availability of this material at the FAA, call 206–231–3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Issued on December 21, 2023.

Caitlin Locke,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–121010–17]

RIN 1545–BO11

Bad Debt Deductions for Regulated Financial Companies and Members of Regulated Financial Groups

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would provide guidance regarding whether a debt instrument is worthless for Federal income tax purposes. The proposed regulations are necessary to update the standard for determining when a debt instrument held by a regulated financial company or a member of a regulated financial group will be conclusively presumed to be worthless. The proposed regulations will affect regulated financial companies and members of regulated financial groups that hold debt instruments.

DATES: Written or electronic comments and requests for a public hearing must be received by February 26, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–121010–17) 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. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.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–121010–17), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stephanie D. Floyd at (202) 317–7053; concerning submissions of comments and requesting a hearing, Vivian Hayes at (202) 317–6901 (not toll-free numbers) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 166 of the Internal Revenue Code (Code). These proposed amendments (proposed regulations) would update the standard in the current regulations under § 1.166–2 (existing regulations) for determining when a debt instrument held by a regulated financial company or a member of a regulated financial group will be conclusively presumed to be worthless.

1. Existing Rules

Section 166(a)(1) provides that a deduction is allowed for any debt that becomes worthless within the taxable year. Section 166(a)(2) permits the Secretary of the Treasury or her delegate (Secretary) to allow a taxpayer to deduct a portion of a partially worthless debt that does not exceed the amount charged-off within the taxable year. The existing regulations do not define ''worthless.'' In determining whether a debt is worthless in whole or in part, the IRS considers all pertinent evidence, including the value of any collateral securing the debt and the financial condition of the debtor. *See* § 1.166–2(a). The existing regulations provide further that, when the surrounding circumstances indicate that a debt is worthless and uncollectible and that legal action to enforce payment would in all probability not result in the satisfaction of execution on a judgment, legal action is not required in order to determine that the debt is worthless. *See* § 1.166–2(b).

The existing regulations provide two alternative conclusive presumptions of worthlessness for bad debt. First, § 1.166–2(d)(1) generally provides that if a bank or other corporation subject to supervision by Federal authorities, or by State authorities maintaining substantially equivalent standards, charges off a debt in whole or in part, either (1) in obedience to the specific orders of such authorities, or (2) in accordance with the established policies of such authorities, and such authorities at the first audit subsequent to the charge-off confirm in writing that the charge-off would have been subject to specific orders, then the debt is conclusively presumed to have become worthless, in whole or in part, to the extent charged off during the taxable year.

Second, § 1.166–2(d)(3) generally provides that a bank (but not other corporations) subject to supervision by Federal authorities, or by State authorities maintaining substantially equivalent standards, may elect to use a method of accounting that establishes a conclusive presumption of worthlessness for debts, provided the bank's supervisory authority has made an express determination that the bank maintains and applies loan loss classification standards that are consistent with the regulatory standards of that supervisory authority. Section 1.166–2(d)(1) and (3) are collectively referred to as the ''Conclusive Presumption Regulations.''

2. Generally Accepted Accounting Principles Prior to the Current Expected Credit Loss Revisions

For financial reporting purposes, financial institutions in the United States follow the U.S. Generally Accepted Accounting Principles (GAAP) issued by the Financial Accounting Standards Board (FASB). The long-standing GAAP model for recognizing credit losses is referred to as the ''incurred loss model'' because it delays recognition of credit losses until it is probable that a loss has been incurred. Under the incurred loss model, an entity considers only past events and current conditions in measuring the incurred credit loss. This method does not require or allow the incorporation of economic forecasts, or consideration of industry cycles. The incurred loss model permits institutions to use various methods to estimate credit losses, including historical loss methods, roll-rate methods, and discounted cash flow methods. The GAAP accounting for credit losses has been revised with the introduction of the current expected credit loss methodology for estimating allowance for credit losses, as further described in section 3 of this Background.

Under the GAAP incurred loss model, an institution must first assess whether a decline in fair value of a debt security below the amortized cost of the security is a temporary impairment or other than temporary impairment (OTTI). If an entity intends to sell the security or more likely than not will be required to sell the security before recovery of its amortized cost basis less any current-period credit loss, OTTI will be recognized in earnings equal to the difference between the investment's amortized cost basis and its fair value at the balance sheet date. In assessing whether the entity more likely than not will be required to sell the security before recovery of its amortized cost basis less any current period credit losses, an entity considers various factors such as the payment structure of the debt security, adverse conditions related to the security, or the length of time and the extent to which the fair value has been less than the amortized cost basis.

By contrast, if an entity determines OTTI exists but does not intend to sell the debt security or it is more likely than not that the entity will not be required to sell the debt security prior to its anticipated recovery, the impairment is separated into two parts: the portion of OTTI related to credit loss on a debt security (Credit-Only OTTI) and the portion of OTTI related to other factors but not credit (Non-Credit OTTI). Credit-Only OTTI will be recognized in earnings on the income statement, but Non-Credit OTTI will be reported on the balance sheet as Other Comprehensive Income. FASB Staff Positions, FSP FAS 115–2 and 124–2, Recognition and Presentation of Other-Than-Temporary Impairments (later codified as part of ASC 320).

3. The Current Expected Credit Loss Standard

On June 16, 2016, FASB introduced a new standard, the Accounting Standards Update (ASU) No. 2016–13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* (Update). The Update, which replaces the incurred loss model in GAAP, became effective for many entities for fiscal years beginning after December 15, 2019, and became generally effective for all entities for fiscal years beginning after December 15, 2022.

