corporation W's \$500,000 distributive share of the partnership's deduction is reported separately to Corporation W pursuant to § 1.702-1(a)(8)(iii). Individual F is also an employee (within the meaning of section 3401(c)) of Corporation Y. In Corporation W's 2027 taxable year, it pays \$8,000,000 to Corporation Y in exchange for Individual F's services. The \$8,000,000 is otherwise deductible for Corporation W's 2027 taxable year. Individual F performs substantially all Individual F's services in 2027 for Corporation W.

(2) *Conclusion.* Pursuant to paragraph (c)(3)(iv) of this section, Individual F is treated as an employee of Corporation W for purposes of this section. The entire \$8,000,000 paid to Corporation Y by Corporation W in 2027 is compensation within the meaning of paragraph (c)(3) of this section and is taken into account to determine whether Individual F is one of the five highest compensated employees of Corporation W for its 2027 taxable year. Because Corporation W's \$500,000 distributive share of the partnership's deduction is attributable to the compensation paid by the partnership for services performed by Individual F (who is treated as an employee of Corporation W), the \$500,000 is compensation within the meaning of paragraph (c)(3)(ii) of this section. Accordingly, Corporation W's \$500,000 distributive share of the partnership's deduction is aggregated with Corporation W's deduction for \$8,000,000 paid to Corporation Y in determining whether Individual F is a covered employee as one of the five highest compensated employees of Corporation W for its 2027 taxable year. If, pursuant to paragraph (c)(2)(i)(D) of this section, Individual F is a covered employee of Corporation W, then Corporation W's deduction for \$8,500,000 for its 2027 taxable year is subject to the section 162(m)(1) limit.



Because a publicly held corporation includes an affiliated group for purposes of paragraph (c)(3) of this section, the result would be the same even if there were an intermediary privately held subsidiary between Corporation W and Partnership X (so that, instead of Corporation W, an intermediary subsidiary was a partner in Partnership X), as long as Corporation W and the intermediary subsidiary comprised an affiliated group, and as long as Individual F performed substantially all Individual F's services for the intermediary subsidiary. Furthermore, the result would also be the same if Individual F performed substantially all Individual F's services for both Corporation W and the intermediary subsidiary (regardless of whether Corporation W or the intermediary subsidiary paid the \$8,000,000 to Corporation Y). In such case, pursuant to paragraph (c)(1)(ii) of this section, the amount disallowed as a deduction would be prorated between Corporation W and the intermediary subsidiary.

\* \* \* \* \*

- (h) \* \* \*  
(2) \* \* \*  
(ii) \* \* \*

(C) *Definition of compensation.* The definition of compensation provided in paragraph (c)(3)(ii) of this section (relating to distributive share of partnership deductions for compensation paid) applies to any deduction for compensation that is paid after December 18, 2020. The definition of compensation in paragraph (c)(3)(ii) of this section does not apply to compensation paid pursuant to a written binding contract that is in effect on December 20, 2019, and that is not materially modified after that date. For purposes of paragraph (h)(2)(C) of this section, written binding contract and material modification have the same meanings as provided in paragraphs (g)(1) and (2) of this section. The definition of compensation provided in paragraphs (c)(3)(iii) and (iv) of this section and the examples in paragraphs (c)(3)(vi)(D) and (E) of this section apply to any deduction for compensation that is otherwise deductible for taxable years beginning after the later of December 31, 2026, or the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

\* \* \* \* \*

(F) *Five highest compensated employees.* Paragraph (c)(2)(i)(D) of this section (describing the five highest compensated employees of a publicly held corporation) and the examples in paragraphs (c)(2)(vii)(CC) through (EE)

of this section apply to taxable years beginning after the later of December 31, 2026, or the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

(G) *Amendment to paragraph (c)(1)(vi)(W)(2) of this section.* The amendment to paragraph (c)(1)(vi)(W)(2) of this section (*Example 23*) to reference paragraph (c)(1)(vi)(T) of this section (*Example 20*) is proposed to apply to taxable years ending on or after January 16, 2025.

**Douglas W. O'Donnell,**  
*Deputy Commissioner.*

[FR Doc. 2025-00728 Filed 1-14-25; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2024-0123]

RIN 1625-AA00

#### Safety Zone; San Pedro Bay, Los Angeles and Long Beach, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish moving safety zones around vessels carrying oversized cargo within the Los Angeles-Long Beach Port Complex in San Pedro Bay. Safety zones around vessels carrying oversized cargo during movements within the port complex would ensure navigational safety and minimize mishaps disrupting the navigational channels. Entry of persons or vessels into these safety zones would be prohibited unless specifically authorized by the Captain of the Port (COTP) Los Angeles-Long Beach or their designated representative. We invite your comments on this proposed rulemaking. **DATES:** Comments and related material must be received by the Coast Guard on or before February 18, 2025.

**ADDRESSES:** You may submit comments identified by docket number USCG-2024-0123 using the Federal Decision-Making Portal at <https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-

word-or-less proposed rule summary will be available in this same docket.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email LCDR Kevin Kinsella, Waterways Management, U.S. Coast Guard Sector Los Angeles-Long Beach; telephone (310) 357-1603, email [D11-SMB-SectorLALB-WWM@uscg.mil](mailto:D11-SMB-SectorLALB-WWM@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

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

##### II. Background, Purpose, and Legal Basis

Within the past two years, there have been six arrivals of vessels carrying a total of 16 ship-to-shore cranes to the Port Complex. The Coast Guard anticipates future deliveries of additional cranes and other oversized cargo. The Coast Guard previously established seven temporary safety zones and two extensions of those rules for past arrivals, shifts, and departures of oversized critical infrastructure cargo to the port complex. With this proposed rule, we propose establishing a permanent safety zone around all vessels moving oversized cargos that would be enforced only when the vessels are transiting into, out of, or within the port complex. The COTP has determined that potential hazards associated with the oversized cargo movements would be a safety concern for anyone within a 500-foot radius of the vessel carrying oversized cargo.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters during movements of oversized cargo within the port complex. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

##### III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone for all vessels carrying oversized cargo inside the port complex. The safety zone would cover all navigable waters within a 500-foot radius of a vessel while it is in transit into, out of, and within the Los Angeles-Long Beach port complex. The duration of the zone is intended to ensure the safety of vessels and these navigable waters during scheduled movements. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The