INTERNAL REVENUE
BULLETIN

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2025–6
February 3, 2025

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

ADMINISTRATIVE, EXEMPT ORGANIZATIONS

Rev. Proc. 2025-6, page 713.

This revenue procedure provides the exclusive procedures for certain applicable entities, as defined in § 6417(d)(1)(A) of the Internal Revenue Code and the regulations thereunder that are not required to file either a federal income tax return under § 6011 or an annual information return under § 6033(a), but previously filed a Form 990-T solely to make an elective payment election under § 6417, to change their annual accounting period.

ADMINISTRATIVE, INCOME TAX

T.D. 10028, page 660.

This document contains final regulations that identify certain partnership related-party basis adjustment transactions and substantially similar transactions as transactions of interest, a type of reportable transaction. Material advisors and certain participants in these transactions are required to file disclosures with the IRS and are subject to penalties for failure to disclose. The regulations affect participants in these transactions as well as material advisors.

EMPLOYEE PLANS

Notice 2025-13, page 710.

This notice sets forth updates on the corporate bond monthly yield curve, the corresponding spot segment rates for December 2024 used under § 417(e)(3)(D), the 24-month average segment rates applicable for January 2025, and the 30-year Treasury rates, as reflected by the application of § 430(h)(2)(C)(iv).

EXCISE TAX

REG-115560-23, page 716.

Section 5000D of the Internal Revenue Code imposes an excise tax on applicable sales of designated drugs by manufacturers, producers, and importers during statutorily defined periods. This Notice of Proposed Rulemaking contains proposed rules relating to the imposition and calculation of that excise tax.

INCOME TAX

Notice 2025-9, page 681.

This notice provides safe harbors regarding the incremental cost and retail price equivalent of certain qualified commercial clean vehicles for purposes of the credit for qualified commercial clean vehicles under section 45W of the Internal Revenue Code.

Notice 2025-10, page 682.

Notice 2025-10 announces forthcoming proposed regulations on the clean fuel production credit under § 45Z (§ 45Z credit), enacted under the Inflation Reduction Act of 2022. In addition to providing background on the § 45Z credit, the notice explains the forthcoming proposed regulations and requests public comments on the draft text of the forthcoming proposed regulations contained in the appendix.

Finding Lists begin on page ii.

Notice 2025-11, page 704.

Notice 2025-11 provides taxpayers with guidance about emissions rates, including the initial emissions rate table, for the clean fuel production credit. For a transportation fuel established on the emissions rate table that is not a sustainable aviation fuel, this notice directs a taxpayer producing such fuel to calculate emissions rates using the most recent determinations under the new 45ZCF-GREET model. For a transportation fuel established on the emissions rate table that is a sustainable aviation fuel, this notice directs a taxpayer producing such fuel to calculate emissions rates using either determinations from fuel pathways approved under the most recent version of the CORSIA Program or the most recent determinations under the 45ZCF-GREET model. This notice also requests public comments.

REG-123525-23, page 726.

Section 45W of the Internal Revenue Code provides a credit against the tax imposed by chapter 1 of the Code with respect to each qualified commercial clean vehicle placed in service by a taxpayer during the taxable year. This Notice of Proposed Rulemaking proposes rules under section 45W relating to vehicle credit eligibility, credit amount determination, and credit reporting.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

Part I

26 CFR 1.6011-18: Certain partnership related-party basis adjustment transactions as transactions of interest.

T.D. 10028

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Certain Partnership Related-Party Basis Adjustment Transactions as Transactions of Interest

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule.

SUMMARY: This document contains final regulations that identify certain partnership related-party basis adjustment transactions and substantially similar transactions as transactions of interest, a type of reportable transaction. Material advisors and certain participants in these transactions are required to file disclosures with the IRS and are subject to penalties for failure to disclose. The final regulations affect participants in these transactions as well as material advisors.

DATES: *Effective date*: These regulations are effective on January 14, 2025.

Applicability date: For the date of applicability, *see* § 1.6011-18(h) and (i).

FOR FURTHER INFORMATION CONTACT: Concerning these final regulations, contact Elizabeth Zanet of the Office of Associate Chief Counsel (Passthroughs and Special Industries), (202) 317-6007 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

This document amends the Income Tax Regulations (26 CFR part 1) by adding final regulations under section 6011 of the Internal Revenue Code (Code). The document adds § 1.6011-18 to identify certain partnership related-party basis adjustment transactions and substantially similar transactions as transactions of interest, a type of reportable transaction (final regulations). These regulations are issued pursuant to the authority conferred on the Secretary of the Treasury or her delegate (Secretary) under the following provisions of the Code.

Section 6001 of the Code provides an express delegation of authority to the Secretary of the Treasury or her delegate (Secretary), requiring every taxpayer to keep the records, render the statements, make the returns, and comply with the rules and regulations that the Secretary deems necessary to demonstrate tax liability, as prescribed, either by notice served or by regulations.

Section 6011(a) provides an express grant of regulatory authority for the Secretary to prescribe regulations requiring any person who is liable for any tax imposed by the Code, or with respect to the collection thereof, to make a return or statement according to the forms and regulations prescribed by the Secretary. Section 6011(a) adds that every person who is required to make a return or statement must include the information required by forms or regulations.

In addition, section 6707A(c)(1) of the Code defines the term "reportable transaction" for purposes of imposing penalties under section 6707A(a) relating to persons who fail to include on any return or statement any information with respect to a reportable transaction that is required under section 6011 to be included with such return or statement. In doing so, it provides an express delegation of authority to the Secretary, stating that, "[t]he term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion."

Section 6111(a) provides an express grant of regulatory authority for the Secretary to require that each material advisor with respect to any reportable transaction make a return setting forth any information as the Secretary may prescribe. Such return must be filed not later than the date specified by the Secretary.

Finally, section 7805(a) of the Code authorizes the Secretary 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

I. *Basis Adjustments under Subchapter K*

A. *In general*

Under subchapter K of chapter 1 of the Code (subchapter K), a distribution by a partnership of the partnership's property (partnership property) or a transfer of an interest in a partnership (partnership interest) may result in an adjustment to the basis of the distributed property, partnership property, or both. A key factor is whether an election made by the partnership in accordance with regulations prescribed by the Secretary under section 754 of the Code (section 754 election) is in effect.

Section 754 provides that if a section 754 election is in effect for a partnership, the basis of its partnership property will be adjusted, in the case of a distribution of property, in the manner provided by section 734 of the Code, and in the case of a transfer of a partnership interest, in the manner provided in section 743 of the Code. Unless a section 754 election is revoked in accordance with the regulations under section 754, the section 754 election applies to all distributions of property by the partnership and to all transfers of interests in the partnership in the taxable year for which the section 754 election was properly made and all subsequent taxable years.

In the case of a distribution of partnership property to a partner by a partnership for which a section 754 election is in effect, or with respect to which there is a substantial basis reduction as described in section 734(d), the distribution may result in an adjustment to the basis of the partnership's remaining property (remaining partnership property) under section 734(b). A distribution of partnership property may also result in an adjustment to the basis of the distributed property under section 732(a), (b), or (d) of the Code.

If a partnership interest is transferred by sale or exchange or on the death of a partner, and the partnership either has a section 754 election in effect or has a substantial built-in loss with respect to the transfer of the partnership interest as described in section 743(d), the transfer may result in an adjustment to the basis of partnership property under section 743(b) with respect to the transferee partner.

B. *Basis adjustments under section 732*

Section 732 applies to determine a distributee partner's basis in distributed property other than money. In the case of a distribution of partnership property other than in liquidation of the distributee partner's partnership interest (current distribution), and except as provided under section 732(a)(2), section 732(a)(1) provides that the distributee partner's basis in distributed property (other than money) is equal to the partnership's adjusted basis in the distributed property immediately before the distribution. Under section 732(a)(2), however, a distributee partner's basis in distributed property is limited to the adjusted basis of the distributee partner's partnership interest reduced by any money distributed to such partner in the same transaction.

In the case of a distribution of partnership property in liquidation of the distributee partner's partnership interest (liquidating distribution), section 732(b) provides that the distributee partner's basis in distributed property (other than money) is equal to the adjusted basis of the distributee partner's partnership interest reduced by any money distributed to such partner in the same transaction.

In the case of a distribution of more than one property from a partnership, the basis of the distributed properties to which section 732(a)(2) and (b) apply must be allocated among the distributed properties under the rules of section 732(c). Section 732(d) through (f) provide additional rules applicable to certain distributed property. *See also* §§ 1.732-1 through 1.732-3.

C. *Basis adjustments under section 734*

In the case of a distribution of property by a partnership for which a section 754 election is in effect, and for which either the distributee partner recognizes gain or loss on the distribution, or for which the basis of the distributed property in the distributee partner's hands, as determined under section 732, differs from the partnership's adjusted basis in the distributed property immediately before the distribution, section 734(b) requires the partnership to increase or decrease (as applicable) the basis of its remaining partnership property. Also, in the case of a distribution of property by a partnership that results in a substantial basis reduction under section 734(d), the basis of remaining partnership property must be adjusted under section 734(b), even if no section 754 election is in effect for the partnership.

Section 734(b)(1) requires a partnership to increase the basis of its remaining partnership property if a distribution of partnership property by the partnership results in the distributee partner recognizing gain under section 731(a)(1) of the Code, or if property (other than money) to which section 732(a)(2) or (b) applies is distributed to the distributee partner and the property's adjusted basis to the partnership immediately before the distribution is greater than the distributee partner's basis in the distributed property as determined under section 732. Section 731(a)(1) requires a distributee partner to recognize gain in a current or liquidating distribution to the extent that any money distributed to that partner in the distribution exceeds the adjusted basis of that partner's partnership interest immediately before the distribution. The amount of the basis increase to the partnership's remaining property under section 734(b)(1) following a distribution of partnership property to a partner is equal to the amount of gain recognized by the distributee partner in the distribution under section 731(a)(1), and the excess of the partnership's adjusted basis in the distributed property immediately before the distribution, over the distributee partner's basis in the distributed property as determined under section 732.

Section 734(b)(2) requires a partnership to decrease the basis of its remaining property if a distribution of property by the partnership results in the distributee partner recognizing loss under section 731(a)(2), or if property (other than money) is distributed to the distributee partner in a distribution to which section 732(b) applies and the property's adjusted basis to the partnership immediately before the distribution is less than the distributee partner's basis in the distributed property as determined under section 732. Under section 731(a)(2), a distributee partner may recognize a loss in a liquidating distribution of that partner's interest in the partnership to the extent that such partner received in the distribution only money, unrealized receivables described in section 751(c) of the Code, or inventory items described in section 751(d). In such a case, the distributee partner is required to recognize a loss to the extent that such partner's adjusted basis in the partnership interest exceeds the sum of any money distributed to that partner in the distribution and the basis to the distributee partner (determined under section 732) of any unrealized receivables or inventory items received by that partner in the distribution. The amount of the basis decrease to the partnership's remaining property under section 734(b)(2) following a distribution of partnership property to a partner is equal to the amount of loss recognized by the distributee partner in the distribution under section 731(a)(2), and the excess of the distributee partner's basis in the distributed property as determined under section 732, over the partnership's adjusted basis in the distributed property immediately before the distribution.

A partnership for which no section 754 election is in effect is subject to a mandatory basis adjustment under section 734(b)(2) if there is a substantial basis reduction with respect to a distribution of partnership property. Under section 734(d), a substantial basis reduction with respect to a distribution of partnership property occurs if the sum of the amount of loss recognized to the distributee partner on the distribution, plus any increase in basis in the distributed property to the distributee partner under section 732(b), exceeds $250,000.

D. *Basis adjustments under section 743(b)*

Generally, if a partnership interest is transferred in a sale or exchange or on the death of a partner, the transferee partner's basis in the transferred partnership interest is determined under section 742 of the Code and the basis of partnership property is determined under section 743(a). Section 742 provides that the transferee partner's basis in a partnership interest acquired other than by contribution is determined under part II of subchapter O of chapter 1 of the Code, beginning at section 1011 of the Code and following. Thus, for example, a transferee partner's basis in a partnership interest acquired by purchase generally is the transferee partner's cost basis under section 1012 of the Code. Section 743(a) provides that, in the case of a transfer of a partnership interest by sale or exchange or on the death of a partner, the basis of partnership property is not adjusted unless either a section 754 election is in effect for the partnership, or the partnership has a substantial built-in loss with respect to the transfer of the partnership interest.

Under section 743(b), in the case of a transfer of a partnership interest by sale or exchange or on the death of a partner, a partnership for which a section 754 election is in effect or that has a substantial built-in loss with respect to the transfer of the partnership interest must increase or decrease (as applicable) the adjusted basis of partnership property with respect to the transferee partner.

Section 743(b)(1) provides that the adjusted basis of partnership property is increased by the excess of the transferee partner's basis in the transferred partnership interest, over the transferee partner's proportionate share of the adjusted basis of partnership property.

Section 743(b)(2) provides that the adjusted basis of partnership property is decreased by the excess of the transferee partner's proportionate share of the adjusted basis of partnership property, over the transferee partner's basis in the transferred partnership interest.

A partnership for which no section 754 election is in effect is subject to a mandatory basis adjustment under section 743(b) with respect to a transfer of a partnership interest if the partnership has a substantial built-in loss with respect to the transfer of the partnership interest. Under section 743(d)(1), a partnership has a substantial built-in loss with respect to a transfer of an interest in the partnership if either the partnership's adjusted basis in its property exceeds the fair market value of such property by more than $250,000, or the transferee partner would be allocated a loss of more than $250,000 if the partnership assets were sold for cash equal to their fair market value immediately after the transfer.

The flush language at the end of section 743(b) provides that, under regulations prescribed by the Secretary, a basis adjustment under section 743(b) is an adjustment to the basis of partnership property with respect to the transferee partner only. *See generally* § 1.743-1. The transferee partner's proportionate share of the partnership's adjusted basis in its property generally is determined in accordance with the transferee partner's interest in the partnership's previously taxed capital (including the transferee partner's share of partnership liabilities) under § 1.743-1(d).

In the case of a transferee partner who acquired all or part of the partner's partnership interest by a transfer with respect to which no section 754 election was in effect for the partnership, and to whom a distribution of property (other than money) is made with respect to the transferred interest within two years, section 732(d) and the regulations thereunder allow the partner to make an election to treat as the adjusted basis of the distributed property the adjusted basis such property would have if the adjustment under section 743(b) were in effect with respect to the partnership property.

Under § 1.732-1(d)(4), the special basis adjustment under section 732(d) is required to apply to a distribution of property to a partner who acquired all or part of the partner's partnership interest by a transfer from a partnership for which no section 754 election is in effect for the taxable year of such transfer, whether or not the distribution is made within two years of such transfer, if at the time the partnership interest was transferred, (i) the fair market value of all partnership property (other than money) exceeded 110 percent of its adjusted basis to the partnership, (ii) an allocation of basis under section 732(c) upon a liquidation of the transferee partner's interest in the partnership immediately after the transfer of such interest would have resulted in a shift of basis from property not subject to an allowance for depreciation, depletion, or amortization to property subject to such an allowance, and (iii) a basis adjustment under section 743(b) would change the basis to the transferee partner of the property actually distributed.

E. *Allocation of basis adjustments under sections 734 and 743*

Section 734(c) states that a basis adjustment under section 734(b) is allocated among partnership properties under the rules of section 755 of the Code. Section 743(c) states that a basis adjustment under section 743(b) is allocated among partnership properties under the rules of section 755.

Section 755(a) generally requires basis adjustments under section 734(b) or section 743(b) to be allocated in a manner that has the effect of reducing the difference between the fair market value and the adjusted basis of partnership properties or in any other manner permitted by regulations prescribed by the Secretary. In addition, section 755(b) requires these basis adjustments to be allocated to partnership property of a like character or to subsequently acquired partnership property of a like character if such property is not available or has insufficient basis at the time of the basis adjustment (because a decrease in the adjusted basis of the property would reduce the basis of such property below zero). Section 755(c) provides a special rule that prohibits allocating a basis decrease under section 734(b) to the stock of a corporation that is a partner of the partnership (or that is related to a partner in the partnership within the meaning of section 267(b) of the Code or section 707(b)(1) of the Code).

F. *Common terminology for bases with respect to a partnership interest*

A partner's adjusted basis in its partnership interest commonly is referred to as the partner's "outside basis" in its partnership interest. A partnership's adjusted basis in its property commonly is referred to as the "inside basis" of the partnership's property. Each partner has a share of inside basis.

II. *Proposed Regulations*

On June 18, 2024, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-124593-23) in the **Federal Register** (89 FR 51476) containing proposed regulations under section 6011 (proposed regulations).[1] The proposed regulations would have added § 1.6011-18 identifying certain partnership related-party basis adjustment transactions as "transactions of interest" for purposes of sections 6011, 6111, and 6112 and § 1.6011-4(b)(6). The provisions of the proposed regulations are explained in greater detail in the preamble to the proposed regulations.

The Treasury Department and the IRS received written comments in response to the proposed regulations. The comments are available for public inspection at www.regulations.gov or upon request. A public hearing on the proposed regulations was conducted in person and telephonically on September 17, 2024, during which two presenters provided comments. After full consideration of the comments received, these final regulations adopt the proposed regulations with modifications in response to the comments as described in the Summary of Comments and Explanation of Revisions.

Summary of Comments and Explanation of Revisions

This Summary of Comments and Explanation of Revisions summarizes the comments received in response to the proposed regulations, and describes and responds to comments concerning: (1) transactions of interest generally, (2) the usefulness and burden of reporting the transactions of interest identified by the proposed regulations, (3) the specific transactions of interest identified by the proposed regulations, (4) the proposed $5 million threshold amount for reporting (proposed $5 million threshold amount), (5) the relatedness standard, (6) substantially similar transactions, and (7) participation in a transaction of interest identified by the proposed regulations. In general, as described herein, the final regulations adopt several commenters' suggestions, which limit the scope of the transactions identified by the proposed regulations in an effort to exclude from additional reporting certain common business transactions that do not meet large economic thresholds.

Comments merely summarizing the statute or proposed regulations, recommending revisions to the Code, addressing unrelated issues, or recommending changes to IRS forms or procedures are generally not addressed in this Summary of Comments and Explanation of Revisions or adopted in these final regulations. Additionally, this Treasury decision does not address comments addressing the issues and rules specific to Notice 2024-54, 2024-28 IRB 24, which the Treasury Department and the IRS continue to consider. Unless otherwise indicated in this Summary of Comments and Explanation of Revisions, provisions of the proposed regulations with respect to which no comments were received are adopted without substantive change.

I. *Transactions of Interest Generally*

A. *General reporting rules under § 1.6011-4*

Section 1.6011-4(e)(2)(i) requires a taxpayer to report a transaction entered into prior to the publication of guidance identifying the transaction as a transaction of interest after the filing of the taxpayer's tax return (including an amended return) reflecting the taxpayer's participation in the transaction of interest (later identified transaction) if the statute of limitations for assessment of tax is still open when the transaction becomes a transaction of interest. Under § 1.6011-4(e)(2)(i), taxpayers are generally required to report a later identified transaction by filing a disclosure statement with the Office of Tax Shelter Analysis (OTSA) within 90 calendar days after the date on which a transaction becomes a transaction of interest.

Some commenters asserted that taxpayers should not be required to report later identified transactions because taxpayers were not on notice that certain partnership related-party basis adjustment transactions would be identified as transactions of interest. These commenters asserted that certain of the transactions identified in the proposed regulations are typical business transactions for which taxpayers would not have known to keep records. Two commenters requested that the required time for filing a disclosure statement with the OTSA should be expanded to one year. Another commenter recommended that the final regulations apply prospectively to transactions of interest that occur in taxable years beginning on or after the date of the final regulations.

Although the reporting required by § 1.6011-4(e)(2)(i) may apply to transactions undertaken before the identification of the transactions as transactions of interest, the disclosure obligation is prospective rather than retroactive, since it arises only when the transaction becomes a transaction of interest after the final regulations are published in the **Federal Register**. Additionally, taxpayers have been on notice since the issuance of the proposed regulations that reporting of partnership related-party basis adjustment transactions may soon be required. Nevertheless, given the additional time that taxpayers may need to identify and prepare disclosures for already-completed transactions, § 1.6011-18(h)(1) provides an extension of time of 90 additional calendar days after the date specified in § 1.6011-4(e)(2)(i) for taxpayers to meet their obligations to disclose to the OTSA their participation in such later identified transactions.

B. *Material advisor rules*

The proposed regulations provided no special rules for material advisors. One commenter requested that the final regulations add an "actual knowledge" qualifier for material advisors such that advisors would be required to disclose and list only those transactions described by the proposed regulations that would be reportable

[1] On July 24, 2024, a notice of correction was published in the ***Federal Register*** (89 FR 59864) to correct minor typographical errors in the preamble of REG-124593-23.

based on their actual knowledge. The rules for material advisors under sections 6111 and 6112, and the corresponding regulations under §§ 301.6111-3 and 301.6112-1 of the Procedure and Administration Regulations (26 CFR part 301), which apply to all transactions of interest, do not have a knowledge qualifier. After consideration of this comment, the Treasury Department and the IRS have determined that adding a knowledge qualifier for this transaction of interest is not warranted. Accordingly, this comment is not adopted in the final regulations.

One commenter requested that the final regulations apply reporting requirements for material advisors only prospectively for transactions of interest that occur in taxable years beginning on or after the date of the final regulations, or, alternatively, that material advisors be permitted to report transactions of interest to the OTSA within one year as opposed to by the last day of the month following the end of the calendar quarter in which the final regulations are published. Section 301.6111-3 sets forth the requirements for disclosures from material advisors. In particular, § 301.6111-3(e) provides that a material advisor's disclosure statement must be filed with the OTSA by the last day of the month that follows the end of the calendar quarter in which the advisor became a material advisor with respect to the transaction. Section 301.6111-3(b)(4)(iii) provides that for a transaction that was not a reportable transaction but is identified as a transaction of interest in published guidance after the occurrence of the events described in § 301.6111-3(b)(4)(i), the person will be treated as becoming a material advisor on the date the transaction is identified as a transaction of interest. Additionally, material advisors have been on notice since the issuance of the proposed regulations that reporting of partnership related-party basis shifting transactions may soon be required. However, given the additional time that may be needed for material advisors to identify and prepare disclosures for already-completed transactions, § 1.6011-18(h)(2) provides an extension of 90 additional calendar days after the date specified in § 301.6111-3(e) for material advisors to meet their disclosure obligations.

II. *Usefulness and Burden of Reporting the Transactions of Interest Identified by the Proposed Regulations*

A. *Comments suggesting the IRS already has the information it needs*

One commenter stated that the Treasury Department and the IRS already have sufficient information to determine that the transactions identified by the proposed regulations are abusive and thus the proposed regulations are unnecessary.[2] This commenter stated that the Treasury Department and the IRS have already concluded that the transactions identified in the proposed regulations are abusive through IRS positions taken in litigation and the issuance of Rev. Rul. 2024-14, 2024-28 IRB 18 (advising taxpayers that the IRS would challenge certain partnership related-party basis adjustment transactions under the codified economic substance doctrine in section 7701(o) of the Code). The commenter also asserted that transactions of interest are reserved for transactions that have the potential for tax avoidance, but that the Treasury Department and the IRS failed to articulate a rational connection between "the facts found and the choice made." Another commenter suggested that the proposed regulations relied on the application of Rev. Rul. 2024-14, implying that the proposed regulations cannot have effect if the IRS does not prevail in pending litigation.

The Treasury Department and the IRS do not agree with these comments. The final regulations identify certain partnership related-party basis adjustment transactions as transactions of interest under § 1.6011-4(b)(6), rather than as listed transactions under § 1.6011-4(b)(2). This is because the Treasury Department and the IRS have determined that these transactions have the potential for tax avoidance through the IRS's examination of certain transactions that are abusive but are not aware of the entire universe of partnership related-party basis adjustment transactions and whether every transaction is per se abusive. As explained in the preamble to the proposed regulations, the Treasury Department and the IRS have become aware of related persons using partnerships to engage in transactions that inappropriately exploit the basis adjustment provisions of subchapter K applicable to distributions of partnership property or transfers of partnership interests and wish to gather additional information. This awareness results from the IRS's examination of various partnership transactions involving related parties in which basis in distributed property or partnership property is shifted in a manner that results in significant tax benefits attributable to the basis shift for the related parties but with little or no tax or economic cost (abusive partnership related-party basis adjustment transactions), thus artificially generating (or regenerating) Federal income tax benefits that results in significant tax savings without a corresponding economic outlay. The transactions identified as transactions of interest in these final regulations have the potential for tax avoidance because they share certain indicia with these abusive partnership related-party transactions. Rev. Rul. 2024-14 contains several examples of abusive transactions discovered by the IRS, and the legal analysis it contains is independent of the requirement to disclose the transactions described in these regulations as transactions of interest. In other words, the issuance of a revenue ruling does not preclude further scrutiny of partnership related-party basis adjustment transactions by identifying those transactions as transactions of interest. Similarly, pending litigation is irrelevant to the identification of these transactions as transactions of interest. Accordingly, the final regulations do not adopt these comments.

A few commenters questioned why the Treasury Department and the IRS need to identify certain partnership related-party basis adjustment transactions as transactions of interest if these transactions are already disclosed as part of the Form 1120, *U.S. Corporation Income Tax Return*, or Form 1065, *U.S. Return of Partnership Income*. These commenters generally contended that existing reporting requirements already accomplish the objectives

[2] The commenter also argued that it would be inappropriate to identify the transactions identified in the proposed regulations as listed transactions under §1.6011-4(b)(2). This comment is not relevant to these final regulations, which solely identify certain transactions as transactions of interest and not as listed transactions.

of the proposed regulations and that adding these transactions as transactions of interest is therefore unnecessary. One commenter recommended that instead of identifying the transactions described in the proposed regulations as transactions of interest, the Form 1065 should be modified to ask questions to determine whether partnership related-party basis adjustment transactions occurred during the taxable year.