The Update was in response to concerns by regulators that the incurred loss model under GAAP restricted the ability to record credit losses that are expected but that do not yet meet the probable threshold. The Update is based on a current expected credit loss model (CECL Model), which generally requires the recognition of expected credit loss (ECL) in the allowance for credit losses upon initial recognition of a financial asset, with the addition to the allowance recorded as an offset to current earnings. Subsequently, the ECL must be assessed each reporting period, and both negative and positive changes to the ECL must be recognized through an adjustment to the allowance and to earnings. ASC 326–20–30–1; ASC 326–20–35–1. In estimating the ECL under the CECL Model, institutions must consider information about past events, current conditions, and reasonable and supportable forecasts relevant to assessing the collectability of the cash flow of financial assets. The CECL Model does not prescribe the use of specific estimation methods for measuring the ECL. However, an entity will need to make adjustments to provide an estimate of the ECL over the remaining contractual life of an asset and to incorporate reasonable and supportable forecasts about future economic conditions in the calculations. A charge-off of a financial asset, which may be full or partial, is taken out of the allowance in the period in which a financial asset is deemed uncollectible. ASC 326–20–35–8. At that time the carrying value of the financial asset is also written down. See ASC 326–20–55–52. The ECL recognized under the CECL Model cannot be used to determine bad debt deductions under section 166 because the ECL recognized under the CECL Model would be a current deduction for estimated future losses.

4. Insurance Company Financial Accounting

Publicly traded insurance companies report their financial transactions and losses to the Securities and Exchange Commission in accordance with GAAP. Privately held insurance companies may also report their financial transactions and losses in accordance with GAAP. However, in the United States, all insurance companies, whether publicly traded or privately held, are regulated by State governments in the States in which they are licensed to do business and are required by State law to prepare financial statements in accordance with statutory accounting principles (Statements of Statutory Accounting Principles, known as SSAPs or SAPs). SSAPs serve as a basis for preparing financial statements for insurance companies in accordance with statutes or regulations promulgated by various States. SSAPs establish guidelines that must be followed when an asset is impaired. SSAPs are detailed in the National Association of Insurance Commissioner's (NAIC's) Accounting Practices and Procedures Manual. Generally, the NAIC's guidelines require the carrying value of an asset to be written down if the loss of principal is OTTI. The OTTI standard is found in several different statutory accounting provisions, including SSAP 43R (loan-backed and structured securities) and SSAP 26 (bonds, excluding loan-backed and structured securities).

5. IRS Directives

In 2012, in response to comments regarding the significant burden on both insurance companies and the IRS's Large Business and International Division (LB&I) in dealing with audits relating to the accounting of loss assets, the IRS issued an insurance industry directive to its LB&I examiners. See *I.R.C. § 166: LB&I Directive Related to Partial Worthlessness Deduction for Eligible Securities Reported by Insurance Companies,* LB&I 04–0712–009 (July 30, 2012) (Insurance Directive). The Insurance Directive states that LB&I examiners would not challenge an insurance company's partial worthlessness deduction under section 166(a)(2) for the amount of the SSAP 43R—Revised Loan-Backed and Structured Securities (September 14, 2009) credit-related impairment charge-offs of ''eligible securities'' as reported according to SSAP 43R on its annual statement if the company follows the procedure set forth in that directive. The definition of ''eligible securities'' in the Insurance Directive covers investments in loan-backed and structured securities within the scope of SSAP 43R, subject to section 166 and not subject to section 165(g)(2)(C) of the Code, including real estate mortgage investment conduit regular interests. Thus, the Insurance Directive allowed insurance companies to use the financial accounting standard for tax purposes in limited circumstances regardless of whether the regulatory standard is precisely the same as the tax standard for worthlessness under section 166.

In 2014, the IRS issued another industry directive to LB&I examiners regarding bad debt deductions claimed under section 166 by a bank or bank subsidiary. See *LB&I Directive Related to § 166 Deductions for Eligible Debt and Eligible Debt Securities,* LB&I–04–1014–008 (October 24, 2014) (Bank Directive). Unlike insurance companies, banks generally determine loss deductions for partial and wholly worthless debts in the same manner for GAAP and regulatory purposes. The Bank Directive generally allowed for loss deductions for partial and wholly worthless debts to follow those reported for GAAP and regulatory purposes.

6. Summary of Comments Received in Response to Notice 2013–35

In 2013, the IRS issued Notice 2013–35, 2013–24 I.R.B. 1240, requesting comments on the Conclusive Presumption Regulations. The Treasury

Department and the IRS noted that since the adoption of the Conclusive Presumption Regulations, there have been significant changes made to the regulatory standards relevant for loan charge-offs. In light of those changes, Notice 2013–35 sought comments on whether (1) changes that have occurred in bank regulatory standards and processes since adoption of the Conclusive Presumption Regulations require amendment of those regulations, and (2) application of the Conclusive Presumption Regulations continues to be consistent with the principles of section 166. Comments were also sought on the types of entities that are permitted, or should be permitted, to apply a conclusive presumption of worthlessness.

Commenters responded that the Conclusive Presumption Regulations are outdated and contain requirements for a bad debt deduction that taxpayers can no longer satisfy. For example, one commenter noted that § 1.166–2(d)(1) is unusable by community banks because banking regulators will not issue written correspondence confirming that a charge-off is being made for either of the reasons set forth in § 1.166–2(d)(1). A commenter similarly noted that regulators generally no longer provide specific orders on a loan-by-loan basis and may never confirm the appropriateness of a charge-off in writing. Another commenter noted that for certain banks the election under § 1.166–2(d)(3) was automatically revoked under § 1.166–2(d)(3)(iv)(C) during the 2008 financial crisis because bank examiners ordered greater charge-offs than those initially taken by the banks, and then could not provide the required express determination letter stating that the banks maintained and applied loan loss classification standards consistent with the regulatory standards of the supervisory authority.

