range of activities that would already be deemed political expenditures under section 4955(d)(1). The plain language of the statute makes it clear that the expenditures described in section 4955(d)(2) are included within the general category of political expenditures that is described in section 4955(d)(1). Furthermore, the legislative history states that section 4955(d)(2)"enumerates certain expenditures as political expenditures for purposes of the excise tax * * *." The IRS and the Treasury Department believe that organizations described in section 4955(d)(2) are subject to the same restrictions on political expenditures as all other section 501(c)(3) organizations. Therefore, the final regulations have not been revised.

One comment concluded that \$53.4955-1(b) of the proposed regulations, affecting organization managers under section 4955, imposed tax on a larger group of employees and officers than are subject to tax under chapter 42 because the section did not include language contained in § 53.4946–1(f)(1)(ii) and in § 53.4946– 1(f)(2). The IRS and the Treasury Department agree that the definition of foundation manager under section 4946(b) should be incorporated into the definition of organization manager when applying section 4955(f)(2). Therefore, we have clarified the final regulations to make them consistent with the interpretation in § 53.4946-1(f)(1)(ii) and in § 53.4946–1(f)(2) by adding a sentence at the end of § 53.4955–1(b)(2)(ii)(B) and at the end of § 53.4955-1(b)(2)(iii).

One comment noted that § 53.4955-1(b)(7) of the proposed regulations provides that, in certain circumstances, if an organization manager relies on a reasoned legal opinion from legal counsel, the act of the organization manager will not be considered knowing or willful and will be considered due to reasonable cause for purposes of section 4955(a)(2). The commentator requested consideration of whether the same reasoned legal opinion would protect the organization from tax under section 4955(a)(1). Section 53.4955-1(b)(7) interprets whether an act is not willful and is due to reasonable cause for purposes of section 4955(a)(2). Unlike section 4955(a)(2), section 4955(a)(1) taxes an organization without regard to whether its act of making a political expenditure was willful or due to reasonable cause. Therefore, the final regulations have not been revised. A reasoned legal opinion from legal counsel received by the organization prior to making a political expenditure may be a factor that the IRS

takes into account in determining what action to take in an individual case. Section 53.4955–1 (d) and (e) of the final regulations are also relevant where an organization has corrected a political expenditure that was not willful and flagrant.

Öne comment requested that the regulations provide more detail on the type of behavior that would be considered flagrant under sections 6852 and 7409. Since a determination of when a specific act or acts by an organization is flagrant depends on the facts and circumstances in individual cases, the IRS and the Treasury Department believe that, to the extent guidance is necessary on this issue, it is better rendered in a form other than through regulations. Therefore, the final regulations do not expand on the definition of flagrant.

One comment suggested that § 301.7409–1 of the proposed regulations should be modified to allow the IRS, where appropriate, to provide an organization with less than the 10 days notice required under the proposed regulations before the Commissioner would recommend that a petition for injunctive relief be filed. In light of the important considerations involved when contemplating an injunction of this sort, the IRS and the Treasury Department believe that an organization should be allowed a reasonable amount of time to respond before the IRS takes action. Therefore, the final regulations retain the 10 day notice period.

Special Analysis

It has been determined that this Treasury Decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Cynthia D. Morton, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1, 53, and 301 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

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

Par. 2. In § 1.6091–2, paragraph (g) is added to read as follows:

§1.6091–2 Place for filing income tax returns.

(g) Returns of persons subject to a termination assessment. Notwithstanding paragraph (c) of this section, income tax returns of persons with respect to whom an income tax assessment was made under section 6852(a) with respect to the taxable year must be filed with the district director as provided in paragraphs (a) and (b) of this section.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 3. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 53.4955–1 is added to Subpart K to read as follows:

§ 53.4955–1 Tax on political expenditures.

(a) Relationship between section 4955 excise taxes and substantive standards for exemption under section 501(c)(3). The excise taxes imposed by section 4955 do not affect the substantive standards for tax exemption under section 501(c)(3), under which an organization is described in section 501(c)(3) only if it does not participate or intervene in any political campaign on behalf of any candidate for public office.

(b) Imposition of initial taxes on organization managers—(1) In general. The excise tax under section 4955(a)(2)