The Forms 1120 and 1065, including statements or schedules required to be attached thereto, are filed as a part of a taxpayer's tax return and do not include all the information contained on Form 8886, *Reportable Transaction Disclosure Statement*. The Forms 1120 and 1065 also do not alert the OTSA to the taxpayer's participation in a transaction of interest, nor does the filing of a tax return result in disclosure and other obligations of material advisors to the transaction. Moreover, the purpose of the reporting requirements for a transaction of interest is to allow the OTSA and the IRS to learn detailed information about the identified transaction using limited resources, and without having to distill information obtained through annual filing requirements or to open taxpayer examinations. Accordingly, these comments are not adopted in the final regulations.

B. *Comments addressing compliance burdens and costs*

Several commenters asserted that complying with the reporting requirements for the transactions identified by the proposed regulations would be unduly burdensome and result in excessive costs for small businesses. One commenter asserted that the proposed regulations stray from Congressional intent of simplicity by subjecting family business owners and their advisors to substantial reporting obligations and penalties. Another commenter asserted that the proposed regulations would result in many protective disclosures that the Treasury Department and the IRS could not handle.

The impact on taxpayers who engage in legitimate business transactions with related parties resulting in positive partnership basis adjustments that meet the increased threshold amounts in these final regulations (applicable threshold amounts) discussed in Part IV of this Summary of Comments and Explanation of Revisions, or who may decide they need to file a protective disclosure, is far outweighed by the benefit of requiring disclosure for the identified transactions, which have the potential for tax avoidance. Combatting abusive tax avoidance is a priority for the Federal Government and partnership transactions that shift basis among related parties without a corresponding economic or tax impact have the potential for tax avoidance. Moreover, the identification of the transactions described in these final regulations should not impact small business owners. If a taxpayer is engaging in one or more of the complex transactions identified by these final regulations with a related party that results in positive basis adjustments in a single taxable year that exceed the applicable threshold amounts of $10 million or more (or $25 million for later identified transactions), the taxpayer is not likely a small business owner and the reporting obligations outlined in these final regulations should not be unduly burdensome. Accordingly, these comments are not adopted in the final regulations.

C. *Comments requesting that the proposed regulations be withdrawn or reissued*

A few commenters suggested that the proposed regulations be withdrawn, stating that they are overbroad. One commenter suggested that due to the number of their recommendations, the proposed regulations should be reproposed. Another commenter suggested that the proposed regulations be withdrawn and reproposed after the forthcoming proposed regulations described in Notice 2024-54 are finalized. The final regulations are narrowly tailored to identify transactions in which taxpayers may be exploiting the mechanical basis adjustment provisions in subchapter K to produce significant tax benefits with little to no economic cost to the partners. Taxpayers are able to engage in these transactions because the parties are related. In most cases, these transactions would not likely occur between partners negotiating on an arm's length basis. The purpose of the final regulations is to determine the ways in which related taxpayers are inappropriately shifting basis using the provisions of subchapter K, how they are creating opportunities to engage in transactions that generate inappropriate basis shifts (for example, how inside-outside basis disparities are being created), and the economic impact of the Federal income tax consequences created by the basis shifting transactions (for example, the extent to which gain is reduced or cost recovery is increased). It is in the interest of sound tax administration to gather this information now. As disclosures pursuant to this regulation will inform the Treasury Department and the IRS on transactions for which further examination or further guidance may be warranted, it does not make sense to withdraw the proposed regulations and wait to repropose them until the forthcoming regulations described in Notice 2024-54 are both proposed and finalized. Moreover, these final regulations are separate from, and do not rely on, the forthcoming proposed regulations described in Notice 2024-54. The comments to these proposed regulations have been helpful and have allowed the Treasury Department and the IRS to make several modifications in response to comments that limit the scope of the rules, as described in this Summary of Comments and Explanation of Revisions.

III. *Transactions of Interest Identified in the Proposed Regulations*

The proposed regulations would have identified four kinds of partnership related-party basis adjustment transactions as transactions of interest. A basis adjustment transaction under proposed § 1.6011-18(c)(1)(i) would occur if a partnership distributes property to a person who is a related partner in a current or liquidating distribution, the partnership increases the basis of one or more of its remaining properties under section 734(b) and (c), and a proposed $5 million threshold amount is met (section 734(b) TOI). A basis adjustment transaction under proposed § 1.6011-18(c)(1)(ii) would occur if a partnership distributes property to a partner who is related to one or more partners in liquidation of a partnership interest (or in complete liquidation of the partnership), the basis of one or more distributed properties is increased under section 732(b) and (c), and a proposed $5 million threshold amount is met (section 732(b) TOI). A basis adjustment transaction under proposed § 1.6011-18(c)(1)(iii) would occur if a partnership distributes property to a partner who is related to one or more partners, the basis of one or more distributed properties is increased under section 732(d), the related partner acquired all or a part of its interest in the partnership in a transaction that would have been a transaction described in proposed § 1.6011-18(c)(2) if the partnership had a section 754 election in effect for the year of transfer, and a proposed $5 million threshold amount is met (section 732(d) TOI). A basis adjustment transaction under proposed § 1.6011-18(c)(2) would occur if a partner transfers an interest in the partnership to a related transferee or to a person who is related to one or more existing partners in a nonrecognition transaction (as defined in proposed § 1.6011-18(b)(6)), the basis of one or more partnership properties is increased under section 743(b)(1) and (c), and a proposed $5 million threshold amount is met (section 743(b) TOI).

A. *General reporting exclusions*

1. Tax-avoidance indicators

One commenter recommended requiring reporting only for transactions with defined indicators of potential tax avoidance or evasion, rather than the involvement of a related or tax-indifferent party, but did not suggest other indicators or explain how the current indicators are insufficient. The Treasury Department and the IRS have made modifications to the proposed regulations as described herein to better target the identification of transactions for which reporting is required.

2. Basis shifts between assets of like character

One commenter recommended excluding transactions identified as a basis adjustment transaction of interest in cases in which (1) basis is shifted between assets of like character (that is, capital asset to capital asset or ordinary income asset to ordinary income asset), (2) basis is shifted from non-recoverable property to non-recoverable property or the basis adjustment does not provide a shorter recovery period, and (3) the property receiving the basis increase is not sold within two years of the basis increase. The Treasury Department and the IRS agree that a basis shift to a like-kind asset that has the same or a longer recovery period than the asset to which the basis was shifted from presents less risk of tax avoidance. However, the Treasury Department and the IRS do not agree that it would be appropriate in such circumstances to require reporting only if the property is disposed of within two years after the basis increase as there is still a potential for abuse if the property is disposed of after two years. A two-year rule would allow related taxpayers to increase the basis in property in anticipation of a future sale and would exclude transactions that present significant risks of tax avoidance. Accordingly, it is in the interest of sound tax administration to identify certain partnership related-party basis adjustment transactions as transactions of interest in the year of the basis shift and the commenter's recommendation is not adopted in the final regulations.

3. Requiring knowledge or intent

A few commenters recommended including an intent requirement for the transactions identified by the proposed regulations as transactions of interest. One commenter recommended that taxpayers that are unaware of or have no reason to know that a transaction identified by the proposed regulations is reportable be excused from disclosure. Another commenter recommended including a subjective test for intent and providing safe harbors and exceptions for business separations and succession-planning transactions.

Including an intent requirement for the transactions identified by the proposed regulations would introduce a subjective element, which is inconsistent with the IRS's need to gather additional information on the identified transactions to ascertain their potential for tax avoidance. Including an intent requirement in these regulations would also frustrate the IRS's ability to determine which of the basis adjustment transactions are impermissible tax avoidance transactions and to effectively and efficiently address the tax avoidance. Moreover, the general transaction of interest reporting requirements under section 6011 do not include a knowledge component; taxpayers are required to report the tax consequences of their transactions identified as transactions of interest regardless of whether they are aware of the reporting requirements. As further described in Parts III.A.4 and III.E of this Summary of Comments and Explanation of Revisions, it is not appropriate to incorporate an exception or safe harbor for business separations or succession-planning transactions into the final regulations as these transactions are no less likely to be structured to avoid tax, and thus may also have the potential for tax avoidance. Accordingly, these comments are not adopted in the final regulations.

4. Excluding certain basis-adjustment transactions

One commenter recommended excluding certain basis-adjustment transactions that cure inside-outside basis disparities created by section 734(b) adjustments, section 704(c) methods, contributions, distributions, and revaluations. Another commenter recommended that the final regulations consider common reasons why an inside-outside basis disparity might arise, such as transaction costs required to be capitalized to outside basis, certain income exclusions related to foreign corporations owned through a partnership, or the use of various section 704(c) methods. This commenter recommended that certain acquisitions of partnership businesses that may involve or create related-partner relationships, including distributions of lower-tier partnership interests to an upper-tier partnership and liquidations of blocker subsidiaries, be excluded as transactions of interest. Another commenter requested that the final regulations exclude partnership-incorporation transactions, including transactions described in Rev. Rul. 84-111, 1984-2 C.B. 88, Situation 2 (assets-up incorporation) and Situation 3 (interests-over incorporation). A few commenters requested that the final regulations exclude from the transactions identified as section 732(b) TOIs and section 734(b) TOIs any basis adjustments resulting from an actual or deemed distribution in the case of a partnership merger or division done for commercial reasons, such as to allow a partial sale and continuation of certain investments held by a private equity or other investment fund.

In response to comments received on the proposed regulations, these final regulations adopt several suggestions to limit the scope of the transactions identified by the proposed regulations to exclude from reporting common business transactions that do not meet large, economic thresholds. However, providing a blanket exclusion for certain transactions that may be common business transactions under specific circumstances, but may also have the potential for tax avoidance, would defeat the purpose of identifying the transactions as transactions of interest. For example, a partnership merger or division involving related parties may be undertaken with the intent to increase the basis of an asset that is subsequently disposed of in a recognition transaction or to increase cost recovery deductions. Moreover, one of the purposes of the final regulations is to gather additional information on how taxpayers are creating opportunities to shift basis between related parties using the provisions of subchapter K (for example, information related to how inside-outside basis disparities are being created). Providing an exclusion from reporting for transactions that cure inside-outside disparities created through certain section 704(c) methods, contributions, adjustments, distributions or revaluations would nullify most of the disclosures required by the final regulations as these are the techniques used to create opportunities for partnership related-party basis shifting. For these reasons, the commenters' suggestions for exclusions of certain transactions are not adopted in the final regulations.

5. Publicly traded partnerships

One commenter expressed concern that publicly traded partnerships within the meaning of section 7704 of the Code (PTPs) are unable to identify the buyers and sellers of interests therein, making it impossible to determine whether a transfer is made between related parties. This commenter stated that PTPs frequently engage in transactions that result in section 743(b) adjustments as part of normal public trading and capital-markets transactions and that the final regulations should add carveouts for transactions of PTPs. At a minimum, the commenter recommended that the final regulations implement an ownership threshold for related partners of five percent or more of the PTP to allow such persons to be identified by disclosures required to be made to the U.S. Securities and Exchange Commission. Another commenter recommended that basis adjustments resulting from an acquisition of a unit in a PTP, including as part of any redemption of publicly traded units by the PTP, should be excluded from the transactions identified as transactions of interest.

The Treasury Department and the IRS agree that due to PTPs having a large number of PTP unitholders that are not related partners within the meaning of the final regulations, and the unlikelihood that unrelated PTP unitholders would engage in the transactions identified as transactions of interest in the final regulations, it is appropriate to exclude basis adjustments involving a transfer of or a distribution with respect to partnership interests in a PTP, except basis adjustments resulting from certain material transactions involving partnership interests held by related partners in a PTP. Accordingly, the final regulations provide that in the case of a PTP, a participating partner means a partner of the PTP but only to the extent that the partner engages in a private transfer (as described in § 1.7704-1(e)), redemption and repurchase agreement (as described in § 1.7704-1(f)), or private placement (as described in § 1.7704-1(h)) of a partnership interest with a related partner and the transaction is not otherwise excluded as a transaction of interest described in the final regulations.

B. *Cash as property for purposes of section 734(b) TOIs*

One commenter requested that the final regulations clarify that cash is not included as "property" for purposes of a section 734(b) TOI and thus positive basis adjustments resulting from a distribution of cash be excluded from transactions identified as transactions of interest. Another commenter asked for clarification that cash distributions in excess of basis that result in positive basis adjustments under section 734(b) are identified as transactions of interest only to the extent that the distributions are made to a tax-indifferent party.

As a general matter, the text of section 734 makes no distinction between cash and other partnership property. A cash distribution to a related partner could be treated as a section 734(b) TOI to the extent that any basis increases generated under section 734(b)(1) exceed the gain recognized under section 731(a)(1) (or otherwise) with respect to which any tax imposed under subtitle A of the Code (subtitle A) is required to be paid by the related partners. However, the Treasury Department and the IRS note that if gain is recognized on a distribution of cash that results in a basis adjustment under section 734(b)(1)(A) and tax imposed under subtitle A is required to be paid on such gain by any of the related partners, that portion of the basis adjustment would not be counted towards the overall applicable threshold amount in determining whether disclosure of a transaction of interest is required.

C. *Acquisition and integration transactions for purposes of section 743(b) TOIs*

A few commenters recommended excluding from a section 743(b) TOI transactions in which a party purchases a partnership interest in an arm's-length transaction, receives a basis adjustment under section 743(b), then transfers the partnership interest to a related person in a nonrecognition transaction (for example, a transfer to a corporation under section 351(a) or to a partnership under section 721(a)) that causes a re-computation and re-allocation of the section 743(b) adjustment for the benefit of the related-party transferee. Under the proposed regulations, assuming the proposed $5 million threshold amount was met, such a transaction would be reportable if the nonrecognition transfer to the related transferee results in a positive basis increase.

The Treasury Department and the IRS agree that a positive section 743(b) basis adjustment acquired through an arm's-length transaction (for example, a transaction that would not be a reportable transaction under these final regulations, without regard to the six-year lookback period) to which a related transferee succeeds should not be a reportable transaction, except to the extent of any additional positive basis adjustment resulting from the nonrecognition transfer. This is because if the original section 743(b) adjustment was acquired through an arm's length transaction that would not be reportable under the final regulations, a corresponding amount of gain should have been recognized and tax imposed under subtitle A should have been paid by the original transferor. Thus, a subsequent nonrecognition transfer by the original transferee that results in the same section 743(b) adjustment has little potential for tax abuse. Accordingly, the final regulations provide that if a partner receives an interest in a partnership from a person in a recognition transaction (first transfer) and the basis of one or more partnership properties is increased under section 743(b)(1) and (c), and subsequently the partner (transferor) transfers the partnership interest to a person related to the transferor (transferee) in a nonrecognition transaction (subsequent transfer), the subsequent transfer is a transaction of interest only if the transferee's basis adjustment under section 743(b)(1) and (c) resulting from the subsequent transfer exceeds the amount of the transferor's remaining basis adjustment that is attributable to the transferred partnership interest (excess amount), and the applicable threshold amount is met. The final regulations further provide that only the excess amount is counted towards the applicable threshold amount and that a transferor's remaining basis adjustment is equal to the amount of the transferor's basis adjustment under section 743(b)(1) and (c) resulting from the first transfer as adjusted under section 1016(a)(2) to reflect any recovery of the basis adjustment or as otherwise adjusted prior to the subsequent transfer.

D. *Transfers between unrelated partners for purposes of section 743(b) TOIs*

Many commenters recommended excluding transfers between unrelated parties from a section 743(b) TOI if the transferee is related to one or more existing partners. Several of these commenters recommended that the transaction identified by proposed § 1.6011-18(c)(2) should be limited to transfers between related transferors and transferees. The Treasury Department and the IRS agree with this suggestion as transfers between related parties have a clear potential for tax avoidance whereas transfers between unrelated parties if the transferee is related to one or more existing partners may be much harder to structure to achieve the desired tax avoidance. Additionally, an unrelated transferor may not have reason to know that a transferee is related to one or more existing partners. Accordingly, the definition of "related partner" in § 1.6011-18(b)(9) in the final regulations provides that in the case of a section 743(b) TOI, a related partner means a transferor and transferee of a partnership interest that are related to each other immediately before or immediately after a section 743(b) TOI. The definition in the final regulations does not include a transferee that is unrelated to a transferor but is related to one or more of the partners in the partnership.

E. *Transfers upon death*

For purposes of a section 743(b) TOI, proposed § 1.6011-18(b)(2) would have defined a nonrecognition transaction as defined in section 7701(a)(45) — that is, any disposition of property in a transaction in which gain or loss is not recognized in whole or in part for purposes of subtitle A — other than a transfer on the death of a partner.

One commenter requested clarification that a step up in basis that results from the transfer of an interest on the death of a partner is not a transaction of interest. Another commenter requested clarification that the following transactions are "transfers on the death of a partner" excluded from the definition of a nonrecognition transaction under the final regulations: (1) any deemed transfer to what had been a grantor trust, including an intentionally defective grantor trust; and (2) a transfer on the death of a beneficiary of a trust that is a partner. This same commenter requested clarification that a "transfer on the death of a partner" is neither a "nonrecognition transaction," nor a "recognition transaction" as defined in the proposed regulations. Section 1.6011-18(c)(4) of the final regulations clarifies that transfers on the death of a partner are not identified as transactions of interest or as substantially similar transactions. Section 1.6011-18(b)(13) of the final regulations also provides that the term "transfer on the death of a partner" means a transfer of a partnership interest from a partner to the partner's estate or a deemed transfer from a grantor trust owned by the partner to a trust that becomes a separate entity for Federal income tax purposes by reason of the partner's death.

One commenter recommended excluding distributions of partnership property to transferees of an interest in a partnership owned (or deemed owned) by a decedent at the time of death that occur during the administration of the decedent's estate, or a trust created by the decedent. This commenter also recommended excluding transfers of partnership interests owned (or deemed owned) by a decedent that occur during the administration of the decedent's estate or by a trust that was created by the decedent. Although not specifically stated in the commenter's letter, presumably, both of the commenter's recommendations would not be relevant in cases in which a section 754 election was made at the time of the decedent's death because there would be no disparity between the outside basis in the decedent's partnership interest and its share of inside basis in the partnership's properties. The Treasury Department and the IRS agree that transfers of partnership interests resulting from the death of a partner should be excluded from the transactions identified as transactions of interest and thus these transfers are not identified as such by the final regulations. However, if a section 754 election is not made for the taxable year that includes the death of the partner, subsequent transactions that generate positive basis adjustments, such as distributions of partnership property to the estate or transfers of partnership interests to beneficiaries that may resolve an inside-outside basis disparity created by a step-up to the basis of the decedent's partnership interest upon death, will be included as transactions of interest, provided that the applicable threshold amount is met. The Treasury Department and the IRS appreciate that a section 754 election, once made, is irrevocable without seeking permission from the IRS, and that a section 754 election at the time of a partner's death may require the partnership to maintain a separate set of calculations of the transferee beneficiaries' distributive shares of partnership items that reflect the section 743(b) adjustment. But making a section 754 election at the time of death would be the mechanism by which to avoid the reporting requirements imposed by the regulations (assuming the applicable threshold amount is met). Providing an exception to reporting for transactions that result in basis adjustments because a section 754 election was not made on the death of a partner due to potential administrative burdens would result in additional requests for reporting exceptions in other fact patterns in which a section 754 election was not made on an original transaction due to potential administrative burdens, and a subsequent nonrecognition transaction results in a basis adjustment that would otherwise be reportable. Including such exceptions in the final regulations would defeat the purpose of identifying the transactions of interest, as there may be circumstances in which the lack of a section 754 election was part of a strategy to generate more beneficial results using a transaction identified as a transaction of interest by the regulations. Thus, these final regulations do not exclude transactions in which a basis increase arises because a section 754 election was not made for a transaction that would have provided a basis adjustment to offset an inside-outside basis disparity. The Treasury Department and the IRS note that relief under §§ 301.9100-1 through 301.9100-3 may be available for section 754 elections should a partnership fail to make the election in the time prescribed by the Code and regulations.

IV. *Threshold Amount For Reporting*

A. *Amount generally*

Under proposed § 1.6011-18(c)(3), a partnership related-party basis adjustment transaction would have included those transactions in which the total basis increases from all transactions described in proposed § 1.6011-18(c)(1) or (2), (d)(1) or (2) engaged in by the same partner or partnership during the taxable year (without netting for any basis adjustment that results in a basis decrease in the same transaction or another transaction), reduced by the gain recognized, if any, on which tax imposed under subtitle A is required to be paid by any of the related parties to the transaction, equal or exceed $5 million. Accordingly, a transaction of a partner or partnership described in proposed § 1.6011-18(c)(1) or (2) that resulted in a basis increase of less than $5 million during the taxable year would have been a transaction of interest under proposed § 1.6011-18(a) if, in the same taxable year, the partner or partnership participated in another transaction or transactions described in proposed § 1.6011-18(c)(1) or (2) and, in the aggregate, the transactions resulted in a basis increase that equals or exceeds $5 million, without regard to any basis decrease resulting from the transactions and after reducing the resulting aggregate amount by the gain recognized, if any, on which tax imposed under subtitle A is required to be paid by any of the related parties to the transactions.

Many commenters recommended increasing the proposed $5 million threshold amount, asserting that the $5 million threshold was too low, particularly considering the aggregation requirement, and would catch common business transactions. Several commenters recommended increasing the proposed $5 million threshold amount to an amount between $10 million and $100 million. One commenter recommended making the threshold amount $10 million for transactions of interest occurring after the applicability date of these final regulations and $50 million for transactions of interest occurring before that date.

The Treasury Department and the IRS have determined that increasing the proposed $5 million threshold amount is appropriate to reduce the administrative burden imposed on taxpayers. The purpose of these final regulations is to learn more about partnership related-party basis adjustment transactions and the Treasury Department and the IRS are conscious of overburdening taxpayers in that pursuit. Accordingly, the final regulations provide that, in the case of related-party basis adjustment transactions occurring within the six-year lookback period described in §1.6011-18(c)(3)(ii), the applicable threshold amount is $25 million. For related-party basis adjustment transactions occurring after the six-year lookback period, the final regulations provide an applicable threshold amount of $10 million. In each case, the applicable threshold amount is met for a taxable year if the sum of all related-party basis increases (as determined under Part IV.B. of this Summary of Comments and Explanation of Revisions) resulting from all transactions described in the final regulations of a participant during the taxable year (without netting for any downward basis adjustment in the same transaction or another transaction) exceeds by at least the applicable threshold amount the gain recognized from such transactions, if any, on which tax imposed under subtitle A is required to be paid by any of the related partners (or tax-indifferent party) who are a party to such transactions. If the applicable threshold amount is met for a taxable year, all transactions of the participant described in the final regulations for the taxable year are reportable as transactions of interest regardless of whether an individual transaction meets the applicable threshold amount.

B. *Calculation of threshold amount*

Commenters also recommended changing how the threshold amount is calculated. A few commenters recommended allowing basis increases to be offset by basis decreases for purposes of determining whether the threshold amount has been reached. Another commenter recommended taking basis increases into account only to the extent that corresponding basis decreases are borne by related parties. The same commenter recommended exempting transactions from the proposed regulations for which only a small portion (for example, 10 percent) of an overall basis decrease impacts parties related to those with corresponding basis increases, or vice versa. One commenter recommended that if its recommendation to limit reporting to the year of the transaction of interest is not adopted, that the threshold amount look to net taxable income — that is, reporting should be required only if the tax benefit reduced taxable income by the threshold amount. This commenter also suggested eliminating aggregation of basis increases. Another commenter recommended using a threshold amount that is not related to basis (for example, the book value of distributed property).

The Treasury Department and the IRS agree that the calculation of the applicable threshold amount for purposes of section 734(b) TOIs should include only related partners' shares of basis increases and not the shares of unrelated parties, who can negotiate transactions at arm's length to protect their interests. The Treasury Department and the IRS also agree that the calculation of the applicable threshold amount for purposes of section 732(b) TOIs should exclude basis increases that correspond to basis decreases borne by unrelated partners (other than tax-indifferent parties) as basis decreases borne by unrelated partners should be negotiated at arm's length unless the unrelated partner is a tax-indifferent party. Accordingly, § 1.6011-18(c)(3)(iii) of the final regulations provide that in the case of a section 734(b) TOI, other than a substantially similar transaction described in § 1.6011-18(d)(1), for determining whether the applicable threshold amount is met for a taxable year, a basis increase is an increase to the adjusted basis of the partnership's property under section 734(b)(1) and (c) only to the extent of each related partner's share of the basis increase. Section 1.6011-18(c)(3)(iv) of the final regulations provides that in the case of a section 732(b) TOI, other than a substantially similar transaction described in § 1.6011-18(d)(1), for determining whether the applicable threshold amount is met for a taxable year, a basis increase is an increase to the basis of property distributed to one of the related partners under section 732(b) or (c), but excluding the amount of any basis increase that corresponds to a decrease to the basis of property distributed to unrelated partners (other than tax-indifferent parties) under section 732(b) and (c) or to unrelated partners' (other than tax-indifferent parties') shares of a corresponding decrease to the basis of the partnership's remaining property under section 734(b)(2) and (c). In the case of a substantially similar transaction described in § 1.6011-18 (d)(1), for purposes of determining whether the applicable threshold amount is met for a taxable year, a basis increase is an increase to the basis of property distributed to one of the partners under section 732(b) or (c) only to the extent of a corresponding decrease to the basis of property distributed to a tax-indifferent party under section 732(b) and (c) or to one or more tax-indifferent party's shares of a corresponding decrease to the basis of the partnership's remaining property under section 734(b)(2) and (c). For purposes of all of these rules, a partner's share of a basis decrease is determined immediately after the distribution under rules similar to the rules of § 1.197-2(h)(12)(iv)(D).