Commenters noted the advantages of retaining a conclusive presumption of worthlessness. One commenter stated that a conclusive presumption helps to avoid costly factual disputes between the IRS and taxpayers. Another commenter stated that it is in the best interests of all stakeholders to ensure that duplicative efforts by Federal and State bank regulators and the IRS do not occur. A commenter suggested that the IRS follow determinations made by regulators that routinely and thoroughly examine the financial and accounting records and processes of financial institutions such as banks, bank holding companies, and their non-bank subsidiaries. Another commenter noted that for decades virtually all community banks have conformed their losses on loans for income tax purposes to losses recorded for regulatory reporting purposes. Several commenters recommended that § 1.166–2(d)(1) and (3) should be replaced with a single conclusive presumption rule.

Commenters requested that the Conclusive Presumption Regulations be revised to apply to any institution that is subject to consolidated supervision by the Board of Governors of the Federal Reserve System (Federal Reserve), including systemically important financial institutions (SIFIs) and subsidiaries and affiliates of SIFIs, because these institutions are required to follow a strict process for determining the amounts of the allowance for credit losses under GAAP for financial reporting purposes and the Federal Reserve's examination will focus on the consistent application and adherence to this process. Another commenter suggested that the election under § 1.166–2(d)(3) should be extended to bank holding companies and their nonbank subsidiaries, and potentially to other regulated financial institutions that are examined by the same primary supervisory authority or regulator.

Commenters stated that the GAAP loss standard and the accounting standards used by insurance companies for determining whether a debt is worthless are sufficiently similar to the tax standards for worthlessness under section 166 and, therefore, should be used in formulating a revised conclusive presumption rule. Commenters argued that in most cases, any divergence between the various standards will not be significant enough to result in a material acceleration of loss recognition for Federal income tax purposes. Commenters specifically requested that the Conclusive Presumption Regulations be revised to include all insurance company debts, not just the eligible securities covered in the Insurance Directive. Commenters noted that, in applying the OTTI standard set forth in the SSAPs, insurers consider similar factors to the ones examined under the tax rules such as the adequacy of the collateral or the income stream in determining whether a debt is worthless for purposes of section 166. Commenters stated that a critical condition for coverage under the existing regulations is whether Federal or State regulators have the authority to compel the charge-off on the financial statements of the company. Commenters said that State insurance regulators have this authority since they can mandate a charge-off if an insurance company has not complied with the State law accounting requirement that requires the charge-off.

Commenters varied in their recommendations of what process the IRS should require in revised conclusive presumption regulations to verify that the regulated entity applied appropriate regulatory standards in taking a charge-off. Some commenters recommended that the IRS require an attestation from the taxpayer that the taxpayer has reported worthless debts consistently for tax and regulatory reporting purposes similar to the taxpayer self-certification statement required under the Insurance Directive. Commenters stated that a new self-certification requirement adopted by the IRS could replace the requirement in the existing regulations to obtain written confirmation from regulators. Another commenter suggested that a taxpayer claiming the benefit of the conclusive presumption should file a signed statement with its tax return listing the taxpayer's Federal and State regulators and stating that, for each bad debt deducted under section 166 on the tax return, the taxpayer has charged off the same amount on its financial statements.

Explanation of Provisions

1. Rationale for the Proposed Amendments to § 1.166–2(d)

Regulated financial companies and members of regulated financial groups are generally subject to capital requirements, leverage requirements, or both. A tension exists between the incentives of regulated entities and the incentives of their regulators. An entity that is subject to regulatory capital requirements has an incentive not to charge-off debt assets prematurely, in order to preserve the amount of its capital. Conversely, a regulator that relies on capital or leverage requirements is concerned with ensuring that capital is not overstated, and therefore has an incentive to ensure that regulated entities do not defer charge-offs of losses on loans and other debt instruments. Regulators have provided guidance to those financial companies to ensure they charge off debt losses appropriately.[1] This tension

[1] *See, for example, Interagency Policy Statement on Allowances for Credit Losses,* 85 FR 32991 (June 1, 2020) (providing guidance to financial institutions from the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration on allowances for credit losses in response to changes to GAAP); *Regulatory Capital Rule: Implementation and Transition of the Current Expected Credit Losses Methodology for Allowances and Related Adjustments to the Regulatory Capital Rule and Conforming Amendments to Other Regulations,* 84 FR 4222 (2019) (adopting final rule to address changes to credit loss accounting under

results in a balance with respect to the timing of charge-offs.

The Treasury Department and the IRS believe that regulated financial companies and members of regulated financial groups described in the proposed regulations are subject to regulatory and accounting standards for charge-offs that are sufficiently similar to the Federal income tax standards for determining worthlessness under section 166. Both GAAP and the SSAPs use a facts and circumstance analysis that takes into account all available information related to the collectability of the debt. The analysis considers the value of any collateral securing the debt and the financial condition of the debtor, which are factors that are also evaluated under the tax rules for determining worthlessness under section 166.

As described in part 5 of the Background, the IRS previously has recognized the significant administrative burden for taxpayers and the IRS to independently determine worthlessness amounts under section 166(a)(2) and has accepted charge-off amounts reported for the incurred loss model previously used by GAAP and for regulatory purposes, as well as in accordance with the SSAPs, as evidence of worthlessness. In the Bank Directive, the IRS accepted charge-off amounts reported by banks and bank subsidiaries for the incurred loss model previously used by GAAP and for regulatory purposes as sufficient evidence of worthlessness. Similarly, in the Insurance Directive, the IRS permitted the use of the insurance company's SSAP 43R credit-related impairment charge-offs for the same securities as reported on its annual statement regardless of whether the regulatory standard is precisely the same as the definition of worthlessness under section 166. Thus, the IRS previously has recognized that the present values of timing differences in taxable income that arise from applying the regulatory standards instead of the tax standards to determine worthlessness are likely to be minor and therefore do not outweigh the costs of having two different standards for book and tax purposes.

Based on the foregoing, the Treasury Department and the IRS believe it is appropriate to provide conclusive presumption rules for regulated financial companies and members of regulated financial groups.

Recently, Congress has directed insurance companies to follow their financial statements prepared in accordance with GAAP in certain circumstances. *See* sections 451(b)(3) and 56A(b) of the Code. Section 451 provides the general rule for the taxable year of inclusion of gross income. Section 451(b) and (c) were amended by section 13221 of Public Law 115–97 (131 Stat. 2054), commonly referred to as the Tax Cuts and Jobs Act. For taxpayers using an accrual method of accounting, section 451(b) requires the recognition of income at the earliest of when the all events test is met or when any item of income is taken into account as revenue in the taxpayer's applicable financial statement (AFS). Section 451(b)(3) defines AFS. Section 451(b)(3) and § 1.451–3(a)(5) list in descending priority the financial statements that can be considered an AFS for purposes of income inclusion under section 451(b) and § 1.451–1(a). Highest priority is given to a financial statement that is certified as being prepared in accordance with GAAP, and lowest priority is assigned to, among other things, non-GAAP financial statements filed with a State government or State agency or a self-regulatory organization including, for example, a financial statement filed with a State agency that regulates insurance companies or the Financial Industry Regulatory Authority.

Section 10101 of Public Law 117–169, 136 Stat. 1818, 1818–1828 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022, amended section 55 of the Code to impose a new corporate alternative minimum tax (CAMT) based on the ''adjusted financial statement income'' (AFSI) of an applicable corporation for taxable years beginning after December 31, 2022. For purposes of sections 55 through 59 of the Code, the term AFSI means, with respect to any corporation for any taxable year, the net income or loss of the taxpayer set forth on the taxpayer's AFS of such taxable year, adjusted as provided in section 56A. *See* section 56A(a). Section 56A(b) defines ''applicable financial statement'' by reference to section 451(b)(3) for purposes of determining the adjusted financial statement income on which applicable corporations base their tentative minimum tax under section 55(b). For purposes of section 56A, the term AFS means, with respect to any taxable year, an AFS as defined in section 451(b)(3) or as specified by the Secretary in regulations or other guidance that covers such taxable year. *See* section 56A(b).

The Treasury Department and the IRS believe that, consistent with recent legislation enacted and regulations promulgated in other contexts, for purposes of determining whether a debt instrument is worthless for Federal income tax purposes, insurance companies should first rely on GAAP financial statements that are prioritized in these proposed regulations and then, in the absence of such a GAAP financial statement, should rely on their annual statement.

2. Description of Proposed Amendments to § 1.166–2(d)

These proposed regulations would revise § 1.166–2(d) to permit ''regulated financial companies,'' as defined in proposed § 1.166–2(d)(4)(ii), and members of ''regulated financial groups,'' as defined in proposed § 1.166–2(d)(4)(iii), to use a method of accounting under which amounts charged off from the allowance for credit losses, or pursuant to SSAP standards, would be conclusively presumed to be worthless for Federal income tax purposes (Allowance Charge-off Method). Proposed § 1.166–2(d)(1) would allow these taxpayers to conclusively presume that charge-offs from the allowance for credit losses of debt instruments subject to section 166 or, in the case of insurance companies that do not produce GAAP financial statements for substantive non-tax purposes, charge-offs pursuant to SSAP standards, satisfy the requirements for a bad debt deduction under section 166. The proposed regulations do not address when a debt instrument qualifies as a security within the meaning of section 165(g)(2)(C) and therefore would not change the scope of debt instruments to which section 166 applies.

The definition of a ''regulated financial company'' in proposed § 1.166–2(d)(4)(ii) includes entities that are regulated by insurance regulators and various Federal regulators including the Federal Housing Finance Agency (FHFA) and the Farm Credit Administration (FCA). The Housing and Economic Recovery Act of 2008 established the FHFA as an independent agency responsible for regulating the safety and soundness of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (Government-Sponsored Enterprises, or GSEs). The FHFA has a statutory responsibility to ensure that the GSEs operate in a safe and sound manner, which the FHFA accomplishes through supervision and regulation, including the supervision and regulation of accounting and disclosure and capital adequacy. Further, the FHFA may order the GSEs to classify and charge-off loans, with loan

GAAP, including banking organizations' implementation of the CECL Model).

classification generally following bank regulatory standards.

The definition of a ''regulated financial company'' in proposed § 1.166–2(d)(4)(ii) also includes Farm Credit System (FCS) institutions subject to the provisions of the Farm Credit Act of 1971. The FCA, an independent Federal agency, is the Federal regulator that examines the safety and soundness of all FCS institutions through regulatory oversight. Including FCS institutions in the definition of regulated financial company is consistent with the existing regulations, which define ''banks'' to include institutions that are subject to the supervision of the FCA. *See* § 1.166–2(d)(4)(i).

The definition of a ''regulated financial company'' in proposed § 1.166–2(d)(4)(ii) does not include credit unions or U.S. branches of foreign banks. The proposed regulations do not address how credit unions or U.S. branches of foreign banks determine charge-offs since the IRS did not receive any comments on this topic in response to Notice 2013–35. Moreover, many credit unions are not subject to Federal income tax. However, the Treasury Department and the IRS request comments regarding whether and, if so, how the proposed regulations should be modified to apply to credit unions or U.S. branches of foreign banks.