The Treasury Department and the IRS do not agree, however, that additional changes to the calculation of the applicable threshold amount, such as eliminating aggregation, calculating the applicable threshold amount based on increases to taxable income, or using an economic threshold that is based on book amounts, are appropriate in light of the modifications made. If aggregation were eliminated from the calculation of the applicable threshold amount, taxpayers would be incentivized to separate transactions described in the final regulations into multiple transactions that result in positive basis adjustments in an amount below the applicable threshold amount to avoid reporting obligations. Incentivizing such behavior would defeat the purpose of the final regulations, which is to gather information on partnership related-party basis adjustment transactions. Additionally, calculating the applicable threshold amount based on taxable income or book amounts would introduce unnecessary complexity for both taxpayers and the IRS in identifying the transactions described in the final regulations. The calculation of the applicable threshold amount in the final regulations represents an appropriate methodology for quantifying the magnitude of partnership related-party basis adjustment transactions a taxpayer engages in for a taxable year. As described in Part IV.A of this Summary of Comments and Explanation of Revisions, the increases to the threshold amount made by these final regulations should also address concerns that the applicable threshold amount is overly inclusive.

Finally, one commenter requested clarification that substantially similar transactions are subject to the threshold amount. The Treasury Department and the IRS clarify that a transaction cannot be a substantially similar transaction if the applicable threshold amount is not met. As described in part VI of this Summary of Comments and Explanation of Revisions, transactions would be "substantially similar" transactions if they are (1) expected to obtain the same or similar types of tax consequences as the transactions described in the final regulations, (2) factually similar or based on the same or similar tax strategy, and (3) the applicable threshold amount is met.

V. *Relatedness Standard*

Proposed § 1.6011-18(b)(8) would have defined "related" as having a relationship described in section 267(b) (without regard to section 267(c)(3)) or section 707(b)(1). Proposed § 1.6011-18(b)(9) would have defined "related partners" as partners of a partnership that are related in the following manner — (i) in a transaction described in proposed § 1.6011-18(c)(1), the partnership has two or more direct or indirect partners that are related to each other within the meaning of proposed § 1.6011-18(b)(8), or (ii) in a transaction described in proposed § 1.6011-18(c)(2), the transferor of a partnership interest is related to the transferee, or the transferee is related to one or more of the partners in the partnership, within the meaning of proposed § 1.6011-18(b)(8). Under the proposed regulations, this relatedness requirement would have been met if the requisite relatedness exists either immediately before or immediately after a partnership related-party basis adjustment transaction described in proposed § 1.6011-18(c)(1) or (2).

Several commenters recommended changes to the relatedness requirement, stating that it was overbroad and difficult to comply with as partnerships and partners may not be able to identify their related parties. One commenter recommended importing concepts found in section 1563(a)(2) of the Code (related to brother-sister controlled groups of corporations) that would limit the definition of related partnerships by taking into account common ownership of capital or profits interests in the partnerships only to the extent that such ownership is identical with respect to each partnership.

In the case of transactions of interest involving section 734(b) or section 732(b) or (d), one commenter recommended requiring related partners to own 80 percent or more of the capital or profits interests of the partnership. Similarly, another commenter recommended that for all purposes of the final regulations, reporting should be required only if related parties own 80 percent or more of the capital or profits of a participating partnership. This commenter also recommended that the standard for relatedness be modified by substituting "80 percent" for "50 percent" in the relevant relationships defined within sections 267(b) or section 707(b)(1).

The Treasury Department and the IRS appreciate that the standard of relatedness used in the proposed regulations, combined with the scope of the transactions identified as transactions of interest, the proposed $5 million threshold amount, and the proposed definition of participation could result in administrative burdens on partnerships and their partners. The final regulations address these burdens by limiting the scope of the transactions identified, increasing the applicable threshold amounts, and limiting the application of the subsequent realization of tax benefit rule as described in Part VII.A. of this Summary of Comments and Explanation of Revisions. For example, in response to comments requesting that the standard of relatedness be narrowed, in the case of a section 734(b), 732(b) or 732(d) TOI, the final regulations provide that only directly related partners (and not also indirectly related partners) are considered in determining whether partners are related within the meaning of § 1.6011-18(b)(8) of the final regulation.

The final regulations do not adopt the additional changes to the standard of relatedness recommended by commenters because the Treasury Department and the IRS are concerned that counting only identical ownership as between related partnerships, or requiring related partners to own 80 percent or more of the capital or profits interests in a partnership, would more easily permit partnership structures with only marginally different ownership, including through the use of accommodation parties, to avoid such higher ownership thresholds without substantially affecting the partners' economics. Likewise, the Treasury Department and the IRS are concerned that increasing the relatedness standard from 50 percent to 80 percent could allow taxpayers to structure their affairs to stay below an 80-percent-relatedness standard, while simultaneously engaging in abusive partnership related-party basis adjustment transactions. Adding an ownership threshold or increasing the relatedness standard would frustrate the purpose of identifying the transactions described in the proposed regulations as transactions of interest. Accordingly, the commenters' recommendations are not adopted in the final regulations.

A commenter recommended excluding transactions between family members from those defined as transactions of interest and focusing instead on transactions involving controlled corporations described in section 267(f). The commenter noted that if relatedness is determined immediately before or after a transaction, parties undergoing divorce may be subject to these rules even though they have competing interests and will not be related after the divorce. Another commenter recommended excluding brothers and sisters from a person's family for purposes of determining relatedness, stating that, in the commenter's experience, siblings often have a contentious business relationship and are less likely to engage in transactions that confer large, gratuitous economic or tax benefits to one another. The Treasury Department and the IRS do not agree that familial relationships, including sibling relationships, should be excluded from the definition of relatedness. Family members, including siblings, often work in concert in ways that arm's-length parties do not. For those reasons, Congress included these familial relationships as part of the limitation rules in sections 267 and 707(b). Additionally, section 1041 of the Code is intended to address transfers of property between spouses incident to divorce. For these reasons, the final regulations retain familial relationships, including sibling relationships, in the definition of relatedness.

VI. *Substantially Similar Transactions*

Section 1.6011-4(b)(6) defines a "transaction of interest" as a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has identified by notice, regulation, or other form of published guidance as a transaction of interest. For purposes of proposed § 1.6011-18, transactions would be "substantially similar" transactions if the transactions are substantially similar within the meaning of § 1.6011-4(c)(4) — that is, if they are expected to obtain the same or similar types of tax consequences and are either factually similar or based on the same or similar tax strategy. Proposed § 1.6011-18(a) would have provided that substantially similar transactions include, but are not limited to, the transactions described in proposed § 1.6011-18(d).

Some commenters recommended clarifying or narrowing the definition of "substantially similar" transactions generally. Several commenters noted that the broad definition of "substantially similar transactions" in § 1.6011-4 increases uncertainty and compliance costs. Suggestions to amend § 1.6011-4, including that provision's definition of a "substantially similar" transaction, are outside the scope of these final regulations. As a result, the commenters' suggestions are not adopted in the final regulations.

A. *Tax-indifferent parties*

Under proposed § 1.6011-18(d)(1), a transaction would have been substantially similar to a transaction described in proposed § 1.6011-18(c) if the transaction is a basis adjustment transaction described in proposed § 1.6011-18(c)(1) or (2), except that it does not involve related partners and one or more partners of the partnership is a tax-indifferent party. Under proposed § 1.6011-18(b)(11), a tax-indifferent party would have meant a person that is either not liable for Federal income tax because of its tax-exempt or, in certain cases, foreign status, or to which gain from a transaction described in proposed § 1.6011-18(c) would not result in Federal income tax liability for the person's taxable year within which such gain is recognized (for example, because the taxpayer has a net operating loss carryforward or capital loss carryforward).

Two commenters recommended eliminating transactions involving tax-indifferent parties from those identified as transactions of interest. Many commenters noted that partners and partnerships may be unaware that a person engaging in a transaction identified by the proposed regulations is a tax-indifferent party. Some commenters requested clarification to the definition of tax-indifferent party, such as whether it includes direct or indirect partners that are exempt from Federal income tax under section 115 of the Code (relating to the income of State, territorial, or local governments), entities treated as partnerships or S corporations for Federal tax purposes, or a person that, due to tax attributes or for other reasons, is subject to tax on only part of its income. One commenter requested confirmation that the definition of a tax-indifferent party does not include a party with a capital loss carryover. The commenter raised that a capital loss carryover may be unrelated to a partner's partnership interest and unknown by other partners, particularly if the partner is unrelated.

One commenter recommended limiting the rule to situations in which the tax-indifferent party knows or has reason to know of the tax benefits arising in connection with its participation in a basis-adjustment transaction and that the other partners that are party to the transaction know of the partner's tax-indifferent status. One commenter recommended an exception for taxpayers who do not have knowledge or reason to know that its transaction is reportable because a person that is a party to the transaction is tax-indifferent. Another commenter recommended modifying the tax-indifferent party rule to apply only to situations in which the taxpayer knowingly participates in the transaction to which the tax-indifferent party facilitates a basis step-up.

Eliminating the tax-indifferent party rule would frustrate the purpose of identifying substantially similar transactions to the identified transactions of interest that use tax-indifferent parties instead of related parties to achieve the same economic or tax results. Accordingly, the Treasury Department and the IRS decline to eliminate the tax-indifferent party rule entirely in the final regulations. However, in response to these comments, the Treasury Department and the IRS have determined that certain changes to the scope of transactions of interest involving tax-indifferent parties are appropriate.

Accordingly, the final regulations include a knowledge element in the definition of a tax-indifferent party. Section 1.6011-18(b)(12) of the final regulations provides that a tax-indifferent party means a person that is either not liable for Federal income tax by reason of its tax-exempt or, in certain cases, foreign status, or to which any gain, or portion of any gain, that would have resulted from a section 732(b) TOI or a section 734(b) TOI if the property subject to a basis decrease in such transaction were sold immediately after such transaction, would not result in Federal income tax liability for the person's taxable year within which such gain would have been recognized, and whose status as a tax-indifferent party is known or should be known to any other person that participates in the transaction or to a partner in a partnership that participates in such a transaction. Thus, a tax-indifferent party would include a person that is partially taxable, for example, due to tax attributes, to the extent that the person's status as a tax-indifferent party is known or should be known by any other person participating in the transaction or to a partner in a partnership that participates in such a transaction. Because partnerships or S corporations are generally not liable for tax, and because the tax status of their partners or shareholders could be diverse, the final regulations also provide that partnerships or S corporations are not tax-indifferent parties except in cases in which a principal purpose of the use of the partnership or S corporation is to avoid tax-indifferent party status.

Additionally, the final regulations limit the scope of a substantially similar transaction with a tax-indifferent party under § 1.6011-18(d)(1) by limiting the calculation of the applicable threshold amount to basis increases that correspond to a basis decrease to the tax-indifferent party for sections 732 and 734 TOIs. *See* Part IV.B. of this Summary of Comments and Explanation of Revisions. These modifications are intended to address concerns that the tax-indifferent party rules in the proposed regulations were overbroad.

The final regulations also clarify that a transaction with a tax-indifferent party includes a transaction in which the tax-indifferent party facilities the increase in the basis of partnership property in a section 732 TOI by having a share of a corresponding decrease to the basis of partnership property.

B. *Recognition transactions*

Proposed § 1.6011-18(d)(2) would have defined as a substantially similar transaction a transaction in which a partner transfers the partner's partnership interest in a recognition transaction to a related transferee or to a person related to one or more existing partners, and the proposed $5 million threshold amount was met. Proposed § 1.6011-18(b)(6) would have defined a "recognition transaction" as a transaction other than a nonrecognition transaction.

One commenter requested clarification that proposed § 1.6011-18(d)(2) applies only to transfers between related parties, meaning the transferor and transferee must be related. The Treasury Department and the IRS agree with this comment and have made clarifying changes to confirm that the rule in § 1.6011-18(d)(2) does not apply to transfers of partnership interests between persons that are not related.

VII. *Participation in a Transaction of Interest Identified by the Proposed Regulations*

A. *Subsequent realization of tax benefit rule*

Under proposed § 1.6011-18(e)(2)-(4), a participating partnership, participating partner, or related subsequent transferee would have participated in a transaction of interest in any taxable year in which it participates in a transaction described in proposed § 1.6011-18(c). Additionally, under proposed § 1.6011-18(e)(5), a participating partnership, participating partner, or related subsequent transferee would have participated in a transaction of interest in any taxable year in which its tax return reflected the tax consequences of a basis increase resulting from a transaction described in proposed § 1.6011-18(c) (subsequent realization of tax benefit rule). Therefore, under the proposed regulations, as a result of the subsequent realization of tax benefit rule, a transaction described in proposed § 1.6011-18(c) that occurred many years ago could require reporting if a taxpayer's tax return in an open tax year reflected the tax consequences (such as cost-recovery deductions) arising from the transaction of interest.

Several commenters recommended eliminating the retroactive effect of the subsequent realization of tax benefit rule. These commenters stated that complying with the rule would be burdensome given that it could require taxpayers and their advisors to reconstruct transactions and their resulting tax consequences from many years ago. Commenters asserted that, in many cases, taxpayers and their advisors will not have sufficient information to comply with the rule.

Several commenters recommended that the proposed regulations apply prospectively to transactions that occur in taxable years beginning on or after the date the final regulations are adopted, whereas one commenter recommended applying the proposed regulations solely to transactions effected on or after January 1, 2023. One commenter recommended applying the subsequent realization of tax benefit rule only to partnership related-party basis adjustment transactions that occur within partnership tax years that remain open under the period of limitations set forth in section 6235 of the Code. Section 6235 provides rules on the period of limitations for making adjustments with respect to partnerships subject to the Centralized Partnership Audit Regime under the Bipartisan Budget Act of 2015 (BBA partnerships). Under section 6235(a)(1), the time for the IRS to make an adjustment for a taxable year of a BBA partnership generally is the later of the date which is three years after the latest of (1) the date on which the partnership return for the taxable year was filed, (2) the return due date for the taxable year, or (3) the date on which the partnership filed an administrative adjustment request under section 6227 of the Code with respect to the taxable year. In the case of a BBA partnership that makes a substantial omission of gross income within the meaning of section 6501(e)(1), section 6235(c)(2) provides that the period of limitations on making adjustments is six years instead of three years.

The Treasury Department and the IRS do not agree with eliminating all reporting that would occur under the subsequent realization of tax benefit rule as this would defeat the purpose of providing the IRS with information regarding transactions with tax consequences occurring over more than one taxable year. However, the Treasury Department and the IRS agree that it is appropriate to limit the retroactive information effect of the subsequent realization of tax benefit rule because of administrative concerns with compliance for transactions that would meet the elements of § 1.6011-18(c) and (d) except that they occurred many years ago.

In determining the appropriate limitation for the subsequent realization of tax benefit rule, limiting the look back period to the prior six years as recommended by one commenter allows the IRS to preserve its ability to assess tax in cases in which the statute of limitations for assessment of tax is six years pursuant to section 6501(e) or section 6235(c)(2). In addition, a six-year lookback period aligns with the requirement under § 301.6112-1(b)(2) that material advisors of transactions of interests maintain lists of advisees, but not if the person entered into the transaction more than six years from the date the transaction was identified as a transaction of interest under published guidance. Accordingly, the final regulations adopt a six-year lookback period for required disclosures. Under the final regulations at § 1.6011-18(f)(2), for a taxable year described in § 1.6011-4(e)(2)(i), a participant must provide the information described in the final regulations only if the transaction of interest occurred within the six-year lookback period. Section 1.6011-18(b)(11) of the final regulations provides that the six-year lookback period means the seventy-two months immediately preceding the first month of the taxpayer's most recent taxable year that began before January 14, 2025. The final regulations include examples demonstrating the six-year lookback period rule.

B. *Limiting the definition of participation*

Several commenters recommended requiring reporting only in the taxable year the transaction of interest occurs and eliminating the subsequent realization of tax benefit rule. These commenters asserted that reporting only in the year in which the transaction of interest first arises would reduce compliance burdens and costs for taxpayers and limit the potential for missed reporting. One commenter suggested adopting a one-time disclosure mechanism like that adopted in Form 1065, Schedule B, questions 11 and 12 for the "drop and swap" or "swap and drop" transactions to which section 1031 of the Code applies. Another commenter recommended requiring reporting only at the partnership level to avoid duplicative reporting. Reporting by all participants in any taxable year in which the participant's tax return reflects the tax consequences of a basis increase resulting from a transaction of interest is the most appropriate for tax compliance and administration. Accordingly, the commenters' recommendations are not adopted in the final regulations.

Special Analyses

I. *Paperwork Reduction Act*

The collection of information contained in these final regulations is reflected in the collection of information for Form 8886 and Form 8918, *Material Advisor Disclosure Statement*, that have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control numbers 1545-1800 and 1545-0865.

To the extent there is a change in burden as a result of these final regulations, the change in burden will be reflected in the updated burden estimates for the Forms 8886 and 8918. The requirement to maintain records to substantiate information on Forms 8886 and 8918 is already contained in the burden associated with the control number for the forms and remains unchanged.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

II. *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) requires agencies to "prepare and make available for public comment an initial regulatory flexibility analysis," which will "describe the impact of the rule on small entities." Section 605(b) of the RFA allows an agency to certify a rule if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Secretary of the Treasury hereby certifies that these final regulations will not have a significant economic impact on a substantial number of small entities pursuant to the RFA. This certification is based on IRS data that estimates the percentage of partnerships that would have been required to file a disclosure statement under the proposed regulations and those that may be required to file a disclosure statement under the final regulations.

The IRS's Research, Applied Analytics, and Statistics division (RAAS) provided data that indicated the percentage of partnerships with gross receipts or sales of $25 million or less that might have been subject to the disclosure obligations under the proposed regulations because of a basis adjustment under section 743(b) of more than $5 million during the taxable year. In addition, RAAS provided data that indicated the percentage of partnerships with gross receipts or sales of $25 million or more that might have been subject to the disclosure obligations under the proposed regulations because of a basis adjustment under section 743(b) of more than $5 million during the taxable year. The data suggested that of all partnerships with related parties and a basis adjustment under section 743(b) of more than $5 million during the taxable year, approximately two-thirds of the partnerships would have gross receipts or sales of $25 million or less and approximately one-third would have gross receipts or sales of $25 million or more. The Treasury Department and the IRS determined that the data did not indicate that the proposed regulations would have a significant economic impact on a substantial number of small entities because not all partnerships with gross receipts or sales of $25 million or less are considered small businesses,[3] and the data did not provide information on whether the partnerships with gross receipts or sale of $25 million or less were part of larger enterprises.

As discussed in Part II of the Summary of Comments and Explanation of Revisions, several commenters stated that the scope of the proposed regulations would be overbroad and the number of entities that would be subject to disclosure was underestimated. In addition, commenters asserted that taxpayers would be subject to substantial costs for complying with the proposed regulations because compliance required reviewing transactions from prior taxable years to determine whether a continuing tax benefit was attributable to a transaction identified as a transaction of interest under the proposed regulations. These comments are addressed in Parts II and VII of the Summary of Comments and Explanation of Revisions.

One commenter asserted that the Treasury Department and the IRS underestimated the likely cost of complying with the proposed regulations. Specifically, the commenter asserted that the likely wage of tax preparers and costs of due diligence, as well as the number of parties affected by each transaction of interest were underestimated.

As indicated in the Summary of Comments and Explanation of Revisions, the final regulations include changes that should significantly limit the total number of entities and more specifically, small businesses, subject to the disclosure obligations. Most significantly, the applicable threshold amount is increased from $5 million to $10 million; the period for reporting under § 1.6011-4(e)(2)(i) is limited to a six-year lookback period and the applicable threshold amount for the six-year lookback period is $25 million; in the case of a section 734(b) TOI, the applicable threshold amount is determined by generally only taking into account only the amount of the basis increase shared by related partners; in the case of a section 732(b) TOI, the applicable threshold amount is determined by generally only taking into account only the amount of the basis increase that corresponds to a basis decrease shared by the related partners.

In addition, more recent data from the IRS indicates that, in the case of partnerships with gross assets of less than $25 million that reported basis adjustments under section 734(b) or section 743(b) for the taxable year, the average basis adjustment was less than the applicable threshold amount of $10 million or more in the final regulations. Thus, the Treasury Department and the IRS anticipate that many partnerships with gross assets of less than $25 million should not be subject to the disclosure obligations under the final regulations. Further, the data indicates that partnerships with gross assets of more than $25 million that reported basis adjustments under section 734(b) or section 743(b) for the taxable year that met the applicable threshold amount of $10 million or more in the final regulations represent less than one percent of all partnerships that filed tax returns for the taxable year. Accordingly, as a result of the changes made to the final regulations in response to comments received on the proposed regulations, the disclosure obligations in the final regulations should affect a low percentage of partnerships and most of those partnerships will be partnerships with less than $25 million of gross assets.

The final regulations should not have a significant economic impact on small entities subject to the reporting requirements of the final regulations because the final regulations merely implement sections 6011, 6111 and 6112 and § 1.6011-4 by specifying the manner in which and the time at which a transaction identified as a transaction of interest in the final regulations must be reported. Accordingly, because the final regulations will be limited in scope to time and manner of information reporting, their economic impact is expected to be minimal. The Treasury Department and the IRS expect that the reporting burden is low because the information sought is necessary for regular annual return preparation and ordinary recordkeeping. The estimated burden for any taxpayer required to file Form 8886 is approximately 10 hours, 16 minutes for recordkeeping, 4 hours, 50 minutes for learning about the law or the form, and 6 hours, 25 minutes for preparing, copying, assembling, and sending the form to the IRS.

RAAS estimated that the appropriate wage rate for complying with the proposed regulations is $102.00 (2022 dollars) per hour. Thus, it was estimated that persons required to comply with the proposed regulations would have incurred costs totaling

[3] *See*, 13 CFR § 121.201.

approximately $2,194.70 per filing. One commenter indicated that this per hour dollar amount is too small and that a better estimate is approximately $177.29 per hour or approximately $3,814.69 per filing (subject to the taxpayer potentially seeking specialists with a higher hourly fee to comply with the proposed regulations). Either of these amounts is small in comparison to an aggregate basis increase of $10 million or more as the result of a transaction identified as a transaction of interest under the final regulations. Thus, the relatively small cost to comply with the final regulations will not pose any significant economic impact to any small entities that would be subject to the final regulations.

For the reasons stated, a regulatory flexibility analysis under the RFA is not required. Pursuant to section 7805(f) of the Code, the proposed rule preceding this rulemaking was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

III. *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 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.

IV. *Executive Order 13132: Federalism*

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

V. *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.

VI. *Congressional Review Act*

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

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is 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*.

Drafting Information

The authors of these regulations are Elizabeth Zanet and Cameron Williamson, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

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 is amended by adding an entry for § 1.6011-18 in numerical order to read in part as follows:

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

* * * * *

Section 1.6011-18 also issued under 26 U.S.C. 6001 and 26 U.S.C. 6011.

* * * * *

Par. 2. Section 1.6011-18 is added to read as follows:

§1.6011-18 Certain partnership related-party basis adjustment transactions as transactions of interest.

(a) *Identification as transaction of interest*. Transactions that are the same as or substantially similar (within the meaning of § 1.6011-4(c)(4)) to the transactions described in paragraph (c) of this section are identified as transactions of interest for purposes of § 1.6011-4(b)(6). Transactions that are substantially similar (within the meaning of § 1.6011-4(c)(4)) to the transactions described in paragraph (c) of this section include, but are not limited to, transactions described in paragraph (d) of this section.

(b) *Definitions*. The following definitions apply for purposes of this section:

(1) *Code* means the Internal Revenue Code.

(2) *Nonrecognition transaction* means a nonrecognition transaction within the meaning of section 7701(a)(45) of the Code.

(3) *Participating partner* means—

(i) Except as provided in paragraph (b)(3)(ii), (iii), or (iv) of this section, any partner that directly receives a distribution of property from, or an interest in, a participating partnership, or directly transfers an interest in a participating partnership, in a transaction described in paragraph (c) or (d) of this section, including a person that becomes or ceases to be a partner as a result of such transaction.

(ii) In the case of a participating partnership interest held by an entity that is disregarded as separate from its owner within the meaning of § 301.7701-2(c)(2)(i) of this chapter, *participating partner* means the owner of the disregarded entity for Federal income tax purposes.

(iii) In the case of a participating partnership interest held by a trust for which the grantor or another person is treated as the owner of the trust that holds the participating partnership interest as provided in section 671 of the Code, *participating partner* means the grantor or other person designated under sections 671 through 679 of the Code as the owner of the trust that holds the participating partnership interest.

(iv) In the case of a publicly traded partnership within the meaning of section 7704 of the Code, *participating partner* means a partner of the publicly traded partnership but only to the extent that the partner engages in a private transfer (as described in § 1.7704-1(e)), redemption or repurchase agreement (as described in § 1.7704-1(f)), or private placement (as described in § 1.7704-1(h)) of a partnership interest with a related partner and the transaction is not otherwise excluded as a transaction described in paragraph (c) or (d) of this section.

(4) *Participating partnership* means any partnership—

(i) That makes a distribution of property to a participating partner in a transaction described in paragraph (c)(1) or (d)(1) of this section, or

(ii) A partnership interest in which is transferred by a participating partner in a transaction described in paragraph (c)(2) or (d)(2) of this section.

(5) *Participating partnership interest* means any partnership interest in a participating partnership.

(6) *Recognition transaction* means a transaction other than a nonrecognition transaction within the meaning of paragraph (b)(2) of this section.

(7) *Recoverable property* means property of a character subject to an allowance for depreciation, amortization, or depletion under subtitle A of the Code (subtitle A).

(8) *Related* means having a relationship described in section 267(b) of the Code (without regard to section 267(c)(3)) or section 707(b)(1) of the Code.

(9) *Related partners* means:

(i) In the case of a transaction described in paragraph (c)(1) of this section, two or more direct partners of a partnership that are related immediately before or immediately after a transaction described in paragraph (c)(1) of this section.

(ii) In the case of a transaction described in paragraph (c)(2) or (d)(2) of this section, a transferor and transferee of a partnership interest that are related to each other immediately before or immediately after a transaction described in paragraph (c)(2) of this section.

(10) *Related subsequent transferee* means any person that is related to a participating partner and directly received in a nonrecognition transaction a transfer (including a distribution) of property that was subject to an increase in basis from a transaction described in paragraph (c) or (d) of this section.

(11) *Six-year lookback period* means the seventy-two months immediately preceding the first month of the taxpayer's most recent taxable year that began before January 14, 2025.

(12) *Tax-indifferent party* means a person that is either not liable for Federal income tax by reason of the person's tax-exempt or, in certain cases, foreign status, or to which any gain, or portion of any gain, that would have resulted from a transaction described in paragraph (d)(1) of this section if the property subject to a basis decrease in such transaction were sold immediately after such transaction would not result in Federal income tax liability for the person's taxable year within which such gain would have been recognized, and whose status as a tax-indifferent party is known or should be known to any other person that participates in a transaction described in paragraph (d)(1) of this section or to a partner in a partnership that participates in such a transaction. A tax-indifferent party does not include a partnership or S corporation except in a case in which a principal purpose of the use of the partnership or S corporation is to avoid tax-indifferent party status.

(13) *Transfer on the death of a partner* means a transfer of a partnership interest from a partner to the partner's estate or a deemed transfer from a grantor trust owned by the partner to a trust that becomes a separate entity for Federal income tax purposes by reason of the partner's death.

(c) *Transaction description*. A transaction is described in this paragraph (c) if the factual elements of the transaction described in paragraph (c)(1)(i) through (iii) or (c)(2) of this section are met.

(1) *Distributions by a partnership*. A partnership with two or more related partners engages in any of the transactions described in paragraphs (c)(1)(i) through (iii) of this section as follows:

(i) The partnership distributes property to one of the related partners in a current or liquidating distribution, the partnership increases the basis of one or more of its remaining properties under section 734(b) and (c) of the Code, and the applicable threshold described in paragraph (c)(3) of this section is met.

(ii) The partnership distributes property to one of the related partners in liquidation of that person's partnership interest (or in complete liquidation of the partnership), the basis of one or more of those distributed properties is increased under section 732(b) and (c) of the Code, and the applicable threshold described in paragraph (c)(3) of this section is met.

(iii) The partnership distributes property to one of the related partners, the basis of one or more of those distributed properties is increased under section 732(d) of the Code, the distributee acquired all or a part of its interest in the partnership in a transaction that would have been a transaction described in paragraph (c)(2) of this section if the partnership had a section 754 election in effect for the year of transfer, and the applicable threshold described in paragraph (c)(3) of this section is met.

(2) *Transfers of a partnership interest*—(i) *In general*. Except as otherwise provided in paragraph (c)(2)(ii) or (c)(4) of this section, a partner transfers all or a portion of a partnership interest to a related partner in a nonrecognition transaction, the basis of one or more partnership properties is increased under section 743(b)(1) and (c) of the Code, and the applicable threshold described in paragraph (c)(3) of this section is met.

(ii) *Subsequent nonrecognition transfers*—(A) *In general.* If a partner receives an interest in a partnership from a person in a recognition transaction (first transfer) and the basis of one or more partnership properties is increased under section 743(b)(1) and (c) of the Code, and subsequently the partner (transferor) transfers the partnership interest to a person related to the transferor (transferee) in a transaction described in paragraph (c)(2)(i) of this section (subsequent transfer), the subsequent transfer is a transaction described in paragraph (c)(2)(i) of this section only to the extent, if any, that the transferee's basis adjustment under section 743(b)(1) and (c) resulting from the subsequent transfer exceeds the amount of the transferor's remaining basis adjustment described in paragraph (c)(2)(ii)(B) of this section that is attributable to the transferred partnership interest (excess amount), and the applicable threshold described in paragraph (c)(3) of this section is met. Only the excess amount is counted towards the applicable threshold described in paragraph (c)(3) of this section.

(B) *Transferor's remaining basis adjustment*. A *transferor's remaining basis adjustment* is equal to the amount of the transferor's basis adjustment under section 743(b)(1) and (c) resulting from the first transfer as adjusted under section 1016(a)(2) of the Code to reflect the recovery of the basis adjustment or as otherwise adjusted prior to the subsequent transfer.

(3) *Applicable threshold*—(i) *In general*. Except as otherwise provided in paragraph (c)(3)(ii) of this section, for determining whether a transaction is described in paragraph (c)(1) or (2), (d)(1) or (2) of this section, the applicable threshold is met for a taxable year if the sum of all basis increases resulting from all such transactions of a partnership or partner during the taxable year (without netting for any basis adjustment that results in a basis decrease in the same transaction or another transaction) exceeds by at least $10 million the gain recognized from such transactions during the same taxable year, if any, on which tax imposed under subtitle A is required to be paid by any of the related partners (or tax-indifferent party, in the case of a transaction described in paragraph (d)(1) of this section) who are a party to such transactions.

(ii) *Six-year lookback period threshold*. In the case of a transaction described in (c) or (d) of this section that occurred within the six-year lookback period, paragraph (c)(3)(i) applies by substituting "$25 million" for "$10 million" for determining whether the applicable threshold is met for a taxable year.

(iii) *Basis increase under section 734(b) and (c) only for shares of basis increase to related partners.* In the case of a transaction described in paragraph (c)(1)(i) of this section for determining whether the applicable threshold is met for a taxable year, a basis increase is an increase to the adjusted basis of the partnership's property under section 734(b)(1) and (c) only to the extent of a related partner's share of the basis increase. For purposes of this paragraph (c)(3)(iii), a partner's share of a basis increase is determined immediately after the distribution under rules similar to the rules of § 1.197-2(h)(12)(iv)(D).

(iv) *Basis increase under sections 732(b) or (c) only for shares of corresponding basis decreases under section 734(b) to related partners or tax-indifferent parties.* In the case of a transaction described in paragraph (c)(1)(ii) of this section for determining whether the applicable threshold is met for a taxable year, a basis increase is an increase to the basis of property distributed to one of the related partners under section 732(b) or (c), but excluding the amount of any basis increase that corresponds to a decrease to the basis of property distributed to unrelated partners (other than tax-indifferent parties) under section 732(b) and (c) or to unrelated partners' (other than tax-indifferent parties') shares of a corresponding decrease to the basis of the partnership's remaining property under section 734(b)(2) and (c). For purposes of this paragraph (c)(3)(iv), a partner's share of a basis decrease is determined immediately after the distribution under rules similar to the rules of § 1.197-2(h)(12)(iv)(D). In the case of a transaction described in paragraph (d)(1) of this section, for purposes of determining whether the applicable threshold is met for a taxable year, a basis increase is an increase to the basis of property distributed to one of the partners under section 732(b) or (c) only to the extent of a corresponding decrease to the basis of property distributed to a tax-indifferent party under section 732(b) and (c) or to one or more tax-indifferent party's shares of a corresponding decrease to the basis of the partnership's remaining property under section 734(b)(2) and (c).

(4) *Exclusion of a transfer on the death of a partner*. A transaction described in paragraph (c)(2) or (d)(2) of this section does not include a transfer of a partnership interest that is a transfer on the death of a partner within the meaning of paragraph (b)(13) of this section.

(d) *Substantially similar transaction*. A transaction that is substantially similar (within the meaning of § 1.6011-4(c)(4)) to a transaction described in paragraph (c) of this section includes, but is not limited to:

(1) A transaction that is described in paragraph (c)(1)(i) or (ii) of this section except that the partners of the partnership are not related and one or more partners of the partnership is a tax-indifferent party that facilitates an increase in the basis of partnership property or an increase in the basis of property held by another partner in the partnership by receiving a distribution of property from the partnership or having a share of a corresponding decrease to the basis of partnership property, and the applicable threshold described in paragraph (c)(3) of this section is met; and

(2) A transaction in which a transferor transfers an interest in a partnership to a transferee that is related to the transferor in a recognition transaction, and the applicable threshold described in paragraph (c)(3) of this section is met.

(e) *Participation*—(1) *In general*. Whether a taxpayer has participated in a transaction of interest described in paragraph (c) of this section or a substantially similar transaction described in paragraph (d) of this section during a taxable year is determined under this paragraph (e).

(2) *Participating partners.* A participating partner participates in a transaction of interest described in paragraph (c)(1) of this section or a substantially similar transaction described in paragraph (d)(1) of this section in any taxable year in which the partner directly receives a distribution of property, or directly transfers or receives an interest in a participating partnership, in a transaction described in paragraph (c)(2) of this section or a substantially similar transaction described in paragraph (d)(2) of this section.

(3) *Participating partnerships.* A participating partnership participates in a transaction of interest described in paragraph (c) or a substantially similar transaction described in paragraph (d) of this section in any taxable year in which the partnership makes a distribution of property to a participating partner in a trans-

action described in paragraph (c)(1) or (d)(1) of this section, or a participating partnership interest is transferred in a transaction described in paragraph (c)(2) or (d)(2) of this section.

(4) *Related subsequent transferees.* A related subsequent transferee participates in a transaction of interest described in paragraph (c) of this section or a substantially similar transaction described in paragraph (d) of this section in any taxable year in which the related subsequent transferee directly receives, in a nonrecognition transaction, a transfer (including a distribution) of property that was subject to an increase in basis as a result of a transaction described in paragraph (c) or (d) of this section that was required to be disclosed under paragraph (f) of this section.

(5) *Subsequent realization of tax benefit.* A participating partnership, participating partner, or related subsequent transferee also participates in a transaction of interest described in paragraph (c) or a substantially similar transaction described in paragraph (d) of this section in any taxable year in which its tax return reflects the tax consequences of a basis increase resulting from a transaction of interest described in paragraph (c) or (d) of this section, taking into account the limitations provided in paragraphs (c)(3)(iii) and (iv) of this section. For example, if a participating partner sells property the basis of which has been increased as a result of a transaction of interest described in paragraph (c) of this section during a taxable year after the taxable year in which the transaction of interest occurred, the participating partner participates in a transaction of interest described in paragraph (c) of this section in the taxable year of the basis increase and in the taxable year of the sale.

(f) *Disclosure requirements*—(1) *In general*. Except as otherwise provided in this paragraph (f)(1), participants must provide the information required under § 1.6011-4(d) and the Instructions to Form 8886, *Reportable Transaction Disclosure Statement* (or successor form), and in the manner described in § 1.6011-4(e), for each taxable year in which the participant participated in a transaction described in paragraph (c) or (d) of this section as determined under paragraph (e) of this section. For all participants, describing the transaction in sufficient detail includes describing the information described in paragraphs (f)(1)(i) through (iii) of this section, as applicable, on Form 8886 (or successor form) for the taxable year of a transaction described in paragraph (c) or (d) of this section. In the case of a participant that is a tax-indifferent party, the disclosure requirements of this paragraph (f) apply only if the tax-indifferent party is otherwise required to file a tax return (or an information return) for the taxable year of the transaction described in paragraph (d)(1) of this section.

(i) The names and identifying numbers of all participants, including the participating partnership, participating partners and any related subsequent transferees.

(ii) All basis adjustments resulting from a transaction described in paragraph (c) or (d) of this section, including—

(A) Basis information, including the participating partnership's adjusted basis in the distributed property immediately before the distribution,

(B) Any adjustments to basis under section 732(a)(2), (b), (d) or section 734(b),

(C) Any adjustments to basis under section 743(b) with respect to a participating partner that is transferred an interest in a participating partnership, and

(D) With respect to a participating partner that transfers an interest in a participating partnership, that participating partner's adjusted basis in the participating partnership interest and share of the participating partnership's adjusted basis in its property immediately before the transfer.

(iii) Any Federal income tax consequences realized during the taxable year as a result of a transaction described in paragraph (c) or (d) of this section, including any cost recovery allowances attributable to any increase in basis as a result of a transaction described in paragraph (c) of this section, and any gain or loss attributable to the disposition of property that was subject to an increase in basis as a result of a transaction described in paragraph (c) or (d) of this section. The Federal income tax consequences attributable to an increase in basis resulting from a transaction described in paragraph (c) or (d) of this section are limited to those attributable to the increase in basis, taking into account the limitations of paragraph (c)(3)(iii) or (iv) of this section. For example, in the case of a distribution of depreciable property that was subject to an increase in basis because of a transaction described in paragraph (c) or (d) of this section, the Federal income tax consequences realized during the taxable year include the basis increase and cost recovery allowances attributable to the basis increase during the taxable year.

(2) *Six-year lookback period for taxable years described in special rule of §1.6011-4(e)(2)(i)*. For purposes of the special rule of § 1.6011-4(e)(2)(i) (describing the disclosure requirement with respect to a transaction that is identified as a transaction of interest after the filing of the taxpayer's tax return (including an amended return) reflecting the taxpayer's participation in the transaction of interest but before the end of the period of limitations for assessment of tax for such taxable year), a participant must provide the information described in paragraph (f)(1) of this section for such open years only if the transaction described in paragraph (c) or (d) of this section occurred within the six-year lookback period described in paragraph (b)(11) of this section.

(g) *Examples*. The following examples illustrate the provisions of this section.

(1) *Example 1*: *Reporting by a participating partner and participating partnership in the taxable year of the transaction, including cost recovery allowances*—(i) *Facts*. ABC Partnership is owned by partners A, B, and C. Partners A, B, and C are related within the meaning of paragraphs (b)(8) and (9) of this section. At the beginning of taxable year 2025, ABC Partnership distributes a depreciable asset, Property X, to Partner A in liquidation of Partner A's interest in ABC Partnership. The distribution is a transaction described in paragraph (c)(1)(ii) of this section. As a result of the distribution, the basis of Property X is increased by $10 million in Partner A's hands. On its tax return for taxable year 2025, Partner A reports deductions for depreciation expense attributable to the $10 million increase in the basis of Property X resulting from the transaction under paragraph (c)(1)(ii) of this section. In addition, ABC Partnership must reduce the basis of its remaining property under section 734(b)(2) as a result of the distribution of Property X to Partner A by $10 million. ABC Partnership and Partner A use the calendar year as their taxable year.

(ii) *Analysis*. Partner A is a participant during taxable year 2025 within the meaning of paragraph (e) of this section because it is a participating partner within the meaning of paragraph (b)(3) of this section since it directly received a distribution of property during taxable year 2025 in a transaction described in paragraph (c) of this section. ABC Partnership is a participant during taxable year 2025 within the meaning of paragraph (e) of this section because it is a participating partnership within the meaning of paragraph (b)(4) of this section since it made a distribution of property to a participating partner during taxable year 2025 in a transaction described in paragraph (c) of this section. As part of its disclosure requirements under paragraph (f) of this section and § 1.6011-4(d) and (e), Partner A must disclose the distribution as a transaction of interest under this section on Form 8886 (or successor form) and file the form with its tax return for taxable year 2025. Partner A must include the information described in paragraph (f) of this section, including the amount of the deductions attributable to the $10 million increase in the basis of Property X resulting from the transaction described in paragraph (c)(1)(ii) of this section. As part of its disclosure requirements under paragraph (f) of this section and § 1.6011-4(d) and (e), ABC Partnership must disclose the distribution as a transaction of interest under this section on Form 8886 (or successor form) and file the form with its tax return for taxable year 2025, including the information described in paragraph (f) of this section. In addition, Partner A and ABC Partnership must send a copy of their respective Form 8886 (or successor form) to the Office of Tax Shelter Analysis (OTSA).

(2) *Example 2: Reporting of the Federal income tax consequences (cost recovery allowances) of the transaction in all taxable years*—(i) *Facts*. Under the same facts as in paragraph (g)(1)(i) of this section (*Example 1)*, on its tax returns for taxable years 2026 through 2030, Partner A reports deductions for depreciation expense attributable to the $10 million increase in the basis of Property X related to the transaction described in paragraph (c)(1)(ii) of this section, which occurred in taxable year 2025.

(ii) *Analysis*. As part of its disclosure requirements under paragraph (f) of this section and § 1.6011-4(d) and (e), Partner A must disclose the deductions on Form 8886 (or successor form) for taxable years 2026 through 2030 as the Federal income tax consequences of the transaction described in paragraph (c)(1)(ii) of this section. As a result, for each of taxable years 2026 through 2030, Partner A must file the form with its tax return for the taxable year with the information described in paragraph (f) of this section, including the amount of the deductions for the taxable year attributable to the $10 million increase in the basis of Property X resulting from the transaction described in paragraph (c)(1)(ii) of this section.

(3) *Example 3*: *Reporting by a participating partner, participating partnership, and related subsequent transferee in the taxable year of the transaction*—(i) *Facts*. The facts are the same as in paragraph (g)(1)(i) of this section (*Example 1)*, except that at the beginning of taxable year 2025, instead of distributing a depreciable asset, ABC Partnership distributes a nondepreciable asset, Land with an adjusted basis of $5 million, to Partner A in liquidation of Partner A's interest in ABC Partnership. The distribution is a transaction described in paragraph (c)(1)(ii) of this section. As a result of the distribution, the basis of Land is increased to $15 million in Partner A's hands. Subsequently in the same taxable year 2025, Partner A contributes Land to another partnership, AX Partnership, in a transfer that is treated as a contribution of property under section 721(a). Partner A and AX Partnership are related within the meaning of paragraph (b)(8) of this section. ABC Partnership, Partner A and AX Partnership use the calendar year as their taxable year.

(ii) *Analysis*. Partner A is a participant during taxable year 2025 within the meaning of paragraph (e) of this section because it is a participating partner within the meaning of paragraph (b)(3) of this section since Partner A directly received a distribution of property during taxable year 2025 in a transaction described in paragraph (c) of this section. ABC Partnership is a participant during taxable year 2025 within the meaning of paragraph (e) of this section because it is a participating partnership within the meaning of paragraph (b)(4) of this section since it made a distribution of property to a participating partner during taxable year 2025 in a transaction described in paragraph (c) of this section. AX Partnership is a participant during taxable year 2025 within the meaning of paragraph (e) of this section because it is a related subsequent transferee within the meaning of paragraph (b)(10) of this section since it directly received in a nonrecognition transaction a transfer of property during taxable year 2025 that was subject to an increase in basis because of a transaction described in paragraph (c) of this section. As part of its disclosure requirements under paragraph (f) of this section and § 1.6011-4(d) and (e), Partner A must disclose the distribution as a transaction of interest under this section on Form 8886 (or successor form) and file the form with its tax return for taxable year 2025. Partner A must include the information described in paragraph (f) of this section. As part of its disclosure requirements under paragraph (f) of this section and § 1.6011-4(d) and (e), ABC Partnership must disclose the distribution as a transaction of interest under this section on Form 8886 (or successor form) and file the form with its tax return for taxable year 2025, including the information described in paragraph (f) of this section. Further, AX Partnership is subject to the disclosure requirements under paragraph (f) of this section and § 1.6011-4(d) and (e). AX Partnership must disclose that it is a related subsequent transferee within the meaning of paragraph (b)(10) of this section that received, in a nonrecognition transaction, a transfer of property that was distributed in a transaction of interest under this section on Form 8886 (or successor form) and file the form with its tax return for taxable year 2025. In addition, Partner A, ABC Partnership and AX Partnership must send a copy of their respective Form 8886 (or successor form) to the OTSA.

(4) *Example 4: Reporting of the Federal income tax consequences (reduced taxable gain) of the transaction in the taxable year of disposition of the property*—(i) *Facts*. Under the same facts as in paragraph (g)(3)(i) of this section (*Example 3)*, in taxable year 2026, AX Partnership disposes of Land in a taxable sale for its fair market value of $15 million and recognizes no gain or loss.

(ii) *Analysis*. As part of its disclosure requirements under paragraph (f) of this section and § 1.6011-4(d) and (e), AX Partnership must disclose the taxable gain (zero) on the disposition of Land on Form 8886 (or successor form) for taxable year 2026 as the Federal income tax consequences of the transaction described in paragraph (c)(1)(ii) of this section. AX Partnership must file the form with its tax return for taxable year 2026. Partner A does not have a disclosure requirement with respect to AX Partnership's disposition of Land because the disposition is a subsequent realization of a tax benefit within the meaning of paragraph (e)(5) of this section with respect to AX Partnership.

(5) *Example 5. Reporting of a transaction of interest that occurred within the six-year lookback period*—(i) *Facts*. The facts are the same as in paragraph (g)(1)(i) of this section (*Example 1)*, except that instead of ABC Partnership distributing Property X in taxable year 2025, the distribution is made in May of taxable year 2022, which is within the six-year lookback period described in paragraph (b)(11) of this section. That is, the distribution occurred within the seventy-two months immediately preceding January 2025, the first month of the taxpayer's most recent taxable year that began before January 2025. Further, taxable year 2022 is an open taxable year subject to the special rule of § 1.6011-4(e)(2)(i). Additionally, neither Partner A nor ABC Partnership engages in any other transaction described in paragraph (c) or (d) of this section for taxable year 2022.

(ii) *Analysis*. Because the transaction occurred within the six-year lookback period described in paragraph (b)(11) of this section, the applicable threshold described in paragraph (c)(3)(i) of this section is $25 million as provided in paragraph (c)(3)(ii) of this section. The distribution of Property X to Partner A is not a transaction described in paragraph (c)(1)(ii) of this section with respect to either Partner A or ABC Partnership because the applicable threshold is not met for taxable year 2022. Had the applicable threshold for taxable year 2022 been met, all the information required by paragraph (f)(1) of this section must be reported in its disclosure for taxable year 2022 and for any subsequent taxable year for which the taxpayer's return reflected the tax consequences of the transaction.

(6) *Example 6. No reporting of a transaction of interest for transaction that occurred prior to the six-year lookback period*—(i) *Facts*. The facts are the same as in paragraph (g)(1)(i) of this section (*Example 1)*, except that as a result of the distribution of Property X to Partner A, the basis of Property X is increased by $30 million, and the distribution occurred in December of taxable year 2018, which is prior to the six-year lookback period described in paragraph (b)(11) of this section. That is, the transaction occurred prior to January 2019, which is the beginning of the seventy-two-month period that ends in December 2024. In addition, taxable year 2018 is an open taxable year subject to the special rule of § 1.6011-4(e)(2)(i). Further, Partner A realized Federal income tax consequences (depreciation expense) in taxable year 2019 attributable to the $30 million increase to the basis of Property X and taxable year 2019 is an open taxable year subject to the special rule of § 1.6011-4(e)(2)(i).

(ii) *Analysis*. Because taxable year 2018 is not within the six-year lookback period, under paragraph (f)(2) of this section, neither the distribution of Property X to Partner A, nor any of the Federal income tax consequences arising in that taxable year or later taxable years (such as depreciation expense in taxable year 2019 or any later taxable year) from such distribution, is required to be disclosed under paragraph (f) of this section and §§1.6011-4(d) and (e).

(7) *Example 7. Corresponding basis decrease under section 734(b)(2)(B) shared by an unrelated partner*—(i) *Facts*. The facts are the same as in paragraph (g)(1)(i) of this section (*Example 1)*, except Partner C is unrelated to Partners A and B and is not a tax-indifferent party. As a result of the distribution of Property X to Partner A, and the increase to the basis of Property X by $10 million in Partner A's hands, ABC Partnership is required to reduce the adjusted basis of its remaining properties under section 734(b)(2)(B) by $10 million. Partner B's and Partner C's share of ABC Partnership's basis decrease to its remaining properties is $5 million each. Neither Partner A nor ABC Partnership engages in any other transaction described in paragraph (c) of this section for taxable year 2025.

(ii) *Analysis*. For purposes of paragraphs (c)(1)(ii) and (c)(3)(i) of this section, under paragraph (c)(3)(iv) of this section, only $5 million of the $10 million basis increase to Property X counts toward the applicable threshold because $5 million of the basis increase corresponds to unrelated Partner C's share of the decrease to the basis of ABC Partnership's remaining properties under section 734(b)(2)(B) and thus, is excluded from the calculation of the applicable threshold. Thus, the distribution of Property X to Partner A is not a transaction described in paragraph (c)(1)(ii) of this section with respect to either Partner A or ABC Partnership because the applicable threshold is not met for taxable year 2025.

(h) *Extension of time—(1) Taxpayer disclosures*. Taxpayers will be treated as having met their requirements to disclose timely under §1.6011-4(e)(2)(i) if they file their disclosure with the OTSA by January 14, 2025.

(2) *Material advisor disclosures*. Material advisors who have made a tax statement before January 14, 2025 will be treated as having met their requirements to disclose timely under § 301.6111-3(e) of this chapter if they file their disclosure with the OTSA by the date that is an additional 90 days beyond the last day for filing specified in § 301.6111-3(e) of this chapter.

(i) *Applicability date*—(1) *In general*. This section's identification of transactions that are the same as or substantially similar (within the meaning of § 1.6011-4(c)(4)) to the transactions described in paragraph (c) of this section as transactions of interest for purposes of §1.6011-4(b)(6) and sections 6111 and 6112 of the Code is effective January 14, 2025.

(2) *Material advisors*. Notwithstanding §301.6111-3(b)(4)(i) and (iii) of this chapter, material advisors are required to disclose only if they have made a tax statement on or after January 9, 2031.

Douglas W. O'Donnell,
Deputy Commissioner.

Approved: January 3, 2025.