The definition of a ''regulated financial company'' in proposed § 1.166–2(d)(4)(ii) also does not include non-bank SIFIs. Treasury and the IRS would need to understand the extent to which prudential or other regulators of non-bank SIFIs apply regulatory standards for worthlessness that are sufficiently close to tax standards before determining whether the rules provided in the proposed regulations should apply to those SIFIs.

The definition of ''regulated insurance company'' in proposed § 1.166–2(d)(4)(vii) does not include corporations that, although licensed, authorized, or regulated by one or more States to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3) of the Code) in such States, are not engaged in regular issuances of (or subject to ongoing liability with respect to) insurance, reinsurance, or annuity contracts with persons that are not related persons (within the meaning of section 954(d)(3)). The Treasury Department and the IRS request comments regarding whether and how the proposed regulations should be modified to include a reinsurance entity that regularly issues reinsurance contracts only to related persons, provided the risks reinsured are regularly those of persons other than related persons.

The term ''financial statement'' is defined in proposed § 1.166–2(d)(4)(ix) broadly to include a financial statement provided to a bank regulator, along with any amendments or supplements to that financial statement. The Treasury Department and the IRS note that many insurance companies prepare GAAP financial statements. Therefore, the term ''financial statement'' includes a financial statement based on GAAP that is prepared contemporaneously with a financial statement prepared in accordance with the standards set out by the NAIC and given to creditors for purposes of making lending decisions. However, the Treasury Department and the IRS also understand that there are insurance companies that do not prepare GAAP financial statements but, for substantive non-tax purposes, use the SSAP financial statements discussed above, which may not have the functional equivalent of an allowance from which charge-offs are made. In order to extend conformity to insurance company taxpayers that do not prepare GAAP financial statements for substantive non-tax purposes, the Treasury Department and the IRS propose to allow these taxpayers to use their SSAP financial statements for purposes of determining the amount of bad debt deduction under, and in the manner prescribed in, the proposed regulations. Thus, the proposed regulations would direct insurance companies to first rely on a financial statement certified as prepared in accordance with GAAP that is a Form 10–K or an annual statement to shareholders. If no such financial statement exists, the proposed regulations would direct insurance companies to next rely on a financial statement that is based on GAAP that is (1) given to creditors for purposes of making lending decisions, (2) given to equity holders for purposes of evaluating their investments in the regulated financial company or member of a regulated financial group, or (3) provided for other substantial non-tax purposes that also meet certain criteria set forth in these proposed regulations. If an insurance company does not have either of these two types of financial statements based on GAAP, the insurance company would then rely on a financial statement prepared in accordance with the standards set forth by the NAIC and filed with the insurance regulatory authorities of a State that is the principal insurance regulator of the insurance company. Accordingly, the term ''financial statement'' would be defined in the insurance industry context under proposed § 1.166–2(d)(4)(ix)(D) to include a financial statement that is prepared in accordance with standards set out by the NAIC and filed with State insurance regulatory authorities. The Treasury Department and the IRS request comments regarding whether these financial statements should be assigned different levels of priority and on this definition generally.

The term ''charge-off'' is defined in proposed § 1.166–2(d)(4)(i) to mean an accounting entry or set of accounting entries for a taxable year that reduces the basis of the debt when the debt is recorded in whole or in part as a loss asset on the applicable financial statement of the regulated financial company or the member of a regulated financial group for that year. For a regulated financial company that is a regulated insurance company that has as its applicable financial statement a financial statement described in proposed § 1.166–2(d)(4)(ix)(D), the term charge-off is defined in the proposed regulations to mean an accounting entry or set of accounting entries that reduces the debt's carrying value and results in a realized loss or a charge to the statement of operations (as opposed to recognition of unrealized loss) that is recorded on the regulated insurance company's annual statement.

Certain of the commenters suggested that the proposed regulations should extend to GAAP post-impairment accounting for recoveries. Extending tax conformity to GAAP post-impairment accounting for recoveries raises, among other issues, questions about whether GAAP recoveries qualify as tax recoveries, both with regard to amount and timing, and whether GAAP's treatment of recoveries is consistent with the tax recovery payment ordering rules. *See, for example,* section 111, §§ 1.111–1(a)(2), 1.446–2(e), 1.1275–2(a), Rev. Rul. 2007–32, 2007–1 C.B. 1278, and *Hillsboro National Bank* v. *Commissioner,* 460 U.S. 370 (1983). In view of the foregoing, the Treasury Department and the IRS, while welcoming comments on the topic, do not propose extending tax conformity to GAAP post-impairment recovery accounting at this time.

Under the proposed regulations, the Allowance Charge-off Method would be a method of accounting because it would determine the timing of the bad debt deduction. Accordingly, proposed § 1.166–2(d)(2) provides that a change to the Allowance Charge-off Method is a change in method of accounting requiring consent of the Commissioner under section 446(e).

When the proposed regulations are finalized, those regulated financial companies or members of regulated financial groups that do not presently use or change to the Allowance Charge-off Method would not be entitled to a conclusive presumption of worthlessness and would in most cases be required to use the specific charge-off method for deducting bad debts under section 166(a) and § 1.166–1(a)(1).

3. Proposed Applicability Dates and Reliance on the Proposed Regulations

A. Proposed Applicability Dates of the Final Regulations

Under the proposed applicability date in proposed § 1.166–2(d)(5), the final regulations would apply to charge-offs made by a regulated financial company or a member of a regulated financial group on its applicable financial statement that occur in taxable years ending on or after the date of publication of a Treasury decision adopting those rules as final regulations in the **Federal Register**. However, under proposed § 1.166–2(d)(5), a regulated financial company or a member of a regulated financial group may choose to apply the final regulations, once published in the **Federal Register**, to charge-offs made on its applicable financial statement that occur in taxable years ending on or after December 28, 2023, and before the date of publication of a Treasury decision adopting those rules as final regulations in the **Federal Register**. *See* section 7805(b)(7) of the Code.