Aviva R. Aron-Dine,
Deputy Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register January 10, 2025, 8:45 a.m., and published in the issue of the Federal Register for January 14, 2025, 90 FR 2958)

Part III

Section 45W Credit for Qualified Commercial Clean Vehicles and Incremental Cost for 2025

Notice 2025-9

SECTION 1. PURPOSE

This notice provides safe harbors regarding the incremental cost and retail price equivalent (RPE) of certain qualified commercial clean vehicles for purposes of the credit for qualified commercial clean vehicles under section 45W of the Internal Revenue Code (Code).[1]

SECTION 2. BACKGROUND

.01 Section 13403(a) of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022, added section 45W to the Code to allow a credit for qualified commercial clean vehicles (section 45W credit). The section 45W credit is effective for vehicles acquired after December 31, 2022, and before January 1, 2033.

.02 For purposes of the General Business Credit under section 38 of the Code, section 45W(a) allows a taxpayer to claim a credit for the acquisition of each qualified commercial clean vehicle, as defined in section 45W(c), placed in service by the taxpayer during the taxable year. The amount of the section 45W credit allowed for each qualified commercial clean vehicle is the lesser of (1) 15 percent of the taxpayer's basis in the vehicle (30 percent in the case of a vehicle not powered by a gasoline or diesel internal combustion engine), or (2) the incremental cost of the vehicle. *See* section 45W(b)(1). Under section 45W(b)(4), the maximum credit allowed is $7,500 for a qualified commercial clean vehicle that has a gross vehicle weight rating (GVWR) of less than 14,000 pounds, and $40,000 for all other vehicles.

.03 Section 45W(b)(2) provides that the incremental cost of any qualified commercial clean vehicle is the excess of the purchase price of such vehicle over the purchase price of a comparable vehicle. A comparable vehicle with respect to any qualified commercial clean vehicle is any vehicle that is powered solely by a gasoline or diesel internal combustion engine and is comparable in size and use to such qualified commercial clean vehicle. *See* § 45W(b)(3).

.04 On January 17, 2023, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published Notice 2023-9, 2023-3 I.R.B. 402, which provides a safe harbor for purposes of the section 45W credit regarding the incremental cost of certain qualified commercial clean vehicles placed in service in calendar year 2023, based on a December 2022 incremental cost analysis by the U.S. Department of Energy (DOE) across classes of clean vehicles (DOE Analysis).[2] The DOE Analysis modeled the costs of representative clean vehicles and comparable internal combustion engine vehicles. For this purpose, clean vehicles included battery electric, plug-in hybrid electric, and fuel cell electric vehicles.

.05 On January 8, 2024, the Treasury Department and the IRS published Notice 2024-5, 2024-2 I.R.B. 347, which provides a safe harbor for purposes of the section 45W credit regarding the incremental cost of certain qualified commercial clean vehicles placed in service in calendar year 2024, based on the DOE Analysis updated to incorporate minor modifications in December 2023.[3] The minor modifications did not change the results of the analysis conducted in December 2022. Notice 2024-5 also requested comments regarding additional types or classes of vehicles that should be included in the safe harbor in the future. The Treasury Department and the IRS received comments in response to Notice 2024-5 and carefully considered them.

.06 The DOE updated the DOE Analysis in a report published in January 2025 to incorporate further modifications (DOE's January 2025 Report).[4] First, the DOE's January 2025 Report updates the analysis of component and vehicle manufacturing costs, including refinements to the approach previously employed for determining an incremental purchase cost for battery electric, plug-in hybrid electric, and fuel cell electric vehicles. Second, the DOE's January 2025 Report expands medium- and heavy-duty vehicle classes previously analyzed and updates results based on current costs of technology. These modifications changed the results of the analysis conducted in December 2022 and updated in December 2023.

.07 In addition to modeled incremental costs, the DOE's January 2025 Report explicitly identifies the RPEs used in the DOE Analysis, that is, the factors applied to the component and vehicle manufacturing costs to account for additional indirect costs and profits when modeling the incremental cost of a class of vehicle. In cases where taxpayers do not rely on modeled incremental cost safe harbors

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Code.

[2] U.S. Department of Energy, "2022 Incremental Purchase Cost Methodology and Results for Clean Vehicles," December 2022, available at https://www.energy.gov/sites/default/files/2022-12/2022.12.23%202022%20Incremental%20Purchase%20Cost%20Methodology%20and%20Results%20for%20Clean%20Vehicles.pdf.

[3] U.S. Department of Energy, "Incremental Purchase Cost Methodology and Results for Clean Vehicles," originally published December 2022 and amended December 2023, available at https://www.energy.gov/sites/default/files/2023-12/2023.12.18%20Incremental%20Purchase%20Cost%20Methodology%20and%20Results%20for%20Clean%20Vehicles%20pub%2012-2022%20amd%2012-2023%20Final_2.pdf.

[4] U.S. Department of Energy, "2025 Incremental Purchase Cost Methodology and Results for Clean Vehicles," January 2025, available at https://www.energy.gov/sites/default/files/2025-01/2025.01.13_DOE_Incremental_Cost_Report_for_publication.pdf..

(which in every case already incorporate the appropriate RPE), taxpayers may use the RPEs provided in the DOE's January 2025 Report to determine incremental cost.

.08 On January 14, 2025, the Treasury Department and the IRS published a notice of proposed rulemaking that contains proposed regulations issued under section 45W (REG-123525-23) in the ***Federal Register*** (proposed regulations), 90 FR 3506.

SECTION 3. SAFE HARBORS

.01 *Incremental cost of a qualified commercial clean vehicle*.

(1) The DOE's January 2025 Report provides a modeled incremental cost analysis based on current costs across several classes of clean vehicles. For any qualified commercial clean vehicle not previously placed in service by another person or entity, the IRS will accept a taxpayer's use of the modeled incremental cost published in table ES-2 in the DOE's January 2025 Report for the appropriate class of clean vehicle to establish the incremental cost of a qualified commercial clean vehicle placed in service by the taxpayer on or after January 1, 2025. An incremental cost established under this section 3.01(1) is used to identify the lesser of (1) 15 percent of the taxpayer's basis in the vehicle (30 percent in the case of a vehicle not powered by a gasoline or diesel internal combustion engine), or (2) the incremental cost of the vehicle for purposes of section 45W(b)(1).

(2) For any qualified commercial clean vehicle previously placed in service by another person or entity, the IRS will accept a taxpayer's application of the modeled incremental cost of the qualified commercial clean vehicle when new, as determined by reference to the IRS safe harbor guidance that corresponds to the model year of such vehicle,[5] to the rules found in proposed §1.45W-2(f) of the proposed regulations to establish the incremental cost of such qualified commercial clean vehicle. Proposed §1.45W-2(f)(1) provides that the incremental cost of a qualified commercial clean vehicle previously placed in service by another person or entity is the product of the incremental cost of the qualified commercial clean vehicle (that is, the incremental cost of such vehicle when new) and the residual value factor that corresponds to the age of the qualified commercial clean vehicle as described in that section. An incremental cost established under this section 3.01(2) is used to identify the lesser of (1) 15 percent of the taxpayer's basis in the vehicle (30 percent in the case of a vehicle not powered by a gasoline or diesel internal combustion engine), or (2) the incremental cost of the vehicle for purposes of section 45W(b)(1). A taxpayer may use the safe harbor in this section 3.01(2) with respect to any qualified commercial clean vehicle placed in service by the taxpayer after December 31, 2022.

.02 *Retail price equivalent*. The DOE's January 2025 Report provides the RPEs used by the DOE for purposes of modeling incremental cost across several classes of clean vehicles. In cases where taxpayers do not use a modeled incremental cost safe harbor, such as those provided in section 3.01 of this notice, the IRS will accept taxpayers' use of the RPEs published in table 4 of the DOE's January 2025 Report for the appropriate class of clean vehicle to calculate the incremental cost of qualified commercial clean vehicles. A taxpayer may use the safe harbor in this section 3.02 with respect to any qualified commercial clean vehicle placed in service by the taxpayer after December 31, 2022.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Section 3.01(2) of this notice clarifies the application of the guidance provided in Notice 2023-9 and Notice 2024-5 to qualified commercial clean vehicles previously placed in service by another person or entity. Section 3.02 of this notice amplifies Notice 2023-9 and Notice 2024-5 by providing that the RPEs published in the DOE's January 2025 Report may be used to calculate the incremental cost of qualified commercial clean vehicles placed in service by taxpayers after December 31, 2022.

SECTION 5. EFFECTIVE DATE

This notice is effective on January 15, 2025, and will remain in effect through the day before the effective date of superseding guidance published in the IRB or the ***Federal Register***.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Energy, Credits, and Excise Tax). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice contact Chief Counsel at (202) 317-5254 (not a toll-free call).

Section 45Z Clean Fuel Production Credit; Request for Public Comments

Notice 2025-10

SECTION 1. PURPOSE

This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to propose regulations (forthcoming proposed regulations) addressing the clean fuel production credit determined under § 45Z of the Internal Reve-

[5] For example, the safe harbor incremental cost of a model year 2023 vehicle is determined by reference to Notice 2023-9, and the safe harbor incremental cost of a model year 2024 vehicle is determined by reference to Notice 2024-5.

nue Code (§ 45Z credit),[1] which applies to eligible transportation fuel produced domestically after December 31, 2024, that is sold by December 31, 2027. In addition to providing background on the § 45Z credit, this notice explains the rules that the Treasury Department and the IRS intend to propose in the forthcoming proposed regulations and requests public comments on the draft text of the forthcoming proposed regulations contained in the appendix to this notice. Notice 2025-11, this Bulletin, provides additional guidance on fuel emissions rates for purposes of the § 45Z credit and contains the initial emissions rate table described in § 45Z(b)(1)(B)(i).

The Treasury Department and the IRS developed this notice and Notice 2025-11 in consultation with the Department of Energy (DOE), the Environmental Protection Agency (EPA), the United States Department of Agriculture, and other Federal agencies.

SECTION 2. BACKGROUND

.01 *Overview of § 45Z*. Section 45Z, added to the Code by § 13704 of Public Law 117-169, 136 Stat. 1818, 1997 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), provides an income tax credit for clean transportation fuel produced domestically after December 31, 2024, and sold by December 31, 2027. The § 45Z credit is a general business credit under § 38.

To qualify for the § 45Z credit, a taxpayer must: (1) produce a transportation fuel that has a lifecycle greenhouse gas emissions rate (emissions rate) of not greater than 50 kilograms (kg) of CO_2e per mmBTU[2] and that satisfies certain suitability and coprocessing requirements; (2) produce the fuel in the United States at a qualified facility; (3) be registered as a producer of clean fuel under § 4101 at the time of production; and (4) sell the fuel to an unrelated person in a qualifying manner during the taxable year. *See* § 45Z(a)(1) & (4), (d)(4)-(5)(A), and (f)(1). A taxpayer producing a transportation fuel that is sustainable aviation fuel (SAF transportation fuel) must also provide unrelated party certification demonstrating compliance with certain requirements. *See* § 45Z(f)(1)(A)(i)(II). A taxpayer is eligible to claim a § 45Z credit for the taxable year in which the taxpayer sells a transportation fuel. *See* § 45Z(a)(1)(A).

Under § 45Z(a)(1), a taxpayer calculates the § 45Z credit by multiplying the applicable amount per gallon or gallon equivalent with respect to a transportation fuel by the emissions factor for such fuel. The applicable amount varies depending on whether the transportation fuel is a SAF transportation fuel or a transportation fuel that is not a sustainable aviation fuel (non-SAF transportation fuel) and is higher for SAF transportation fuel than for non-SAF transportation fuel. Under § 45Z(a)(2) and (3), the applicable amount increases if the taxpayer produces transportation fuel at a qualified facility that satisfies the prevailing wage and apprenticeship (PWA) requirements. *See* § 1.45Z-3 of the Income Tax Regulations for applicable PWA requirements.

A transportation fuel's emissions factor is a calculation of the fuel's emission rate against the baseline emissions rate of 50 kg of CO_2e per mmBTU. *See* § 45Z(b)(1)(A). A taxpayer determines a fuel's emissions rate by using either the annual emissions rate table published by the Secretary of the Treasury or her delegate (Secretary) or a provisional emissions rate (PER) determined by the Secretary. *See* § 45Z(b)(1)(B) and (D).

.02 *Section 45Z published guidance and FAQs*.

(1) *Notice 2022-58 (Request for Comments)*. Notice 2022-58, 2022-47 I.R.B. 483 (released November 3, 2022), requested comments on § 45Z.[3] The comments received in response to Notice 2022-58 were considered in the drafting of this notice.

(2) *Notice 2024-49 (Registration Requirements)*. Notice 2024-49, 2024-26 I.R.B. 1781 (released May 31, 2024), provides guidance on the § 45Z registration requirements, including the time, form, and manner of registration. Notice 2024-49 also provides initial definitions of SAF and non-SAF transportation fuels and an initial, non-exclusive list of primary feedstocks, to help taxpayers applying for registration identify fuels and primary feedstocks that may qualify for the § 45Z credit. Section 7 of this notice addresses the effect of this notice on Notice 2024-49.

(3) *Treasury Decision 9998 (PWA Requirements)*. Treasury Decision 9998, published in the *Federal Register* at 89 FR 53184 (June 25, 2024), adopted final regulations on the PWA requirements under several sections of the Code (PWA Regulations). The PWA Regulations include § 1.45Z-3, which provides rules on the application of the PWA requirements to § 45Z.

(4) *Fact Sheet FAQs*. A § 45Z Fact Sheet, FS-2024-25 (released July 10, 2024), provides answers to certain frequently asked questions (FAQs) on the § 45Z registration requirements. This Fact Sheet is available at https://www.irs.gov/newsroom/frequently-asked-questions-about-applying-for-registration-for-the-clean-fuel-production-credit-under-ss-45z.

(5) *Notice 2025-11*. Notice 2025-11 provides guidance regarding methodologies for determining emissions rates under § 45Z and provides the initial emissions rate table required by § 45Z(b)(1)(B)(i). Notice 2025-11 is being released concurrently with this notice.

SECTION 3. EXPLANATION OF FORTHCOMING PROPOSED REGULATIONS

.01 *Forthcoming proposed regulations*. The draft text of the forthcoming § 45Z proposed regulations is contained in the appendix of this notice. This section 3 explains the draft regulatory text.

.02 *Authority*. The forthcoming proposed regulations would be issued under

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Internal Revenue Code (Code), or the regulations issued thereunder.

[2] The term "mmBTU" means 1,000,000 British thermal units, and the term "Btu" means British thermal units. The term "CO_2e" means, with respect to any greenhouse gas, the equivalent carbon dioxide (as determined based on relative global warming potential). *See* § 45Z(d)(1)-(2).

[3] Notice 2022-58 also requested comments on § 45V.

the authority granted by §§ 45Z, 4101(a)(1), 6001, and 7805(a).

Section 45Z contains several delegations of authority to the Secretary. Section 45Z(e) directs the Secretary to issue guidance no later than January 1, 2025, regarding implementation of § 45Z, including calculation of emissions factors for transportation fuel, the emissions rate table described in § 45Z(b)(1)(B)(i), and the determination of clean fuel production credits under § 45Z. Section 45Z(f)(2) further authorizes the Secretary to issue regulations regarding the fuel production attributable to the taxpayer, and § 45Z(f)(1)(A)(i)(II) authorizes the Secretary to issue guidance on certification and other information with respect to certain transportation fuels. Section 45Z(b)(1)(B)(ii) authorizes the Secretary to determine whether a model is a successor model in the case of non-SAF transportation fuel. Additionally, § 45Z(b)(1)(B)(i) directs the Secretary, subject to § 45Z(b)(1)(B)(ii) and (iii), to annually publish a table setting forth the emissions rate for similar types and categories of transportation fuels based on the amount of lifecycle greenhouse gas emissions as described in section 211(o)(1)(H) of the Clean Air Act (42 U.S.C. 7545(o)(1)(H)), as in effect on August 16, 2022 (CAA) for such fuels, expressed as kilograms of CO_2e per mmBTU, which a taxpayer must use for purposes of § 45Z. *See* Notice 2025-11 (providing initial emissions rate table).

Section 4101(a)(1) authorizes the Secretary to prescribe regulations related to any registration required under § 4101, including the time, form, manner, and terms and conditions of such registration.

Section 6001 authorizes the Secretary to prescribe regulations related to recordkeeping, statements, and special returns. The Secretary implemented such regulations under § 1.6001-1.

Section 7805(a) authorizes the Secretary 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.

.03 *Definitions*. Section 1.45Z-1 of the forthcoming proposed regulations would provide definitions that would apply for purposes of § 45Z. The forthcoming proposed regulations would incorporate statutory definitions and provide additional or clarifying definitions with respect to § 45Z. Sections 3.03(1) through (10) of this notice address some of the key terms that would be defined in the forthcoming proposed regulations.

(1) *45ZCF-GREET model*. The forthcoming proposed regulations would provide that the 45ZCF-GREET model means the model by that name developed by the Argonne National Laboratory (ANL) and published by the DOE for use in determining the amount of lifecycle greenhouse gas emissions for purposes of § 45Z. For additional information about the 45ZCF-GREET model, see section 3.04(3)(a) of this notice.

(2) *Fuel*. The forthcoming proposed regulations would define a "fuel" as any liquid or gaseous substance that can be consumed to supply heat or power. Therefore, for purposes of § 45Z, the term "fuel" would not include electricity. For an additional explanation, see section 3.03(8)(b) of this notice.

(3) *Gallon equivalent*.

(a) *In general*. The forthcoming proposed regulations would define "gallon equivalent" for purposes of § 45Z(a)(1)(A) to mean, with respect to any non-liquid fuel, the amount of such fuel that has the energy equivalent of a gallon of gasoline, which refers to the amount of such fuel having a Btu content of 116,090 (lower heating value).

(b) *Non-liquid fuel*. The forthcoming proposed regulations would clarify that a fuel is considered non-liquid if it is in a gaseous state at ambient pressure and temperature of 1 atmosphere and 60 degrees Fahrenheit, respectively. The forthcoming proposed regulations would also clarify that the gallon equivalent for a given non-liquid fuel is calculated by dividing the lower heating value of that fuel (measured in Btu) by the lower heating value of a gallon of gasoline (that is, 116,090 Btu), rounded to 5 decimal places.

(4) *Producer and taxpayer*.

(a) *In general*. The forthcoming proposed regulations would define "producer" for purposes of § 45Z as the person that engages in the production of a transportation fuel. The forthcoming proposed regulations would define the "taxpayer" for purposes of § 45Z as the person that is registered as a producer of clean fuel under § 4101 (or treated as the registrant for purposes of filing a claim for the § 45Z credit).

Section 45Z refers to the "taxpayer" producing and selling a transportation fuel as the person eligible to claim the credit but does not specify who that person is if the production process involves multiple persons and multiple steps. The forthcoming proposed regulations would provide clarity on this point.

(b) *Producer of alternative natural gas*. The forthcoming proposed regulations would provide that the "producer" of alternative natural gas, including renewable natural gas (RNG), for purposes of § 45Z is the person that processes the alternative natural gas (processor) to remove water, carbon dioxide, and other impurities such that it is interchangeable with fossil natural gas. This definition would be consistent with the purpose of § 45Z because the processor is the most active participant in the production process, and § 45Z incentivizes production. The definition of "producer" would, therefore, exclude any person that removes conventional or alternative natural gas (CANG) from a pipeline, compresses it further after removal, and then sells such further-compressed CANG (compressor). Under the proposed definition, CANG compression also would not meet the definition of "production" because compression is not a chemical transformation, and the compression process is minimal processing.

Several commenters and industry stakeholders specifically raised questions about who should be considered the producer of RNG for purposes of § 45Z. The Treasury Department and the IRS understand that the processor and the compressor are typically different persons, and that the processor typically performs most of the active production and owns (or uses) a facility. The Treasury Department and the IRS further understand that the compressor typically performs the final compression step before a fuel is used in a vehicle and typically owns (or uses) only compression equipment rather than an actual facility. As a result, the compressor would be unable to meet the requirement that transportation fuel be produced in a qualified facility as provided in § 45Z(d)(4) and § 1.45Z-1(b)(24) of the forthcoming proposed regulations and is not engaging in production of a transportation fuel under § 45Z(a)(1) and § 1.45Z-1(b)(23) of the forthcoming proposed regulations.

(5) *Production*. The forthcoming proposed regulations would define "production" as all steps and processes used to make a transportation fuel. Under the forthcoming proposed regulations, production would begin with the processing of primary feedstock(s) and end with a transportation fuel ready to be sold in a qualifying sale. Production would not include instances where a person uses a primary feedstock to produce a fuel that meets the same ASTM standard as the primary feedstock.

The definition of "production" would also clarify that minimal processing would not qualify as production for purposes of the § 45Z credit. Minimal processing would include blending a fuel mixture or otherwise engaging in activities that do not result in a chemical transformation. Therefore, under the forthcoming proposed regulations, a person that merely blends a fuel mixture, regardless of whether the fuel mixture itself satisfies the requirements of § 45Z(d)(5)(A), is not a producer of a transportation fuel because the blending process would constitute minimal processing. For example, a person that blends different types of fuel, such as ethanol and gasoline, directly at a fuel pump (sometimes known as splash blending) would not be the producer of a transportation fuel. Further, the importation of fuel that is largely finished fuel and undergoes only minimal processing in the United States would not constitute production.

Section 45Z is a production credit that is meant to replace fuel credits and payments that specifically incentivize blending (including credits under §§ 40B and 6426(k), which incentivize SAF blending). Thus, to equate blending with production would be contrary to Congress's purpose in enacting § 45Z.

The forthcoming proposed regulations would also incorporate the rules in § 45Z(f)(1)(A)(ii) and (f)(1)(B) requiring production to occur in the United States.

(6) *Qualified facility*.

(a) *Facility*. The forthcoming proposed regulations would clarify that a "facility," as used in § 45Z(d)(4), means a single production line that is used to produce a transportation fuel and would include all components that function interdependently to produce a transportation fuel. The definition would also clarify the treatment of indirect, post-production, and multipurpose equipment. The definition of "facility" would also exclude CANG compression equipment as post-production equipment.

(b) *Qualified facility*. The forthcoming proposed regulations would clarify that a "qualified facility," as defined in § 45Z(d)(4), means a facility that satisfies the anti-stacking rules in § 45Z(d)(4)(B) and § 1.45Z-4 of the forthcoming proposed regulations.

(7) *Qualifying sale*. The forthcoming proposed regulations would define a "qualifying sale" in accordance with § 45Z(a)(4). The forthcoming proposed regulations would also (1) clarify that a sale "for use . . . in a trade or business" refers to use as a fuel in a trade or business within the meaning of § 162; and (2) incorporate the sale attribution rules in § 45Z(f)(3) when fuel is sold by another member (as defined in § 1.1502-1(b)) of the taxpayer's consolidated group (as defined in § 1.1502-1(h)).

(8) *Transportation fuel*.

(a) *In general*. The forthcoming proposed regulations would define terms associated with the § 45Z(d)(5)(A) definition of "transportation fuel."

The term "suitable for use as a fuel in a highway vehicle or aircraft" (suitable for use) would be defined to mean that the fuel either has practical and commercial fitness for use as a fuel in a highway vehicle or aircraft, or may be blended into a fuel mixture that has practical and commercial fitness for use as a fuel in a highway vehicle or aircraft. The forthcoming proposed regulations would also clarify that actual use as a fuel in a highway vehicle or aircraft is not required. For example, a fuel that is otherwise suitable for use, but is used as marine diesel fuel or marine methanol, may satisfy the definition of transportation fuel. The forthcoming proposed regulations would further provide that CANG is suitable for use once it is produced such that if further compressed it would meet the specifications of ASTM International D8080, and that a fuel that does not require further processing and may be blended with or used as a component of taxable fuel (within the meaning of § 4083) is suitable for use.

(b) *Electricity*. The forthcoming proposed regulations would not include electricity in the definition of "transportation fuel," and electricity production would therefore be ineligible for the § 45Z credit, for several reasons.

First, at the time § 45Z was enacted, the Code contained an assortment of income tax credit, excise tax credit, and excise tax payment provisions for various biofuels and other alternative fuels sold or used as a fuel. These include incentives for biodiesel, renewable diesel, and several different alternative fuels (including compressed natural gas and second generation biofuel). Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 117th Congress*, JCS 1-23, at 278 (Dec. 31, 2023). Congress designed the § 45Z credit to replace these incentives, which were only available for liquid or gaseous fuels. *See* §§ 40(b)(6); 40A(b)(1) and (b)(2); 40B; 6426(c)-(e) and (k); 6427(e). Therefore, for purposes of § 45Z, a "fuel" refers to a liquid or gaseous substance that can be consumed to supply heat or power and does not include electricity.

Second, the anti-stacking rules within the definition of "qualified facility" in § 45Z(d)(4)(B) prevent the allowance of both a § 45Z credit and a credit for clean hydrogen production (§ 45V or 48(a)(15)) or carbon oxide sequestration (§ 45Q) with respect to a facility in a taxable year. The inclusion of the anti-stacking rules indicates that Congress was concerned about the potential for activity at a particular facility to generate multiple credits in a taxable year and wished to foreclose that possibility. This, combined with the omission of the § 45Y credit from the anti-stacking rules, suggests that the production of electricity is not eligible for the § 45Z credit. *See* § 45Z(d)(4)(B). Had Congress intended to include electricity as a transportation fuel for purposes of § 45Z, Congress would have included the § 45Y credit in the anti-stacking rules.

Third, the Code already provides a separate credit for clean electricity production under § 45Y. When Congress created the § 45Z clean fuel production credit, it also created the clean electricity production credit under § 45Y. Generally, the credit allowed under § 45Y is not limited based on how the electricity is ultimately used. If the definition of "transportation fuel" in § 45Z were read to include electricity, there would be significant overlap between the electricity eligible for a credit under § 45Z and the electricity eligible for a credit under § 45Y. A reading of § 45Z to include electricity would not be consistent with Congress' intent in designing § 45Y specifically to incentivize clean electricity production and § 45Z to incentivize production of clean transportation fuel.

(9) *Non-SAF transportation fuel*. The forthcoming proposed regulations would define "non-SAF transportation fuel" for purposes of § 45Z. The forthcoming proposed regulations would also provide a list of non-SAF fuels that may qualify as a transportation fuel, as well as descriptions of such fuels. A listed non-SAF fuel that meets the applicable description must also meet all the other applicable requirements under § 45Z to qualify as a transportation fuel. The list of non-SAF fuels would generally track those in Notice 2024-49, with a few modifications to the definitions within Notice 2024-49 to address concerns raised by commenters and industry stakeholders.

(10) *SAF transportation fuel*. The forthcoming proposed regulations would define "SAF transportation fuel" in accordance with the § 45Z(a)(3)(B) definition of sustainable aviation fuel and would clarify that a taxpayer may meet the requirement that the fuel be "sold for use in an aircraft" if such taxpayer sells a synthetic blending component to a person that blends the fuel into a fuel mixture described in ASTM D7566.

.04 *General rules*.

(1) *Overview*. Section 1.45Z-2 of the forthcoming proposed regulations would provide general rules regarding the amount and timing of the § 45Z credit. The rules would describe and clarify the credit calculation rules in § 45Z(a) to (c), including the applicable amount, the emissions factor, the emissions rate, the applicable emissions rate table, rounding, and inflation adjustment. The rules would also clarify that a taxpayer is eligible to claim the § 45Z credit only for the taxable year in which a qualifying sale of a transportation fuel occurs. *See* § 45Z(a)(1)(A)(ii). The rules would provide that a taxpayer may produce a transportation fuel in an earlier taxable year than the taxable year in which the qualifying sale of such fuel occurs, and that a qualifying sale may take place no earlier than the date the fuel is produced. The forthcoming proposed regulations would also describe when a taxpayer may file a petition with the Secretary for determination of a PER and generally describe the PER process. The Treasury Department and the IRS will publish guidance establishing procedures for taxpayers to request a PER and providing the § 45Z inflation adjustment factor at a later time.

(2) *Fuel measurement*. The forthcoming proposed regulations would require the § 45Z credit to be calculated using the applicable amount per gallon for liquid transportation fuels and the applicable amount per gasoline gallon equivalent for non-liquid transportation fuels. The volume of a liquid fuel would be measured on the basis of gallons adjusted to ambient pressure and temperature of 1 atmosphere and 60 degrees Fahrenheit. Section 45Z directs taxpayers to use a gallon equivalent for non-liquid fuels but does not provide a baseline standard. Gasoline is the most appropriate baseline fuel for a gallon equivalency for non-liquid fuels because gasoline is the most common transportation fuel, and § 45Z is designed to incentivize cleaner transportation fuels as alternatives to existing fossil fuels. The use of a gasoline gallon equivalency is also consistent with the gasoline gallon equivalent requirement in § 6426(d)(3), which applies to many of the types of fuel that would be considered transportation fuel under § 45Z in the context of a credit that § 45Z is intended to replace. To facilitate implementation of a gallon equivalency standard for non-liquid fuels, it is necessary to specify whether the equivalency is based on a lower heating value or a higher heating value of the baseline fuel, as the two types of heating values have different energy contents. The forthcoming proposed regulations would use a lower heating value of gasoline, rather than a higher heating value, because it is a better representation of the useful energy provided by a transportation fuel.

(3) *Emissions rates*.

(a) *45ZCF-GREET model*. (i) *In general*. Section 45Z(b)(1)(B)(ii) provides that in the case of non-SAF transportation fuel, the lifecycle greenhouse gas emissions of such fuel must be based on the most recent determinations under the Greenhouse gases, Regulated Emissions, and Energy use in Transportation model developed by the ANL or a successor model (as determined by the Secretary). The name of the "Greenhouse gases, Regulated Emissions, and Energy use in Transportation" model was changed to "Greenhouse gases, Regulated Emissions, and Energy use in Technologies" and it is now generally referred to as the "GREET" model.

The GREET model refers to a suite of models, the first version of which was released in 1995 and is now called the R&D GREET model. Since 1995, DOE maintained the GREET model to enable research regarding lifecycle analyses of hundreds of different methods of producing, delivering, and using energy. The R&D GREET model, was not designed to be used for determining emissions rates for tax credits, including the § 45Z credit, but the current suite of GREET models includes different versions, some of which are designed to facilitate particular regulatory regimes.

As of January 10, 2025, the DOE's GREET website lists the following different versions of the GREET model: R&D GREET, 40BSAF-GREET, 45VH2-GREET, 45ZCF-GREET, CA-GREET4.0, and ICAO-GREET. See *http://energy.gov/eere/greet*. For the reasons discussed below, for purposes of the § 45Z credit, the phrase "most recent determinations under the Greenhouse gases, Regulated Emissions, and Energy use in Transportation model" in § 45Z(b)(1)(B)(ii) is best understood as referring to determinations under the 45ZCF-GREET model. In addition, the forthcoming proposed regulations would designate the 45ZCF-GREET model as a successor model to the GREET model.

Some commenters have suggested that the R&D GREET model should be used for the § 45Z credit. However, the 45ZCF-GREET model is the only appropriate GREET model to use for purposes of the 45Z credit, because the R&D GREET model is not limited to transportation fuels and includes information that is based on preliminary analyses (that is, analyses that are not yet complete, have significant technical uncertainties, or are still being reviewed by laboratory staff, the DOE staff, or independent experts). *See generally* GREET, Office of Energy Efficiency & Renewable Energy, U.S. Department of Energy available at *https://www.energy.gov/eere/greet*.

While the R&D GREET model is a valuable tool for characterizing the benefits and impacts of energy technologies in a directional manner and testing new and updated data and parameters, it is not appropriate for use in analyses where a high degree of precision and certainty is required. Because the R&D GREET model offers users many choices regarding analysis methodology (for example, co-product accounting method and global warming potential values), different users can calculate different emissions rates with respect to the same fuel. Many of these choices would not be appropriate for the specific context of the § 45Z credit given the potentially preliminary nature of much of the information represented in R&D GREET and given that specific representations of activities, and their emissions, are needed in a specific fashion (for example, to comply with the requirements of § 45Z). Given the limitations of some of the data underlying aspects of the R&D GREET model and the fact that the model does not predetermine for the user which methodologies and accounting parameters are appropriate for compliance with the requirements of § 45Z, R&D GREET does not provide the analytical and methodological specificity necessary to meet the specific objectives or statutory requirements of the § 45Z credit.

ANL developed, and the DOE published, the 45ZCF-GREET model as a specific version of the GREET model to determine emissions rates that also meets three key parameters: (1) user-friendliness and consistency, (2) technical robustness of the pathways represented, and (3) consistency with the requirements of § 45Z. The first version of the 45ZCF-GREET model, anticipated to be released on January 10, 2025, will be available at *https://www.energy.gov/eere/greet*. This first version of the 45ZCF-GREET model includes the most commonly used types and categories of fuel that are anticipated to meet the eligibility requirements to claim the § 45Z credit. Additional types and categories of fuel may be added in future versions of the 45ZCF-GREET model.

Implementation of the § 45Z credit requires that data used to calculate emissions rates reflect a given taxpayer's specific operations and that such data be independently verifiable to the extent possible. Use of facility-specific, verifiable data ensures that the § 45Z credit is available only to those fuels that meet statutory requirements. For certain parameters, bespoke inputs are unlikely to be easily measured by taxpayers and/or independently verifiable with high fidelity, given the current status of verification mechanisms. Thus, certain parameters in the 45ZCF-GREET model are fixed assumptions, referred to as "background data," that are based on the best available data and may not be changed by users. Alternatively, the "foreground data" in the 45ZCF-GREET model are parameters that must be input by the user. See the 45ZCF-GREET User Manual[4] for details on background and foreground data.

(ii) *45ZCF-GREET as a "successor model"*

The Treasury Department and the IRS recognize that the continued existence of the R&D GREET model and periodic updates to both the 45ZCF-GREET model and the R&D GREET model may create potential uncertainty about the meaning of "most recent determinations" with regard to the GREET model, which would be detrimental to the administration and implementation of the § 45Z credit. To avoid any potential uncertainty, the forthcoming proposed regulations would invoke the Secretary's express delegation of authority in § 45Z(b)(1)(B)(ii) to require use of the 45ZCF-GREET model as a successor model.

This rule would be consistent with the Secretary's determination that, for purposes of the § 45V credit, the 45VH2-GREET model is a "successor" model to GREET and that taxpayers are required to use the most recent version of the 45VH2-GREET model.[5] *See* T.D. 10023 (January 10, 2025) for the Secretary's determination with regard to the 45VH2-GREET model and a more detailed discussion of the GREET model.

In drafting the forthcoming proposed regulations, the Treasury Department and the IRS considered the statutory definition of "lifecycle greenhouse gas emissions" in § 211(o)(1)(H) of the Clean Air Act (as in effect on August 16, 2022) and the specific objectives of § 45Z and consulted with the DOE. The 45ZCF-GREET model is a model specifically developed by ANL as a derivative of and successor to the R&D GREET model to meet the requirements and objectives of § 45Z.

(iii) *Most recent determinations under GREET*. Regardless of any determination by the Secretary of a successor model, the phrase "most recent determinations under the Greenhouse gases, Regulated Emissions, and Energy use in Transportation model" in § 45Z(b)(1)(B)(ii) is best understood as referring to determinations under the latest version of the 45ZCF-GREET model.

After consultation with the DOE, the Treasury Department and the IRS have concluded that use of the latest version of the 45ZCF-GREET model would be appropriate because it is tailored to the administration of the § 45Z tax credit and includes features that make it easy for taxpayers to use. Use of the latest version of the 45ZCF-GREET model would also ensure that the pathways and approaches provided for determining "well-to-wheel" emissions for various fuel production processes are of sufficient methodological certainty to be appropriate for determining eligibility for a tax credit. The most recent determinations under the latest version of the 45ZCF-GREET model are the only determinations under a variant of a GREET model that are suitable for use and may be used for purposes of the § 45Z credit.

[4] The 45ZCF-GREET User Manual, along with the 45ZCF-GREET model, is available at: https://www.energy.gov/eere/greet.

[5] Similar to § 45Z(b)(1)(B)(ii), § 45V(c)(1)(B) requires the Secretary to determine lifecycle greenhouse gas emissions using "the most recent Greenhouse gases, Regulated Emissions, and Energy use in Transportation model (commonly referred to as the 'GREET model') developed by Argonne National Laboratory, or a successor model (as determined by the Secretary)" for purposes of the clean hydrogen production credit under § 45V.

(iv) *SAF portion of 45ZCF-GREET model*. The forthcoming proposed regulations would provide that the 45ZCF-GREET model can be used to determine emissions rates for SAF transportation fuel (SAF portion of 45ZCF-GREET model). The SAF portion of the 45ZCF-GREET model is a "similar methodology" to CORSIA under § 45Z(b)(1)(B)(iii)(II) because, like the CORSIA program, it evaluates the full fuel lifecycle, including all stages of fuel and feedstock production through to the end use of the finished fuel. The DOE worked with the Treasury Department and other federal agencies to develop the 45ZCF-GREET model, including specifications for and limitations on background and foreground data, to satisfy the statutory requirements of § 45Z. Additionally, in the context of whether the R&D GREET model could be used to determine lifecycle greenhouse gas emissions for purposes of § 40B(e)(2),[6] the EPA identified certain necessary components of a lifecycle greenhouse gas analysis consistent with § 211(o)(1)(H) of the CAA that the R&D GREET model lacked and determined that the newly created 40BSAF-GREET 2024 model included the absent categories of emissions.[7] Similarly, the EPA has concluded that the newly-created 45ZCF-GREET model includes the categories of emissions it previously identified as missing from the R&D GREET model, the lack of which made R&D GREET insufficient for calculating lifecycle greenhouse gas emissions for purposes of § 211(o)(1)(H) of the CAA.[8]

Additionally, the 45ZCF-GREET model contains certain necessary components of a lifecycle greenhouse gas analysis consistent with § 211(o)(1)(H) of the CAA.[9] Therefore, emissions rates for SAF transportation fuels calculated using the 45ZCF-GREET model would be based on the amount of lifecycle greenhouse gas emissions as described in § 211(o)(1)(H) of the CAA. *See* § 45Z(b)(1)(B)(i).

(b) *Methodologies*. The forthcoming proposed regulations would designate the allowed methodologies for determining emissions rates for purposes of the emissions rate table described in § 45Z(b)(1)(B)(i). If a type and category of non-SAF transportation fuel is established in the applicable emissions rate table, a taxpayer producing such type and category of fuel would determine the fuel's emissions rate using the 45ZCF-GREET model, as directed by the applicable emissions rate table. If a type and category of SAF transportation fuel is established in the applicable emissions rate table, a taxpayer producing such type and category of fuel would determine the fuel's emissions rate using the most recent version of the CORSIA Default Life Cycle Emissions Values for CORSIA Eligible Fuels lifecycle approach (CORSIA Default) or the CORSIA Methodology for Calculating Actual Life Cycle Emissions Values lifecycle approach (CORSIA Actual), or the 45ZCF-GREET model, as directed by the applicable emissions rate table. Under the forthcoming proposed regulations, for each type and category of SAF transportation fuel, a taxpayer would be required to use the same methodology to calculate lifecycle greenhouse gas emissions associated with all stages of fuel feedstock production and distribution.

Section 45Z(b)(1)(B)(i) requires the emissions rate table to be based on the amount of lifecycle greenhouse gas emissions (as described in § 211(o)(1)(H) of the CAA) for such fuels. This CAA provision defines lifecycle greenhouse gas emissions as the aggregate emissions from all stages of the fuel's production and use, including feedstock production and transportation, fuel production and distribution, and use of the finished fuel. This type of lifecycle analysis is sometimes referred to as "well-to-wheel" emissions analysis. As a result, for each type and category of transportation fuel, the 45ZCF-GREET model also uses "well-to-wheel" emissions to calculate lifecycle greenhouse gas emissions for all stages of fuel production, as well as emissions resulting from use of the fuel in transportation.

Consistent with § 45Z(b)(1)(B)(ii), the forthcoming proposed regulations would require taxpayers to use the most recent version of an allowed methodology that is publicly available on the first day of the taxable year during which the taxpayer produced the transportation fuel for which the § 45Z credit is claimed. If a version of an allowed methodology adds a type or category of fuel after the first day of a taxable year, taxpayers must use such version for such new type or category of fuel for the entire taxable year. If an updated version of an allowed methodology becomes publicly available after the first day of the taxable year of production (but still within such taxable year), then the taxpayer could choose to treat such updated version as the most recent version of such methodology.

In the 45ZCF-GREET model, for purposes of accounting for emissions associated with hydrogen (as a production input), natural gas alternatives (as a production input or as the transportation fuel produced), electricity, and carbon capture and sequestration, rules similar to the rules under section 45V would apply.

The portions of the forthcoming proposed regulations regarding the emissions rate table and allowed methodologies (including the designation of the 45ZCF-GREET model as a successor model) would apply to taxable periods ending on or after January 10, 2025.

The Treasury Department and the IRS intend to propose rules at a future date providing that taxpayers will be able to access additional reductions in calculating the lifecycle greenhouse gas emissions rates of SAF and non-SAF transportation fuels (as described in 42 U.S.C. 7545(o)

[6] Section 40B(e)(2) has a requirement that a methodology similar to CORSIA must also satisfy the criteria under § 211(o)(1)(H) of the CAA, just as in § 45Z(b)(1)(B)(iii)(II). *See also* Notice 2024-37, 2024-21 I.R.B. 1191.

[7] *See* Letter from Joseph Goffman, Principal Deputy Assistant Administrator for the Office of Air and Radiation, U.S. Environmental Protection Agency, to Lily Batchelder, Assistant Secretary for Tax Policy, U.S. Department of Treasury (December 13, 2023), (EPA December 2023 Letter) *available at* https://home.treasury.gov/system/files/136/Final-EPA-letter-to-UST-on-SAF-signed.pdf.

[8] *See* Letter from Joseph Goffman, Assistant Administrator for the Office of Air and Radiation, U.S. Environmental Protection Agency, to Aviva Aron-Dine, Deputy Assistant Secretary for Tax Policy, U.S. Department of Treasury (January 8, 2025), (EPA January 2025 Letter) *available at* https://home.treasury.gov/system/files/136/January-2025-EPA-letter-to-UST-on-45zcf-GREET-signed.pdf.

[9] EPA January 2025 Letter.

(1)(H)) by utilizing certain climate smart agriculture (CSA) practices for cultivating domestic corn (CSA corn), domestic soybeans (CSA soybeans), and domestic sorghum (CSA sorghum) (collectively, CSA crops) for use as SAF and non-SAF transportation fuel primary feedstocks. These additional reductions would be available to taxpayers once the Treasury Department and the IRS propose regulations, including rules for CSA, for the § 45Z credit, and an accounting of one or more CSA practices is developed for the lifecycle greenhouse gas emissions rates of CSA crops calculated under the 45ZCF-GREET model.

.05 *Special rules*. Section 1.45Z-4 of the forthcoming proposed regulations would provide certain special rules with respect to the § 45Z credit. The rules would (1) incorporate the requirements in § 45Z(f)(1)(A)(i)(I) and (ii) that taxpayers must be registered as a producer of clean fuel under § 4101 at the time of production and produce their fuel in the United States; (2) describe the anti-stacking rules under § 45Z(d)(4)(B) for purposes of determining if a facility is a qualified facility, including examples; (3) incorporate the production attribution rules in § 45Z(f)(2) for facilities with multiple owners; (4) clarify that § 45Z does not require the taxpayer to own a facility and provide related production attribution rules; and (5) describe the recordkeeping and substantiation requirements for taxpayers claiming the § 45Z credit.

The forthcoming proposed regulations would provide an emission rate substantiation safe harbor providing that a taxpayer may substantiate the emissions rate for a non-SAF transportation fuel that was determined using the 45ZCF-GREET model by obtaining certification with respect to such fuel substantially in the form and manner described in § 1.45Z-5 of the forthcoming proposed regulations for certifying a SAF transportation fuel emissions rate determined using the 45ZCF-GREET model.

The Treasury Department and the IRS are concerned about the potential abuse of the section 45Z credit where transportation fuel is produced and sold in a manner that is inconsistent with the statutory purposes. The Treasury Department and the IRS are considering the need for an anti-abuse rule in the forthcoming proposed regulations.

With respect to used cooking oil (UCO) feedstocks, the Treasury Department and the IRS are concerned about (1) the improper identification of a substance that is not UCO as UCO (for example, virgin palm oil mislabeled as UCO), which could have substantially greater emissions impacts than genuine UCO, and (2) the uncertainty of market impacts caused by incentivizing UCO (for example, the degree to which increased UCO demand would be backfilled by virgin oils such as palm oil). Both of these concerns are particularly acute for imported UCO given the lack of transparency regarding the local sources. Due to these significant concerns about the ability to reliably distinguish between imported UCO and palm oil, and the resulting risk of crediting ineligible fuels, the Treasury Department and the IRS are considering appropriate substantiation and recordkeeping requirements for imported UCO. As a result, pathways that use imported UCO will not be available in the 45ZCF-GREET model until the Treasury Department and the IRS publish further guidance. UCO is considered to be imported if it originates from a source (for example, restaurant or food processor) outside the United States and/or is purchased from an aggregator located outside the United States.

.06 *Certification of emissions rates*. Section 1.45Z-5 of the forthcoming proposed regulations would provide rules for unrelated party certification of emissions rates for SAF transportation fuel (certification). The rules would describe the content, form, and manner for a taxpayer to provide certification under § 45Z(f)(1)(A)(i)(II). The Treasury Department and the IRS are developing a model certificate that will be provided at a later date. Until the model certificate is available, taxpayers may use the model certificates included in Notice 2024-6, 2024-2 I.R.B. 348, and Notice 2024-37, 2024-21 I.R.B. 1191, as examples of how to format their certification. Taxpayers should reference § 1.45Z-5 of the forthcoming proposed regulations for the substance and content of the certification.

The forthcoming proposed regulations would treat the following as qualified certifiers for the associated methodologies: (1) for taxpayers using CORSIA Default or CORSIA Actual, any individual or organization with active accreditation from International Sustainability and Carbon Certification, Roundtable on Sustainable Biomaterials, or other sustainability certification scheme approved by the International Civil Aviation Organization; and (2) for taxpayers using the 45ZCF-GREET model, any individual or organization with active accreditation (i) as a validation and certification body from the American National Standards Institute National Accreditation Board or (ii) as a verifier, lead verifier, or verification body under the California Air Resources Board Low Carbon Fuel Standard program (CARB LCFS). Qualified certifiers would be required to have the relevant active accreditation as of the date they provide the certification for a taxpayer's fuel.

The forthcoming proposed regulations would include CARB LCFS verifiers as qualified certifiers for taxpayers using the 45ZCF-GREET model as a methodology for SAF transportation fuel because CARB LCFS verifiers are experienced with evaluating information similar to the information included in the 45ZCF-GREET model.

The Treasury Department and the IRS anticipate requiring unrelated party certification of CSA crops, including information related to chain of custody of CSA crops throughout the biofuel supply chain.

.07 *Claim filing*. Section 1.45Z-6 of the forthcoming proposed regulations would (1) describe the time and manner of filing a claim for the § 45Z credit and (2) provide special rules for cases in which the producer of a clean fuel is not the credit claimant. If an entity that is disregarded as an entity separate from its owner within the meaning of § 301.7701-2(c)(2)(i) of the Procedure and Administration Regulations (disregarded entity) or a qualified subchapter S subsidiary within the meaning of § 1361(b)(3)(B) (QSub) produces transportation fuel that is eligible for the § 45Z credit, the forthcoming proposed regulations would treat the owner of such disregarded entity or QSub as registered as a producer of clean fuel under § 4101 for purposes of claiming the § 45Z credit. In addition, the forthcoming proposed regulations would clarify that the agent of a consolidated group, when filing a Form

7218, *Clean Fuel Production Credit*, to claim the § 45Z credit, must use the producer's registration number (within the meaning of § 45Z(f)(1)(A)(i)(I) and § 1.4101-1) of the member that produced the transportation fuel. The forthcoming proposed regulations would be consistent with the § 45Z Fact Sheet FAQs and provide additional specificity and clarity.

.08 *Registration*.

(1) *Registration rules generally*. Section 1.4101-1 of the forthcoming proposed regulations would provide rules regarding the approval, denial, revocation, or suspension of registration that are similar to the rules of § 4222(c) and § 48.4222(c)-1 of the Manufacturers and Retailers Excise Tax Regulations. Additionally, many of the requirements of § 1.4101-1 of the forthcoming proposed regulations would be similar or identical to the requirements of § 48.4101-1. The Treasury Department and the IRS are aware that many applicants for registration as clean fuel producers (which is required in order to claim the § 45Z credit) must also be registered under § 4101 for excise tax purposes; such applicants are therefore familiar with the registration process and must maintain other § 4101 registrations.

(2) *Separate entity treatment*. The forthcoming proposed regulations would generally provide that each business unit that has, or is required to have, a separate employer identification number (EIN) is treated as a separate person. The rules would provide that each disregarded entity that has an EIN and is a producer of transportation fuel for purposes of § 45Z must register as a producer of clean fuel in order to be eligible to claim the § 45Z credit. The rules would also provide that each QSub that has an EIN and is a producer of transportation fuel for purposes of § 45Z must register as a producer of clean fuel in order to be eligible to claim the § 45Z credit.

The Treasury Department and the IRS understand that, for many producers, each facility is owned by a disregarded entity. The forthcoming proposed regulations would provide registration rules that would reflect this practice while also satisfying the statutory requirements. The separate entity treatment rules also would provide for registration in a manner that would be similar to registering on a facility basis and would thus align more closely with other related tax provisions, including §§ 45V and 45Q (for which anti-stacking provisions apply) and the elective payment election and transfer election provisions of §§ 6417 and 6418, which are generally determined on a per-facility basis. The rules would also be consistent with (1) § 48.4101-1(a)(4), which requires separate entity treatment by providing that every business that has or is required to have a separate EIN is treated as a separate person for purposes of excise tax registrations under § 4101, (2) § 301.7701-2(c)(2)(v)(A)(3), which provides that § 301.7701-2(c)(2)(i) (concerning certain wholly-owned entities) does not apply for purposes of registration under §§ 4101, 4222, and 4412, and (3) § 1.1361-4(a)(8)(i)(C), which provides that a QSub is treated as a separate corporation for purposes of registration under §§ 4101, 4222, and 4412.

(3) *Reregistration safe harbor*. The forthcoming proposed regulations would provide a safe harbor for a person that has been registered by the IRS and must reregister due to a change in ownership. A person that is approved for reregistration would be eligible to claim a § 45Z credit as of the date the IRS received the application for reregistration, even if, at the time of such person's fuel production, the IRS had not yet approved the reregistration.

(4) *Section 4101(a)(1) registration requirement*. Section 13704(b)(5) of the IRA provides that for transportation fuel produced after December 31, 2024, "[s]ection 4101(a)(1), as amended by the preceding provisions of this Act, is amended by inserting the phrase 'every person producing a fuel eligible for the clean fuel production credit (pursuant to section 45Z)' after 'section 6426(k)(3)).'" However, § 4101(a)(1) does not reference § 6426(k)(3). A prior version of such amendment contained text that read "(as defined in section 40B or section 6426(k)(3)),"[10] but the reference to § 6426(k)(3) did not appear in the enacted version of § 13704(b)(5) of the IRA. The Office of Law Revision Counsel of the U.S. House of Representatives, whose functions include preparing and publishing periodically a new edition of the United States Code, executed the provision by making the insertion after "section 40B)," to reflect the probable intent of Congress.[11] Such intent is also reflected in § 45Z(f)(1)(A)(i)(I). For these reasons, the forthcoming proposed regulations would require every person intending to claim a § 45Z credit with respect to the production of a fuel eligible for the § 45Z credit to register with the IRS under § 4101.