B. Reliance on the Proposed Regulations

A regulated financial company or a member of a regulated financial group may rely on proposed § 1.166–2(d) for charge-offs made on its applicable financial statement that occur in taxable years ending on or after December 28, 2023, and before the date of publication of final regulations in the **Federal Register**.

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. Paperwork Reduction Act

These proposed regulations do not impose any additional information collection requirements in the form of reporting, recordkeeping requirements, or third-party disclosure statements. The Allowance Charge-off Method is a method of accounting under the proposed regulations, and therefore taxpayers would be required to request the consent of the Commissioner for a change in method of accounting under section 446(e) to change to that method. The IRS expects that these taxpayers would request this consent by filing Form 3115, *Application for Change in Accounting Method.* Filing of Form 3115 and any statements attached thereto is the sole collection of information requirement imposed by the statute and the proposed regulations.

For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(c)) (PRA), the reporting burden associated with the collection of information for the Form 3115 will be reflected in the PRA submission associated with the income tax returns under the OMB control number 1545–0123. To the extent there is a change in burden because of these proposed regulations, the change in burden will be reflected in the updated burden estimates for Form 3115. The requirement to maintain records to substantiate information on Form 3115 is already contained in the burden associated with the control number for the form and remains unchanged.

The proposed regulations also would remove the requirement in § 1.166–2(d)(3)(iii)(B) for a new bank to attach a statement to its income tax return, and thereby reduce the burden estimates for OMB control number 1545–0123. The overall burden estimates associated with the OMB control number are aggregate amounts related to the entire package of forms associated with the applicable OMB control number and will include, but not isolate, the estimated burden of the tax forms that will be created, revised, or reduced as a result of the information collection in these proposed regulations. These numbers are therefore not specific to the burden imposed by these proposed regulations. No burden estimates specific to the forms affected by the proposed regulations are currently available. For the OMB control number discussed in this section, the Treasury Department and the IRS estimate PRA burdens on a taxpayer-type basis rather than a provision-specific basis. Those estimates capture both changes made by the proposed regulations (when final) and other regulations that affect the compliance burden for that form.

The Treasury Department and IRS request comment on all aspects of the information collection burden related to the proposed regulations, including estimates for how much time it would take to comply with the paperwork burden described above for the relevant form and ways for the IRS to minimize paperwork burden. In addition, when available, drafts of IRS forms are posted at *https://www.irs.gov/draft-tax-forms,* and comments may be submitted at *https://www.irs.gov/forms-pubs/comment-on-tax-forms-and-publications.* Final IRS forms are available at *https://www.irs.gov/forms-instructions.* Forms will not be finalized until after they have been approved by OMB under the PRA.

III. Regulatory Flexibility Act

It is hereby certified that these regulations would 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 (5 U.S.C. chapter 6).

These proposed regulations would affect only those business entities that qualify as regulated financial companies and members of regulated financial groups, as defined in the proposed regulations. These entities are expected to consist of insurance companies and financial institutions with annual receipts in excess of the amounts set forth in 13 CFR 121.201, Sector 52 (finance and insurance). Therefore, these proposed regulations will not affect a substantial number of small entities.

Although the burden falls primarily on larger entities, some small entities with annual receipts not in excess of the amounts set forth in 13 CFR 121.201, Sector 52 (finance and insurance), may be affected. However, these proposed regulations are unlikely to present a significant economic burden on any small entities affected. The costs to comply with these proposed regulations are not significant. Taxpayers needing to make method changes pursuant to the proposed regulations would be required to file a Form 3115. For those entities that would make a method change, the cost to determine or track the information needed is minimal. The insurance companies and financial institutions affected by the proposed regulations prepare financial statements in accordance with SSAPs or GAAP. The Allowance Charge-off Method is a method of accounting under which these entities would be permitted to use these financial statements to obtain a conclusive presumption of worthlessness for purposes of claiming bad debt deductions under section 166. Accordingly, the affected entities already possess the information needed. The cost in time to fill out a Form 3115 would be minimal.

Notwithstanding this certification, the Treasury Department and IRS invite comments from the public about the impact of these proposed regulations on small entities.

Pursuant to section 7805(f), these regulations will be submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their 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 (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 proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Comments and Requests for a Public Hearing

Before these proposed amendments to the final regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the ADDRESSES heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations, including how best to transition from the existing regulations to the proposed regulations. Any comments submitted will be made available at *https://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. 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 authors of these regulations are Stephanie D. Floyd and Jason D. Kristall of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

The IRS Notices, Revenue Procedures, and Revenue Rulings cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

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 1.166–2 is amended by revising paragraph (d) to read as follows:

§ 1.166–2 Evidence of worthlessness.

* * * * *

(d) *Regulated financial companies and members of regulated financial groups*— (1) *Worthlessness presumed in year of charge-off.* Debt held by a regulated financial company (as defined in paragraph (d)(4)(ii) of this section) or a member of a regulated financial group (as defined in paragraph (d)(4)(iii) of this section) that uses the charge-off method described in paragraph (d)(1) of this section (Allowance Charge-off Method) is conclusively presumed to have become worthless, in whole or in part, to the extent that the amount of any charge-off (as defined in paragraph (d)(4)(i) of this section) under paragraph (d)(1)(i) or (ii) of this section is claimed as a deduction under section 166 of the Internal Revenue Code (Code) by the regulated financial company or the member of a regulated financial group on the relevant Federal income tax return for the taxable year in which the charge-off takes place.