SECTION 4. REQUEST FOR COMMENTS

.01 *General request for comments*. The Treasury Department and the IRS request comments on the forthcoming proposed regulations described in section 3 of this notice, the topics identified in section 4.02 of this notice, and the draft text in the appendix of this notice.

.02 *Specific request for comments*. The Treasury Department and the IRS specifically request comments on:

(1) How the fuel pathways approved under the EPA's Renewable Fuel Standard (RFS) program could be adapted for purposes of the emissions rate table if the Treasury Department and the EPA were to determine that the RFS program is a methodology "similar" to CORSIA that also satisfies the criteria under § 211(o)(1)(H) of the CAA (as required by § 45Z(b)(1)(B)(iii)(II)).

(2) Any clean fuel production processes that are currently in commerce that might meet the eligibility requirements of § 45Z but are not included in the 45ZCF-GREET model that is released simultaneously with this notice.

SECTION 5. SUBMISSION OF COMMENTS

Written comments should be submitted by April 10, 2025. The subject line for the comments should include a reference to Notice 2025-10. Comments may be submitted in one of two ways:

[10] *See* H.R. 5376, 121st Cong., 2d. Sess. § 136203(d)(2)(E) (Nov. 19, 2021).

[11] Available at https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title26-section4101&num=0&edition=prelim.

(1) electronically via the Federal eRulemaking Portal at http://www.regulations.gov (type IRS-2025-0002 in the search field on the regulations.gov homepage to find this notice and submit comments); or

(2) by mail to: Internal Revenue Service, CC:PA:01:PR (Notice 2025-10), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically, or on paper, to its public docket on www.regulations.gov.

SECTION 6. EFFECTIVE DATE OF THIS NOTICE

This notice is effective January 10, 2025.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Section 3 of Notice 2024-49 is modified and superseded. Until further notice, the definitions in section 3 of Notice 2024-49 are replaced with the definitions in the appendix of this notice.

SECTION 8. PAPERWORK REDUCTION ACT

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the OMB.

This notice sets forth intended collections of information to be provided to the IRS with Form 637, *Application for Registration (For Certain Excise Tax Activities)*, to determine whether an applicant meets the requirements to be registered under § 4101, a requirement to qualify for the § 45Z credit. Any collections of information associated with this notice will be reflected in the submission to the OMB for review in accordance with the PRA that is associated with Form 637 (OMB control number 1545-1835). This submission will be updated in the ordinary course.

Any collections of information associated with this notice may include reporting and third-party disclosure requirements that would be necessary to ensure that taxpayers qualify for the § 45Z credit. The collections would be used by the IRS for tax compliance purposes and by taxpayers to ensure that the fuel being produced qualifies for the § 45Z credit. The burden for these requirements would be included with the Form and Instructions for Form 7218, *Clean Fuel Production Credit*. For PRA purposes, the Form and Instructions for Form 7218 are already approved by OMB under 1545-0123 for business filers, 1545-0092 for individuals, 1545-0047 for non-profit organizations, and 1545-0092 for trust and estate filers.

Any collections of information associated with this notice may include reporting and recordkeeping requirements. The collections would be used by the IRS for tax compliance purposes. A taxpayer would use these collections to establish its eligibility for the § 45Z credit and the amount of the credit claimed. The recordkeeping requirements would include that taxpayers keep records about emissions rates, production, and sale. These recordkeeping requirements are considered general tax records under § 1.6001-1(e). For PRA purposes, general tax records are already approved by OMB under 1545-0123 for business filers, 1545-0092 for individuals, 1545-0047 for non-profit organizations, and 1545-0092 for trust and estate filers.

SECTION 9. DRAFTING INFORMATION

The principal authors of this notice are Jennifer Golden, Danielle Mayfield, Camille Edwards Bennehoff, and Andrew Clark of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For questions regarding this notice, contact Ms. Golden, Ms. Mayfield, Ms. Edwards Bennehoff, or Mr. Clark at (202) 317-6855 (not a toll-free number).

Appendix – Draft Text of Forthcoming Proposed Regulations

§1.45Z-1 Clean fuel production credit; definitions.

(a) *Overview*. For purposes of section 38 of the Code, the section 45Z clean fuel production credit is determined under section 45Z of the Code and the section 45Z regulations. This section provides an overview and definitions that apply for purposes of section 45Z and the section 45Z regulations. Section 1.45Z-2 provides general rules for determining the amount and timing of the section 45Z credit, including rules on the emissions factor and the emissions rate for transportation fuels. Section 1.45Z-3 provides rules relating to the increased credit amount for satisfying prevailing wage and apprenticeship requirements. Section 1.45Z-4 provides rules on required registration (under section 4101 of the Code and §1.4101-1 of this chapter), anti-stacking, production attribution, facility ownership, and recordkeeping and substantiation. Section 1.45Z-5 provides procedures for the certification of emissions rates. Section 1.45Z-6 provides procedures for filing a claim for the section 45Z credit. Section 1.4101-1 provides the rules for registration under section 4101.

(b) *Definitions*. The definitions in this section apply for purposes of section 45Z and the section 45Z regulations.

(1) *45ZCF-GREET model*. The term *45ZCF-GREET model* means the model by that name developed by the Argonne National Laboratory and published by the DOE for use in determining the amount of lifecycle greenhouse gas emissions for purposes of section 45Z.

(2) *Applicable amount.* The term *applicable amount* means the applicable amount as described in section 45Z(a)(2) and (a)(3)(A) and §1.45Z-2(a)(4).

(3) *Applicable material.* As provided in section 45Z(d)(5)(B)(i), the term *applicable material* means—

(i) monoglycerides, diglycerides, and triglycerides,

(ii) free fatty acids, and

(iii) fatty acid esters.

(4) *ASTM*. The term *ASTM* means the standards published by ASTM International, formerly known as the American Society for Testing and Materials. Additional information about ASTM International is available at https://www.astm.org/.

(5) *Biomass.* As provided in section 45Z(d)(5)(B)(ii) (citing section 45K(c)(3) of the Code), the term *biomass* means any organic material other than (i) oil and natural gas (or any product thereof), and (ii) coal (including lignite) or any product thereof.

(6) *Claim; Form 7218*. The term *claim* means a completed Form 7218, *Clean Fuel Production Credit* (including any other required documentation that the relevant form instructions and the section 45Z regulations require), filed with the taxpayer's Federal income tax return or Federal information return for the taxable year in which the section 45Z credit is determined. The term *Form 7218* means Form 7218, *Clean Fuel Production Credit*, and any successor form(s). *See* §601.602 Statement of Procedural Rules of this chapter.

(7) *CO_2e*. As provided in section 45Z(d)(2), the term *CO_2e* means, with respect to any greenhouse gas, the equivalent carbon dioxide (as determined based on relative global warming potential).

(8) *Code.* The term *Code* means the Internal Revenue Code.

(9) *CORSIA program*—(i) *In general*. As provided in section 45Z(b)(1)(B)(iii)(I), the term *CORSIA program* means the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) program which has been adopted by the International Civil Aviation Organization with the agreement of the United States. Additional information about the CORSIA program is available at https://www.icao.int/environmental-protection/CORSIA/Pages/default.aspx.

(ii) *CORSIA Default or CORSIA Actual*. The term *CORSIA Default or CORSIA Actual* means determinations from fuel pathways approved under the CORSIA Default Life Cycle Emissions Values for CORSIA Eligible Fuels lifecycle approach (CORSIA Default) or the CORSIA Methodology for Calculating Actual Life Cycle Emissions Values lifecycle approach (CORSIA Actual). Additional information about CORSIA Default and CORSIA Actual is available at *https://www.icao.int/environmental-protection/CORSIA/Pages/CORSIA-Eligible-Fuels.aspx.*

(10) *DOE*. The term *DOE* means the United States Department of Energy.

(11) *Emissions factor*. The term *emissions factor* means the emissions factor as described in section 45Z(b)(1)(A) and §1.45Z-2(c)(1).

(12) *Emissions rate*. The term *emissions rate* means the emissions rate for a transportation fuel as described in §1.45Z-2(d).

(13) *EPA*. The term *EPA* means the United States Environmental Protection Agency.

(14) *Facility*—(i) *In general.* For purposes of the definition of *qualified facility* provided in section 45Z(d)(4) and paragraph (b)(24) of this section, the term *facility* means a single production line that is used to produce a transportation fuel. For this purpose, a single production line includes all components that function interdependently to produce a transportation fuel through a process that results in the lifecycle greenhouse gas emissions rate used to determine the credit. Components function interdependently to produce a transportation fuel if the use of each component is dependent upon the use of each of the other components to produce a transportation fuel. A component that functions interdependently with other components to produce a transportation fuel need not be located within the same building as, or within a certain geographic proximity to, the other components. A facility includes carbon capture equipment if such carbon capture equipment contributes to the lifecycle greenhouse gas emissions rate of the process by which the transportation fuel for which the credit is determined is produced. A single production line includes all steps of the production process from the processing of feedstock through to the transportation fuel that is sold by the taxpayer in a qualifying sale.

(ii) *Certain indirect production and post-production equipment.* The term *facility* does not include—

(A) Equipment that is used to condition, such as equipment used to blend transportation fuel into a fuel mixture, pressurize a fuel for use in transportation, or transport a transportation fuel beyond the point of production; or

(B) Notwithstanding paragraph (b)(14)(iii) of this section, feedstock-related equipment (including production, purification, recovery, transportation, or transmission equipment) or electricity production equipment used to power the transportation fuel production process, including any carbon capture equipment associated with the electricity production process.

(iii) *Multipurpose components*. Components that have a purpose in addition to the production of a transportation fuel may be part of a facility if such components function interdependently with other components to produce a transportation fuel.

(iv) *Examples*. The following examples illustrate the definition of facility.

(A) *Example 1. Effect of geographic proximity; carbon capture equipment*. Z produces a transportation fuel at a facility that is equipped with carbon capture equipment (as defined in §1.45Q-2(c)), as distinguished from the carbon capture equipment described in paragraph (b)(14)(ii)(B) of this section. One purpose of the equipment is to capture carbon oxides. Without the carbon capture equipment, the facility could not produce a fuel that has an emissions rate that is not greater than 50 kilograms of CO_2e per mmBTU. Because the carbon capture equipment functions interdependently with other components to produce the transportation fuel, the carbon capture equipment is part of the facility under paragraph (b)(14)(i) of this section. The analysis in this example is the same regardless of the geographic distance between the carbon capture equipment and the rest of the components comprising the facility. A component that functions interdependently with other components to produce a transportation fuel need not be located within the same building as, or within a certain geographic proximity to, the other components.

(B) *Example 2. Single production line with components functioning interdependently; SAF transportation fuel*. X produces SAF transportation fuel that is a synthetic blending component that meets the requirements of ASTM D7566, Annex A2, at its facility. X sells the SAF transportation fuel to an unrelated person, Y, a blender, that blends it with kerosene to create a fuel mixture that qualifies as jet fuel under ASTM 7566. X uses equipment and components that function interdependently to produce the SAF transportation fuel that is sold to Y. X's equipment and components constitute a facility for section 45Z purposes. As described in paragraph (b)(14)(ii)(A) of this section, Y's equipment and components used to make a transportation fuel mixture are blending equipment and not a facility for section 45Z purposes.

(15) *Fuel*. The term *fuel* means any liquid or gaseous substance that can be consumed to supply heat or power. Therefore, for purposes of section 45Z, the term *fuel* does not include electricity.

(16) *Gallon equivalent*—(i) *In general.* The term *gallon equivalent* means, with respect to any non-liquid fuel, the amount of such fuel that has the energy equivalent of a gallon of gasoline, which refers to the amount of such fuel having a Btu content of 116,090 (lower heating value).

(ii) *Non-liquid fuel.* A fuel is considered non-liquid if it is in a gaseous state at ambient pressure and temperature of 1 atmosphere and 60 degrees Fahrenheit, respectively.

(iii) *Calculation*. For a given non-liquid fuel, the gallon equivalent of such fuel is equal to that fuel's lower heating value divided by the lower heating value of a gallon of gasoline. Expressed mathematically: Gallon equivalent = lower heating value of given fuel (measured in Btu) ÷ lower heating value of a gallon of gasoline (116,090 Btu). Such gallon equivalent must be rounded to 5 decimal places. The lower heating value of some non-liquid fuels are provided below:

Fuel	**Lower Heating Value**
Low-GHG compressed CANG	20,267 Btu per pound
Low-GHG dimethyl ether	12,417 Btu per pound
Low-GHG hydrogen	51,585 Btu per pound
Low-GHG liquified CANG[1]	20,908 Btu per pound
Low-GHG LPG (other than propane from HEFA)[2]	19,873 Btu per pound
Low-GHG LPG (propane from HEFA)[3]	18,568 Btu per pound

(iv) *Example*. A produced 100,000 pounds of low-GHG compressed CANG at a qualified facility and sold it in a qualifying sale. To determine the number of gallon equivalents for which A is eligible to claim the section 45Z credit, A must divide the lower heating value of low-GHG compressed CANG, 20,267 Btu per pound, by the lower heating value of a gallon of gasoline, 116,090 Btu. Rounded to 5 decimal places, on an energy equivalence basis, each pound of low-GHG compressed CANG is equal to 0.17458 gallon equivalents. As such, A is eligible to claim the section 45Z credit for 17,458 gallon equivalents of low-GHG compressed CANG.

(17) *Greenhouse gas (GHG)*. As provided in section 45Z(d)(3), the term *greenhouse gas*, or *GHG*, has the same meaning given that term under section 211(o)(1)(G) of the Clean Air Act (42 U.S.C. 7545(o)(1)(G)), as in effect on August 16, 2022.

(18) *Lifecycle greenhouse gas emissions*. The term *lifecycle greenhouse gas emissions* means the lifecycle greenhouse gas emissions as described in section 211(o)(1)(H) of the Clean Air Act (42 U.S.C. 7545(o)(1)(H)), as in effect on August 16, 2022.

(19) *mmBTU*. As provided in section 45Z(d)(1), the term *mmBTU* means 1,000,000 British thermal units.

(20) *Non-SAF transportation fuel*—(i) *In general*. The term *non-SAF transpor-*

[1] Low-GHG liquified CANG is a non-liquid fuel at ambient pressure and temperature of 1 atmosphere and 60 degrees Fahrenheit.

[2] Low-GHG LPG (other than propane from HEFA) is a non-liquid fuel at ambient pressure and temperature of 1 atmosphere and 60 degrees Fahrenheit.

[3] Low-GHG LPG (propane from HEFA) is a non-liquid fuel at ambient pressure and temperature of 1 atmosphere and 60 degrees Fahrenheit.

tation fuel means any transportation fuel that is not a SAF transportation fuel.

(ii) *Low-GHG non-SAF fuels*. This paragraph provides a list of non-SAF fuels that may qualify as a transportation fuel, as well as descriptions for such fuels. A listed non-SAF fuel that meets the applicable description in this paragraph (b)(20)(ii) must also meet all the other applicable requirements under section 45Z and the section 45Z regulations to qualify as a transportation fuel.

(A) *Low-GHG biodiesel.* The term *low-GHG biodiesel* means the monoalkyl esters of long chain fatty acids that meet the specifications of ASTM D6751 and that have an emissions rate that is not greater than 50 kilograms of CO_2e per mmBTU.

(B) *Low-GHG butanol.* The term *low-GHG butanol* means any mixture of n-butyl, sec-butyl, and iso-butyl alcohols that meets the specifications of ASTM D7862 and that has an emissions rate that is not greater than 50 kilograms of CO_2e per mmBTU.

(C) *Low-GHG diesel fuel.* The term *low-GHG diesel fuel* means liquid fuel, including renewable diesel, that meets the specifications of ASTM D975 and that has an emissions rate that is not greater than 50 kilograms of CO_2e per mmBTU.

(D) *Low-GHG dimethyl ether.* The term *low-GHG dimethyl ether*, which includes renewable dimethyl ether, means a gaseous fuel that meets the specifications of ASTM D7901 and that has an emissions rate that is not greater than 50 kilograms of CO_2e per mmBTU.

(E) *Low-GHG ethanol.* The term *low-GHG ethanol* means ethyl alcohol that is a liquid fuel that meets the specifications of ASTM D4806 for denatured fuel ethanol for blending with gasoline and that has an emissions rate that is not greater than 50 kilograms of CO_2e per mmBTU.

(F) *Low-GHG gasoline.* The term *low-GHG gasoline*, which includes renewable gasoline, means liquid fuel that meets the specifications of ASTM D4814 and that has an emissions rate that is not greater than 50 kilograms of CO_2e per mmBTU.

(G) *Low-GHG hydrogen.* The term *low-GHG hydrogen* means any gaseous or liquid fuel that meets the requirements of the Society of Automotive Engineers (SAE) J2719 standard and that has an emissions rate that is not greater than 50 kilograms of CO_2e per mmBTU. Information about SAE standards is available at https://www.sae.org/standards.

(H) *Low-GHG liquefied petroleum gas (LPG).* The term *low-GHG LPG*, which includes low-GHG propane, means liquefied gases that meet the specifications of ASTM D1835 and that have an emissions rate that is not greater than 50 kilograms of CO_2e per mmBTU.

(I) *Low-GHG methanol.* The term *low-GHG methanol* means a methyl alcohol that is a liquid fuel that meets the specifications of ASTM D1152 or ASTM D5797 and that has an emissions rate that is not greater than 50 kilograms of CO_2e per mmBTU.

(J) *Low-GHG conventional or alternative natural gas (CANG).* The term *low-GHG conventional or alternative natural gas (CANG)*, which includes renewable natural gas (RNG), means a pipeline-quality compressed or liquefied gas that meets the specifications of ASTM D8080, except for the compression requirements, and that has an emissions rate that is not greater than 50 kilograms of CO_2e per mmBTU.

(21) *Prevailing wage and apprenticeship requirements.* The term *prevailing wage and apprenticeship requirements* or *PWA requirements* means the requirements described in section 45Z(f)(6) and (7) and §1.45Z-3.

(22) *Producer*—(i) *In general.* Except as provided in paragraph (b)(22)(ii), the term *producer* means the person that engages in the production of a transportation fuel.

(ii) *Alternative natural gas*. With respect to alternative natural gas, including RNG, the term *producer* means the person that processes the alternative natural gas (processor) to remove water, carbon dioxide, and other impurities such that it is interchangeable with fossil natural gas.

(iii) *Examples.* The following examples illustrate the definition of producer.

(A) *Example 1. SAF producer*. X uses vegetable oil to make 10,000 gallons of a synthetic blending component via a hydroprocessed esters and fatty acids (HEFA) production pathway described in ASTM D7566, Annex A2, that qualifies as a SAF transportation fuel. X sells the synthetic blending component to Y, a blender that makes a 20,000-gallon SAF blend consisting of 50 percent synthetic blending component and 50 percent petroleum-based kerosene that meets the requirements of ASTM D7566. X and Y are unrelated. X is the producer for the 10,000 gallons of synthetic blending component that it sold to Y. Y is not the producer for any of the 20,000 gallons of fuel that it blended, because blending is not production.

(B) *Example 2. RNG producer*. R collects biogas from an anaerobic digester and processes it into RNG that qualifies as a transportation fuel. R sells 10,000-gallon equivalents of RNG to W, a RNG wholesaler and distributer. R injects the 10,000-gallon equivalents of RNG into a pipeline. W removes 10,000-gallon equivalents of CANG from the pipeline, further compresses it and sells it to a municipality that uses it to fuel compressed natural gas buses. R and W are unrelated. R is the producer of the 10,000-gallon equivalents of RNG. W is not the producer because W merely took a post-production transportation fuel and further compressed it. Further, W's compression equipment does not constitute a facility (as defined in paragraph (b)(14) of this section), as the equipment was used solely to condition, pressurize, or transport a transportation fuel beyond the point of production.

(23) *Production*—(i) *In general.* The term *production* means all steps and processes used to make a transportation fuel. Production begins with the processing of primary feedstock(s) and ends with a transportation fuel ready to be sold in a qualifying sale. Production must involve substantial processing by the producer to create a transportation fuel. Production does not include instances in which a person engages in minimal processing, such as blending a fuel mixture or otherwise engaging in activities that do not result in a chemical transformation. Production does not include instances where a person uses a primary feedstock to produce a fuel that meets the same ASTM standard as the primary feedstock. Production must occur in the United States.

(ii) *Examples*. The following examples illustrate the definition of production.

(A) *Example 1. Minimal processing when stabilizing biodiesel; production in the United States*. X, a domestic corporation, imports fatty acid methyl ester (FAME) that does not meet the ASTM D6751 specifications for biodiesel. After importation into the United States, X adds a stabilizing additive so that the FAME meets the specifications of ASTM D6751. The resulting fuel is ASTM-compliant biodiesel that qualifies as a transportation fuel. X then sells the ASTM-compliant biodiesel to an unrelated person for use as a fuel in that person's trade or business. X has not produced the ASTM-compliant biodiesel, as X merely engaged in minimal processing by adding an additive to the imported FAME. Further, the ASTM-compliant biodiesel sold by X was not produced in the United States, as X did not engage in substantial processing in the United States. Substantial processing, and thus production, occurred before X imported the FAME into the United States.

(B) *Example 2. Minimal processing when dehydrating hydrous ethanol; production in the United States*. Y, a domestic corporation, imports hydrous ethanol into the United States. The hydrous ethanol has excessive water content and does not meet the ASTM D4806 specifications for ethanol. After importation into the United States, Y reduces the water content of the hydrous ethanol. The resulting fuel is ASTM-compliant anhydrous ethanol that qualifies as a transportation fuel. Y then sells the ASTM-compliant anhydrous ethanol to an unrelated person for use in the production of a gasoline blend. Y has not produced the ASTM-compliant anhydrous ethanol, as Y merely engaged in minimal processing by dehydrating the imported hydrous ethanol. Further, the ASTM-compliant anhydrous ethanol sold by Y was not produced in the United States, as Y did not engage in substantial processing in the United States. Substantial processing, and thus production, occurred before Y imported the hydrous ethanol into the United States.

(24) *Qualified facility*—(i) *In general*. As provided in section 45Z(d)(4), the term *qualified facility* means a facility (as defined in paragraph (b)(14) of this section) used for the production of transportation fuel and excludes any facility for which an anti-stacking credit is allowed under section 38 for the taxable year. See §1.45Z-4(b) for more information on the application of the anti-stacking rules.

(ii) *Anti-stacking credit*. The term *anti-stacking credit* means any one of the following credits:

(A) The credit for production of clean hydrogen under section 45V (section 45V credit).

(B) The credit determined under section 46 to the extent that such credit is attributable to the energy credit determined under section 48 with respect to any specified clean hydrogen production facility for which an election is made under section 48(a)(15) (section 48(a)(15) election).

(C) The credit for carbon oxide sequestration under section 45Q (section 45Q credit).

(25) *Qualifying sale*—(i) *In general*. As provided in section 45Z(a)(4), the term *qualifying sale* means a sale of transportation fuel by the taxpayer to an unrelated person if—

(A) The fuel is sold for use in the production of a fuel mixture by such person,

(B) The fuel is sold for use in a trade or business by such person, or

(C) Such person sells such fuel at retail to another person and places such fuel in the fuel tank of such other person.

(ii) *Sold for use in a trade or business*. The term *sold for use in a trade or business* means sold for use as a fuel in a trade or business within the meaning of section 162 of the Code. The term does not include a sale for blending or for further processing, including use as a primary feedstock to produce another fuel.

(iii) *Sale by another member of a consolidated group*. In the case of a corporation that is a member of an affiliated group of corporations filing a consolidated return (that is, a member of a consolidated group (as defined in §1.1502-1(b) and (h))), such corporation will be treated as selling fuel to an unrelated person if such fuel is sold to the unrelated person by another member of such consolidated group.

(iv) *Example. Qualifying sale related to ethanol to SAF production*. A produces 12,000 gallons of ethanol. A sells the ethanol to B. A and B are unrelated. B uses the 12,000 gallons of ethanol to produce 4,500 gallons of a synthetic blending component under ASTM 7566, Annex A5 (ATJ-SPK). B then blends the 4,500 gallons of synthetic blending component with petroleum-based kerosene. B's resulting 9,000-gallon SAF blend is 50 percent synthetic blending component and 50 percent kerosene and meets the requirements of ASTM D7566. B sells the SAF blend to an unrelated person for use in an aircraft in a trade or business under section 162.

A, the producer of the 12,000 gallons of ethanol, is not eligible to claim a section 45Z credit for the 12,000 gallons of ethanol that it sold to B. A sold the ethanol to B for use as a primary feedstock to produce another fuel, which paragraph (b)(25)(ii) of this section excludes from the definition of *sold for use in a trade or business*, and the sale is not otherwise a qualifying sale. B is the producer of the 4,500 gallons of ATJ-SPK, the synthetic blending component, that it made and sold as part of the SAF blend. Assuming all other requirements of the section 45Z credit are met, B is eligible to claim a section 45Z credit for the 4,500 gallons of synthetic blending component because it sold such fuel for use in an aircraft in a trade or business within the meaning of section 162.

(26) *SAF transportation fuel*—(i) *In general*. The term *SAF transportation fuel* means sustainable aviation fuel (SAF) as defined in section 45Z(a)(3)(B). That term means the non-kerosene portion of any liquid fuel that is a transportation fuel, is sold for use in an aircraft, and:

(A) meets the requirements of—

(1) ASTM D7566, or

(2) the Fischer Tropsch provisions of ASTM D1655, Annex A1; and

(B) is not derived from palm fatty acid distillates or petroleum.