(i) *Allowance Charge-off Method generally.* The debt is charged off from the allowance for credit losses in accordance with the United States Generally Accepted Accounting Principles and recorded in the period in which the debt is deemed uncollectible on the applicable financial statement (as defined in paragraph (d)(4)(viii) of this section) of the regulated financial company or the member of a regulated financial group.

(ii) *Certain regulated insurance companies.* In the case of a regulated financial company that is a regulated insurance company (as defined in paragraph (d)(4)(vii) of this section) that prepares an applicable financial statement pursuant to paragraphs (d)(4)(viii) and (d)(4)(ix)(D) of this section, the debt is charged off pursuant to an accounting entry or set of accounting entries that reduce the debt's carrying value and result in a realized loss or a charge to the statement of operations (as opposed to recognition of an unrealized loss) that, in either case, is recorded on the regulated insurance company's annual statement.

(2) *Methods of accounting*—(i) *In general.* A taxpayer may change a method of accounting only with the consent of the Commissioner as required under section 446(e) of the Code and the corresponding regulations. A change to the Allowance Charge-off Method under this paragraph (d) constitutes a change in method of accounting. Accordingly, a regulated financial company or member of a regulated financial group that changes its method of accounting to the Allowance Charge-Off Method is required to secure consent of the Commissioner before using this method for Federal income tax purposes. A change to the Allowance Charge-off Method must be made on an entity-by-entity basis.

(ii) *General rule for changes in method of accounting.* A taxpayer that makes a change in method of accounting to the Allowance Charge-Off Method is treated as making a change in method initiated by the taxpayer for purposes of section 481 of the Code. A taxpayer obtains the consent of the Commissioner to make a change in method of accounting by using the applicable administrative procedures that govern changes in method of accounting under section 446(e). *See* § 1.446–1(e)(3).

(3) *Worthlessness in later taxable year.* If a regulated financial company or member of a regulated financial group does not claim a deduction under section 166 for a totally or partially worthless debt on its Federal income tax return for the taxable year in which the charge-off takes place, but claims the deduction for a later taxable year, then the charge-off in the prior taxable year is deemed to have been involuntary and the deduction under section 166 is allowed for the taxable year for which claimed.

(4) *Definitions.* The following definitions apply for purposes of paragraph (d) of this section:

(i) *Charge-off.* The term *charge-off* means an accounting entry or set of accounting entries for a taxable year that reduces the basis of the debt when the debt is recorded in whole or in part as a loss asset on the applicable financial statement (as defined in paragraph (d)(4)(viii) of this section) of the regulated financial company or the member of a regulated financial group for that year. For a regulated financial company that is a regulated insurance company (as defined in paragraph (d)(4)(vii) of this section) that has as its applicable financial statement a financial statement described in paragraph (d)(4)(ix)(D) of this section, the term *charge-off* means an accounting entry or set of accounting entries that reduce the debt's carrying value and results in a realized loss or a charge to the statement of operations (as opposed to recognition of unrealized loss) that is recorded on the regulated insurance company's annual statement.

(ii) *Regulated financial company.* The term *regulated financial company* means—

(A) A bank holding company, as defined in 12 U.S.C. 1841, that is a domestic corporation;

(B) A covered savings and loan holding company, as defined in 12 CFR 217.2;

(C) A national bank;

(D) A bank that is a member of the Federal Reserve System and is incorporated by special law of any State, or organized under the general laws of any State, or of the United States, or other incorporated banking institution engaged in a similar business;

(E) An insured depository institution, as defined in 12 U.S.C. 1813(c)(2);

(F) A U.S. intermediate holding company formed by a foreign banking organization in compliance with 12 CFR 252.153;

(G) An Edge Act corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611–631);

(H) A corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under section 25 of the Federal Reserve Act (12 U.S.C. 601–604a);

(I) A Federal Home Loan Bank, as defined in 12 U.S.C. 1422(1)(A);

(J) A Farm Credit System Institution chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*);

(K) A regulated insurance company, as defined in paragraph (d)(4)(vii) of this section;

(L) The Federal National Mortgage Association;

(M) The Federal Home Loan Mortgage Corporation; and

(N) Any additional entities that may be provided in guidance published in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii)(a) of this chapter).

(iii) *Regulated financial group.* The term *regulated financial group* means one or more chains of corporations connected through stock ownership with a common parent corporation that is not described in section 1504(b)(4) of the Code and is a regulated financial company described in paragraphs (d)(4)(ii)(A) through (N) of this section (regulated financial group parent) that is not owned, directly or indirectly (as set out in paragraph (d)(4)(v) of this section), by another regulated financial company, but only if—

(A) The regulated financial group parent owns directly or indirectly stock meeting the requirements of section 1504(a)(2) in at least one of the other corporations; and

(B) Stock meeting the requirements of section 1504(a)(2) in each of the other corporations (except the regulated financial group parent) is owned directly or indirectly by one or more of the other corporations.

(iv) *Stock.* The term *stock* has the same meaning as stock in section 1504 (without regard to § 1.1504–4), and all shares of stock within a single class are considered to have the same value. Thus, control premiums and minority and blockage discounts within a single class are not taken into account.

(v) *Indirect stock ownership.* Indirect stock ownership is determined by applying the constructive ownership rules of section 318(a) of the Code.

(vi) *Member of a regulated financial group.* A member of a regulated financial group is any corporation in the chain of corporations of a regulated financial group described in paragraph (d)(4)(iii) of this section. A corporation, however, is not a member of a regulated financial group if it is held by a regulated financial company pursuant to 12 U.S.C. 1843(k)(1)(B), 12 U.S.C. 1843(k)(4)(H), or 12 U.S.C. 1843(o), or if it is a Regulated Investment Company under section 851 of the Code, or a Real Estate Investment Trust under section 856 of the Code.

(vii) *Regulated insurance company.* The term *regulated insurance company* means a corporation that is—

(A) Subject to tax under subchapter L of chapter 1 of the Code;

(B) Domiciled or organized under the laws of one of the 50 States or the District of Columbia (State);

(C) Licensed, authorized, or regulated by one or more States to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3) of the Code) in such States, but in no case will a corporation satisfy the requirements of this paragraph (d)(4)(vii)(C) if a principal purpose for obtaining such license, authorization, or regulation was to qualify the issuer as a regulated insurance company; and

(D) Engaged in regular issuances of (or subject to ongoing liability with respect to) insurance, reinsurance, or annuity contracts with persons that are not related persons (within the meaning of section 954(d)(3)).

(viii) *Applicable financial statement.* The term *applicable financial statement* means a financial statement that is described in paragraph (d)(4)(ix) of this section of a regulated financial company or any member of a regulated financial group. The financial statement may be a separate company financial statement of any member of a regulated financial group, if prepared in the ordinary course of business; otherwise, it is the consolidated financial statement that includes the assets, portion of the assets, or annual total revenue of any member of a regulated financial group.

(ix) *Financial statement.* The term *financial statement* means the taxpayer's financial statement listed in paragraphs (d)(4)(ix)(A) through (D) of this section that has the highest priority. A financial statement includes any supplement or amendment to that financial statement. The financial statements are, in order of descending priority:

(A) A financial statement certified as being prepared in accordance with Generally Accepted Accounting Principles that is a Form 10–K (or successor form), or annual statement to shareholders, required to be filed with the United States Securities and Exchange Commission;

(B) A financial statement that is required to be provided to a bank regulator;

(C) In the case of an insurance company, a financial statement based on Generally Accepted Accounting Principles that is given to creditors for purposes of making lending decisions, given to equity holders for purposes of evaluating their investments in the regulated financial company or member of a regulated financial group, or provided for other substantial non-tax purposes, and that the regulated financial company or member of a regulated financial group reasonably anticipates will be directly relied on for the purposes for which it was given or provided and that is prepared contemporaneously with a financial statement prepared in accordance with the standards set out by the National Association of Insurance Commissioners and filed with the insurance regulatory authorities of a State that is the principal insurance regulator of the insurance company; and

(D) In the case of an insurance company, a financial statement that is prepared in accordance with the standards set out by the National Association of Insurance Commissioners and filed with the insurance regulatory authorities of a State that is the principal insurance regulator of the insurance company.

(x) *Bank regulator.* The term *bank regulator* means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and any Federal Reserve Bank, the Federal Deposit Insurance Corporation, the Farm Credit Administration, the Federal Housing Finance Authority, any successor to any of the foregoing entities, or State banking authorities maintaining substantially equivalent standards as these Federal regulatory authorities. Additional entities included in this paragraph (d)(4)(x) may be provided in guidance published in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii)(a) of this chapter).

(5) *Applicability date.* Paragraph (d) of this section applies to charge-offs made by a regulated financial company or a member of a regulated financial group on its applicable financial statement that occur in taxable years ending on or after [DATE OF FINAL RULE]. A regulated financial company or a member of a regulated financial group may choose to apply paragraph (d) of this section to charge-offs on its applicable financial statement that occur in taxable years ending on or after December 28, 2023.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2023–28589 Filed 12–27–23; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[USCG–2023–0749]

RIN 1625–AA01

Establish Anchorage Ground; Port Westward Anchorage, Columbia River, Oregon and Washington

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering establishing an anchorage ground near Port Westward, Oregon in the Columbia River. We are considering this action after receiving requests suggesting that this anchorage ground is necessary to provide for the safe anchoring of commercial vessels in the navigable waters of the Lower Columbia River. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before February 26, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0749 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.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Carlie Gilligan, Sector Columbia River Waterways Management Division, U.S. Coast Guard, 503–240–9319, email *SCRWWM@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

Under Title 33 of the Code of Federal Regulations (CFR) 109.05, U.S. Coast Guard District Commanders are delegated the authority to establish anchorage grounds by the Commandant of the U.S. Coast Guard. The Coast Guard establishes anchorage grounds under Section 7 of the Act of March 4, 1915, as amended (38 Stat. 1053; 46 U.S.C. 70006) and places these regulations in Title 33 CFR part 110, subpart B. The Coast Guard is proposing the rulemaking to establish a Port Westward anchorage ground in the Columbia River.

In the last several years, the Columbia River Marine Transportation System has seen an increase in commercial traffic and vessel size, thus creating a concern for anchorage capacity within the river system. The Columbia River Steamship Operators Association and the Columbia River Pilots have formally requested the Coast Guard review and evaluate the establishment of this new anchorage ground to address the safety and navigation concerns with the expanding vessel traffic in the Lower Columbia River.

The purpose of this rulemaking is to establish a Federal anchorage ground in the Lower Columbia River that would be maintained and used by commercial vessels. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The Coast Guard is proposing to establish a new anchorage ground in the vicinity of Port Westward, in the Lower Columbia River. The anticipated users of the proposed anchorage ground are commercial vessels and their attending tug, tow, or push boats. The approximate depth of this proposed anchorage ground would be 43 feet to align with the Federal channel depth and would accommodate a variety of vessel types and configurations. An illustration showing the location of the proposed anchorage ground is available in the docket.

When the Columbia River Federal channel was deepened in 2010, the size and draft of commercial vessels was increased, but the anchorage capacity within the river system was not. The vessels transiting in the Columbia River system now are longer and have deeper drafts than before the channel was deepened. Having larger vessels, and increased transit frequency causes concern for safe navigation and emergency situations with limited anchorage capacity. The proposed Port