(ii) *Synthetic blending component*. The term *synthetic blending component* means the SAF portion of a fuel mixture described in ASTM D7566 that meets the specifications of one of the ASTM D7566 Annexes and is not derived from palm fatty acid distillates or petroleum.

(iii) *Sold for use in an aircraft.* A synthetic blending component sold to a person that blends the fuel into a fuel mixture described in ASTM D7566 is sold for use in an aircraft.

(iv) *FT hydrocarbons*. The term *FT hydrocarbons* means the Fischer Tropsch hydrocarbons that are derived from biomass, used to produce jet fuel described in section A1.2.2.2 of ASTM D1655, Annex A1, and not derived from palm fatty acid distillates or petroleum.

(v) *ASTM D7566 Annexes*. The term *ASTM D7566 Annexes* means any of the annexes in ASTM D7566 that provide the specifications for a pathway to create a synthetic blending component that can be blended with ASTM D1655-compliant kerosene.

(vi) *ASTM D1655, Annex A1*. The term *ASTM D1655, Annex A1* means the Fischer Tropsch provisions of ASTM D1655 Annex A1 that are contained in section A1.2.2.2, which provides a pathway for coprocessing up to five percent of FT hydrocarbons with petroleum to make a liquid fuel that qualifies as jet fuel. For purposes of this definition, the term *petroleum* includes any conventionally sourced hydrocarbons permitted under ASTM D1655, Annex A1. Liquid fuel produced in accordance with section A1.2.2.1 of ASTM D1655, Annex A1 does not qualify for the section 45Z credit because section A1.2.2.1 defines a pathway for producing a liquid fuel from coprocessing an applicable material (or materials derived therefrom) with a non-biomass feedstock.

(27) *Secretary; IRS*—(i) *Secretary*. The term *Secretary* means the Secretary of the Treasury or her delegate.

(ii) *IRS*. The term *IRS* means the Internal Revenue Service.

(28) *Section 45Z credit*. The term *section 45Z credit* means the clean fuel production credit determined under section 45Z of the Code and the section 45Z regulations.

(29) *Section 45Z regulations*. The term *section 45Z regulations* means the regulations in this section, §§1.45Z-2 through 1.45Z-6, and §1.4101-1.

(30) *Taxpayer*. The term *taxpayer* means the person that is registered as the producer of a clean fuel under section 4101 (or that is treated as the registrant for purposes of filing a claim for the section 45Z credit). *See* §1.45Z-6, *Procedures for filing a claim for clean fuel production credit*.

(31) *Transportation fuel*—(i) *In general.* As provided in section 45Z(d)(5)(A), the term *transportation fuel* means a fuel that—

(A) Is suitable for use as a fuel in a highway vehicle or aircraft,

(B) Has an emissions rate that is not greater than 50 kilograms of CO_2e per mmBTU, and

(C) Is not derived from coprocessing an applicable material (or materials derived from an applicable material) with a feedstock that is not biomass.

(ii) *Suitable for use as a fuel in a highway vehicle or aircraft (suitable for use)*—(A) A fuel is *suitable for use* if the fuel either has practical and commercial fitness for use as a fuel in a highway vehicle or aircraft, or may be blended into a fuel mixture that has practical and commercial fitness for use as a fuel in a highway vehicle or aircraft. A fuel may possess this practical and commercial fitness even though use in a highway vehicle or aircraft is not the fuel's predominant use. However, a fuel does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in a highway vehicle or aircraft. A fuel is suitable for use at the point at which no further production, refinement, or other step is necessary before the fuel is ready to be sold in a qualifying sale, except, as specified in paragraph (b)(31)(ii)(B) of this section, for CANG. To be considered suitable for use, a fuel need not actually be used as a fuel in a highway vehicle or aircraft.

(B) CANG is suitable for use once it is produced such that if further compressed it would meet the specifications of ASTM D8080.

(C) A fuel that does not require further processing and that may be blended with or used as a component of taxable fuel (within the meaning of section 4083 of the Code) is suitable for use.

(32) *United States*. As provided in section 45Z(f)(1)(B), the term *United States* includes any territory of the United States.

(33) *Unrelated person*. As provided in section 45Z(f)(3), the term *unrelated person* means a person not related to the taxpayer. Persons will be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b) of the Code.

(c) *Applicability date*. This section applies to qualifying sales occurring on or after the date proposed regulations are published in the ***Federal Register***.

§1.45Z-2 General rules.

(a) *Amount of credit*. For purposes of section 38 of the Code, the section 45Z credit is determined under section 45Z of the Code and the section 45Z regulations.

(1) *In general*. The amount of the section 45Z credit for any taxable year is an amount equal to the product of—

(i) The applicable amount per gallon or gallon equivalent (as defined in §1.45Z-1(b)(16)) with respect to any transportation fuel which is—

(A) Produced by the taxpayer at a qualified facility, and

(B) Sold by the taxpayer in a qualifying sale during the taxable year, and

(ii) The emissions factor for such fuel.

(2) *Fuel measurement*. The volume of a liquid fuel is measured on the basis of gallons adjusted to ambient pressure and temperature of 1 atmosphere and 60 degrees Fahrenheit. The gallon equivalent of a non-liquid fuel is calculated according to §1.45Z-1(b)(16).

(3) *Rounding*. As provided in section 45Z(a)(5), if the amount of any section 45Z credit is not a multiple of 1 cent, a taxpayer must round such amount to the nearest cent. A taxpayer must round up any amount ending in 0.5 cents or higher, and round down any amount ending in less than 0.5 cents.

(4) *Applicable amount*—(i) *In general*. The term *applicable amount* means the base amount described in paragraph (a)(4)(ii) of this section or the alternative amount described in paragraph (a)(4)(iii) of this section. The applicable amount is subject to inflation adjustment. *See* section 45Z(c).

(ii) *Base amount*. As provided in section 45Z(a)(2)(A) and (a)(3)(A)(i), in the case of any transportation fuel produced at a qualified facility that does not satisfy the prevailing wage and apprenticeship requirements, the term *base amount* means—

(A) For non-SAF transportation fuel, 20 cents subject to inflation adjustment for calendar years beginning after 2024; and

(B) For SAF transportation fuel, 35 cents subject to inflation adjustment for calendar years beginning after 2024.

(iii) *Alternative amount*. As provided in section 45Z(a)(2)(B) and (a)(3)(A)(ii), in the case of any transportation fuel produced at a qualified facility that satisfies the prevailing wage and apprenticeship requirements, the term *alternative amount* means—

(A) For non-SAF transportation fuel, $1.00 subject to inflation adjustment for calendar years beginning after 2024; and

(B) For SAF transportation fuel, $1.75 subject to inflation adjustment for calendar years beginning after 2024.

(5) *Inflation adjustment*—(i) *In general*. As provided in section 45Z(c)(1), for calendar years beginning after 2024, the base amount and the alternative amount for both non-SAF and SAF transportation fuel (that is, the $0.20, $0.35, $1.00, and $1.75 amounts described in paragraphs (a)(4)(ii) and (iii) of this section), will each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale of the transportation fuel occurs. If an inflation adjusted amount is not a multiple of 1 cent, such amount will be rounded to the nearest multiple of 1 cent.

(ii) *Inflation adjustment factor*. As provided in section 45Z(c)(2), the term *inflation adjustment factor* means the inflation adjustment factor determined and published by the Secretary pursuant to section 45Y(c) of the Code, determined by substituting "calendar year 2022" for "calendar year 1992" in section 45Y(c)(3). Accordingly, the inflation adjustment factor for purposes of section 45Z means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 2022. In this context, the term *GDP implicit price deflator* means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the Department of Commerce before March 15 of the calendar year. *See* section 45Y(c)(3).

(iii) *Publication of inflation adjustment factor.* The Secretary will publish guidance in the Internal Revenue Bulletin (see §601.601 of this chapter) no more frequently than annually that will provide the inflation adjustment factor.

(b) *Qualifying sale after production required*. For transportation fuel produced during or after 2025, a taxpayer is eligible to claim the section 45Z credit only for the taxable year in which the qualifying sale of that fuel occurs, provided the taxpayer meets all other requirements to claim the credit. However, such qualifying sale must occur before the termination date provided in section 45Z(g) (or as otherwise provided by Congress). A taxpayer may produce a transportation fuel in an earlier taxable year than the taxable year in which the qualifying sale of such fuel occurs. However, a qualifying sale may take place no earlier than the date the fuel is produced. Transportation fuel produced before 2025 is ineligible for the section 45Z credit.

(c) *Emissions factor*—(1) *In general*. As provided in section 45Z(b)(1)(A), the *emissions factor* of a transportation fuel is an amount equal to the quotient of—

(i) An amount equal to—

(A) 50 kilograms of CO_2e per mmBTU, minus

(B) The emissions rate for such fuel, divided by

(ii) 50 kilograms of CO_2e per mmBTU.

(2) *Rounding*—(i) *In general*. As provided in section 45Z(b)(2), if the emissions factor for a transportation fuel is not a multiple of 0.1, a taxpayer must round such amount to the nearest multiple of 0.1. A taxpayer must round up if the digit in the hundredths place is a 5 or higher, and round down if the digit in the hundredths place is less than 5.

(ii) *Example*. Y produces a transportation fuel with an emissions rate of 21.25 kilograms of CO_2e per mmBTU. The emissions factor for Y's fuel is initially calculated as follows: (50 – 21.25) ÷ 50 = 0.575. Because 0.575 is not a multiple of 0.1, Y must round it to the nearest multiple of 0.1. Thus, the emissions factor for Y's fuel is 0.6. If Y's initial calculation had instead resulted in an emissions factor of 0.54, Y would have been required to round the emissions factor down to 0.5.

(d) *Emissions rate*. The emissions rate for a transportation fuel is such fuel's lifecycle greenhouse gas emissions rate expressed as kilograms of CO_2e per mmBTU, based on the amount of lifecycle greenhouse gas emissions of such fuel (determined pursuant to section 45Z(b)(1)(B) through (D) and paragraph (e) of this section), the applicable emissions rate table published by the Secretary, and, in the case of any transportation fuel for which an emissions rate has not been established in the applicable emissions rate table, any provisional emissions rate (PER) determined by the Secretary with respect to such fuel.

(e) *Emissions rate table*—(1) *In general*. As provided in section 45Z(b)(1)(B)(i), the Secretary will annually publish a table that sets forth the emissions rate for similar types and categories of transportation fuels (emissions rate table) based on the lifecycle greenhouse gas emissions for such fuels, expressed as kilograms of CO_2e per mmBTU, which a taxpayer must use for purposes of section 45Z. A taxpayer must use the applicable emissions rate table as specified in paragraph (e)(2) of this section (applicable emissions rate table).

(2) *Applicable emissions rate table*—(i) *In general*. A taxpayer that produces a type and category of transportation fuel that is established in the emissions rate table for the taxable year in which the taxpayer produces such fuel must use the emissions rate table to determine the emissions rate for such fuel for all of the taxpayer's production of such fuel during the taxable year. *See* paragraph (f)(1) of this section for additional discussion of types and categories of transportation fuel in the applicable emissions rate table.

(ii) *Emissions rate table updated during taxable year*. If, during the taxable year of production, the Secretary publishes an updated emissions rate table that adds a type and/or category of fuel produced by the taxpayer, the taxpayer must use such table to determine the emissions rate for such fuel(s).

(3) *Allowed methodologies for emissions rate table*—(i) *Methodologies for non-SAF transportation fuel generally*. If a type and category of non-SAF transportation fuel is established in the applicable emissions rate table, a taxpayer producing such type and category of fuel must determine the fuel's emissions rate using the 45ZCF-GREET model, as directed by the applicable emissions rate table.

(ii) *45ZCF-GREET model as a successor model*. For purposes of section 45Z(b)(1)(B)(ii), the 45ZCF-GREET model is a successor model (as determined by the Secretary).

(iii) *Methodologies for SAF transportation fuels*. If a type and category of SAF transportation fuel is established in the applicable emissions rate table, a taxpayer producing such type and category of fuel must determine the fuel's emissions rate using the most recent version of CORSIA Default or CORSIA Actual or the 45ZCF-GREET model, as directed by the applicable emissions rate table. A taxpayer may choose, for each type and category of SAF transportation fuel that it produces, which of these methodologies to use. For each type and category of SAF transportation fuel, a taxpayer must use the same methodology to calculate lifecycle greenhouse gas emissions associated with all stages of fuel feedstock production and distribution. *See* §1.45Z-5, *Procedures for certification of lifecycle greenhouse gas emissions rates*, for information on how to certify these methodologies.

(iv) *Use of the most recent version of methodology*. A taxpayer must use the most recent version of a methodology allowed under paragraphs (e)(3)(i) and (iii) of this section (*allowed methodology*) that is publicly available on the first day of the taxable year during which the taxpayer produced the transportation fuel for which the section 45Z credit is claimed. If a version of an allowed methodology adds a type or category of fuel after the first day of a taxable year, taxpayers must use such version of the allowed methodology for such new type or category of fuel for the entire taxable year. If an updated version of an allowed methodology becomes publicly available after the first day of the taxable year of production (but still within such taxable year), then the taxpayer may, in its discretion, treat such updated version as the most recent version of such methodology.

(v) *Additional instructions on methodologies.* A taxpayer must use an allowed methodology in accordance with the applicable emissions rate table, accurately enter all information requested by such methodology, and follow all publicly available instructions for the use of such methodology.

(vi) *Accounting for certain emissions in 45ZCF-GREET model.* In the 45ZCF-GREET model, for purposes of accounting for emissions associated with hydrogen (as a production input), natural gas alternatives (as a production input or as the transportation fuel produced), electricity, and carbon capture and sequestration, rules similar to the rules under section 45V apply.

(f) *Provisional emissions rate (PER)*—(1) *In general*. If the applicable emissions rate table does not establish the type and category of transportation fuel produced by a taxpayer, such taxpayer may file a petition with the Secretary for determination of the emissions rate for such fuel. *See* section 45Z(b)(1)(D). A taxpayer requesting a PER is referred to as an "applicant." An applicant may use the PER process if the transportation fuel that it is producing is (1) a novel type of fuel not established in the applicable emissions rate table, or (2) if the type of fuel is established in the emissions rate table, but such fuel is produced using a pathway or primary feedstock not established in the applicable emissions rate table. For non-SAF transportation fuels, an applicant may not request a PER for a type and category of transportation fuel if the pathway or primary feedstock is established in the applicable emissions rate table, even if the applicant disagrees with the underlying assumptions (that is, background data) or calculation approach used by the most recent 45ZCF-GREET model. For SAF transportation fuels, an applicant may not request a PER for a type and category of transportation fuel if the pathway or primary feedstock is established in the applicable emissions rate table, even if the applicant disagrees with the underlying assumptions or calculation approach used by the allowed methodology used to determine emissions rates for the applicable emissions rate table (including the 45ZCF-GREET model and the CORSIA program).

(2) *Procedures for requesting a PER*. An applicant seeking a PER must follow the latest procedures for obtaining a PER as published by the Secretary in the section 45Z regulations and in the Internal Revenue Bulletin (see §601.601 of this chapter), including the process for obtaining an emissions value from the DOE that is used by the applicant to request a PER determination. For purposes of the section 45Z PER process, an *emissions value* is a value obtained from the DOE setting forth the DOE's analytical assessment of the lifecycle greenhouse gas emissions rate associated with the production of a type of transportation fuel using a particular primary feedstock and pathway.

(g) *New* e*missions rates (including PER) apply on January 1, 2025*. The emissions rate for any new type or category of fuel established on the applicable emissions rate table or determined through the PER process will apply on January 1, 2025, regardless of when the Treasury Department and the IRS publish guidance establishing an emissions rate or PER procedures.

(h) *Credit not allowed for production before January 1, 2025*. The section 45Z credit is not allowed for fuel produced before January 1, 2025.

(i) *Applicability date*. This section applies to qualifying sales occurring on or after the date proposed regulations are published in the ***Federal Register***, except that paragraph (e) of this section applies to taxable periods ending on or after **January 10, 2025**.

§1.45Z-4 Special Rules.

(a) *Registered production in the United States required*—(1) *In general*. As provided in section 45Z(f)(1)(A)(i)(I) and (ii), no section 45Z credit shall be determined with respect to any transportation fuel unless the taxpayer is registered as a producer of clean fuel under section 4101 of the Code at the time of production and such fuel is produced in the United States.

(2) *Registration rules and procedures*. The registration rules in §1.4101-1 apply for purposes of the section 45Z credit. A taxpayer will be considered registered as a producer of clean fuel under section 4101 at the time of production if, at such time, the taxpayer is registered in accordance with section 4101, §1.4101-1, and any applicable guidance published in the Internal Revenue Bulletin (see §601.601 of this chapter).

(b) *Anti-stacking rules*—(1) *In general*. This paragraph provides rules for determining if an anti-stacking credit has been allowed for a taxable year with respect to a facility. Such determination impacts whether the facility is a qualified facility as provided in section 45Z(d)(4)(B).

(2) *Application of anti-stacking rules on a taxable-year and per-facility basis*—(i) *In general*. The determination of whether a facility is a qualified facility is made separately for each taxable year and each facility. Whether a facility is a qualified facility for a given taxable year depends on whether the facility produced transportation fuel sold during that taxable year and whether an anti-stacking credit was allowed for that taxable year with respect to the facility. A facility may be a qualified a facility in one taxable year but not in another taxable year. If a taxpayer produces transportation fuel at multiple facilities, the determination of whether such fuel was produced at a qualified facility is made separately for each facility.

(ii) *Section 48(a)(15) election*. A section 48(a)(15) election is irrevocable, and if made, will permanently disqualify a facility from being a qualified facility under section 45Z for the taxable year of the election and all subsequent taxable years.

(3) *Carbon capture equipment at a facility*. In the case of any transportation fuel produced at a facility that includes carbon capture equipment for which the section 45Q credit is allowed for the taxable year, such facility is not a qualified facility, and no section 45Z credit will be determined with respect to such facility for such taxable year.

(4) *Examples*. The following examples illustrate the application of the anti-stacking rules. For purposes of these examples, X, Y, and Z are all C corporations and unrelated calendar-year taxpayers, unless otherwise stated.

(i) *Example 1: Interaction of section 45Z and section 45V credits; transportation fuel and qualified clean hydrogen produced at the same facility by persons with the same taxable year*. During 2025 and 2026, X produces a transportation fuel at a facility and sells such fuel in a qualifying sale. X is otherwise eligible to claim the section 45Z credit with respect to the facility. During 2025 and 2026, Y produces qualified clean hydrogen, as defined in section 45V(c)(2), at the same facility. Y is allowed a section 45V credit with respect to the facility for 2025, but not for 2026. No other person is allowed a section 45V credit with respect to the facility for 2025 or 2026. Because Y is allowed a section 45V credit with respect to the facility for 2025, such facility is not a qualified facility for section 45Z purposes for 2025. Thus, X is not eligible to claim a section 45Z credit with respect to the facility for 2025. The result in this example would be the same if a person other than Y is allowed the section 45V credit with respect to the facility for 2025. A separate analysis is conducted for 2026. Because no section 45V credit is allowed with respect to the facility for 2026, the facility is a qualified facility for section 45Z purposes for 2026. Therefore, X is eligible to claim a section 45Z credit with respect to the facility for 2026.

(ii) *Example 2: Interaction of section 45Z and section 45V credits; transportation fuel and qualified clean hydrogen produced at the same facility by persons with different taxable years*. During 2025, X produces a transportation fuel at a facility and sells such fuel in a qualifying sale. X is otherwise eligible to claim the section 45Z credit with respect to the facility. During 2025, Y produces qualified clean hydrogen, as defined in section 45V(c)(2), at the same facility. Y has a taxable year of October 1 to September 30. Y is allowed a section 45V credit with respect to the facility for its taxable year of October 1, 2024, to September 30, 2025, but not for its taxable year of October 1, 2025, to September 30, 2026. No other person is allowed a section 45V credit with respect to the facility for any portion of 2025. Such facility is not a qualified facility for section 45Z purposes for the period in 2025 for which Y is allowed a section 45V credit (that is, January 1 through September 30, 2025). However, such facility is a qualified facility for section 45Z purposes for the period in 2025 for which no section 45V credit is allowed with respect to the facility (that is, October 1 through December 31, 2025). Thus, X is eligible to claim a section 45Z credit with respect to the facility for 2025, but only for the period during which the facility is a qualified facility (that is, October 1 through December 31, 2025).

(iii) *Example 3: Interaction of section 45Z credit and section 48(a)(15) election*. During 2025, X produces a transportation fuel at a facility and sells such fuel in a qualifying sale. During 2025, X also produces qualified clean hydrogen, as defined in section 45V(c)(2), at the same facility, which is a specified clean hydrogen production facility, as defined in section 48(a)(15)(C). X is otherwise eligible to claim the section 45Z credit and to make a section 48(a)(15) election with respect to the facility. For 2025, X makes an election under section 48(a)(15) to treat the facility as energy property for purposes of the energy credit under section 48, which credit then forms part of the investment credit under section 46 that is allowed to X. Because the transportation fuel and the qualified clean hydrogen are produced at the same facility, and X is allowed a section 46 credit attributable to a section 48(a)(15) election with respect to the facility for 2025, such facility is not a qualified facility for section 45Z purposes for 2025. Because a section 48(a)(15) election is irrevocable, the facility also will not be a qualified facility for section 45Z purposes for any subsequent taxable year. Thus, X is not eligible to claim the section 45Z credit with respect to the facility for 2025 or for any subsequent taxable year.

(iv) *Example 4: Interaction of section 45Z and section 45Q credits; transportation fuel produced at a facility that includes carbon capture equipment*. During 2025 and 2026, X produces a transportation fuel at a facility and sells such fuel in a qualifying sale. X is otherwise eligible to claim the section 45Z credit with respect to the facility. The facility includes carbon capture equipment. Y owns and uses the carbon capture equipment at the facility to capture carbon oxide. During 2025, Y utilizes or disposes of the carbon oxide in a manner that qualifies for the section 45Q credit. Y is allowed a section 45Q credit with respect to the facility for 2025, but not for 2026. No other person is allowed a section 45Q credit with respect to the facility for 2025 or 2026. Because Y is allowed a section 45Q credit with respect to the facility for 2025, such facility is not a qualified facility for section 45Z purposes for 2025. Thus, X is not eligible to claim a section 45Z credit with respect to the facility for 2025. The result in this example would be the same if a person other than Y utilizes or disposes of the carbon oxide and is allowed a section 45Q credit with respect to the facility for 2025. A separate analysis is conducted for 2026. Because no section 45Q credit is allowed with respect to the facility for 2026, the facility is a qualified facility for section 45Z purposes for 2026. Therefore, X is eligible to claim a section 45Z credit with respect to the facility for 2026.

(c) *Production attributable to the taxpayer*—(1) *In general*. Except as provided in paragraph (d)(2) of this section, in the case of a facility in which more than one person has an ownership interest (and the arrangement is not classified as a partnership for Federal tax purposes), production from the facility is allocated among such persons in proportion to their respective ownership interests in the gross sales from such facility. *See* section 45Z(f)(2). In the case of such an allocation, the amount of each person's section 45Z credit is determined pursuant to section 45Z(a) and the section 45Z regulations based on each person's allocable share of production.

(2) *Example*. A, B, and C, all calendar year taxpayers, each own an interest in Facility, which is a qualified facility. A has a 45 percent ownership interest in Facility, B has a 35 percent ownership interest in Facility, and C has a 20 percent ownership interest in Facility. Gross sales from Facility are allocated among A, B, and C in proportion to their ownership interests. During 2025, Facility produced 10 million gallons of transportation fuel. A, B, and C will each determine the amount of their section 45Z credit for 2025 based on their allocable share of the 10 million gallons of transportation fuel produced at Facility during 2025. Thus, A will determine the amount of its section 45Z credit based on 4.5 million gallons, B will determine the amount of its section 45Z credit based on 3.5 million gallons, and C will determine the amount of its section 45Z credit based on 2 million gallons.

(3) *Section 761(a) election*. If a facility is owned through an unincorporated organization that has made a valid election under section 761(a) of the Code, each member's undivided ownership interest in the facility will be treated as a separate facility owned by such member.

(d) *No requirement of facility ownership*—(1) *In general*. A taxpayer is not required to own the qualified facility at which the taxpayer produces transportation fuel in order for a section 45Z credit to be determined with respect to such fuel.

(2) *Application of production attribution rules if taxpayer does not own facility*. If a taxpayer produces transportation fuel at a facility owned by another person, production of such fuel will be attributed to the taxpayer unless otherwise specified in the Code or in the section 45Z regulations. In the case of a production arrangement under which multiple taxpayers produce transportation fuel at a facility that is not owned by all such taxpayers, the production of such transportation fuel will be allocated among the taxpayers in proportion to their respective interests in the gross sales from such fuel, as determined under the applicable contract or other legal arrangement with respect to such fuel.

(e) *Recordkeeping and substantiation*—(1) *In general*. A taxpayer claiming the section 45Z credit must keep records sufficient to establish the taxpayer's eligibility for the section 45Z credit and the amount of the credit claimed. At a minimum, those records must include records establishing that each fuel produced is a transportation fuel, records on the primary feedstock(s) used to produce each fuel, records establishing that each fuel meets any additional specifications for the type of fuel under §1.45Z-1(b)(20) and §1.45Z-1(b)(26), records substantiating how the emissions rate for each fuel was determined (including, if applicable, the specific type(s) and category(ies) under the applicable emissions rate table), records relating to any fuel testing obtained by the taxpayer, records establishing that each facility used to produce fuel is a qualified facility, records establishing the date each facility was placed in service, records establishing that each fuel was sold in a qualifying sale, and records establishing any unrelated party certification and substantiating the information therein. If a taxpayer is claiming an increased credit amount based on a qualified facility satisfying the prevailing wage and apprenticeship requirements, the taxpayer must also maintain records in accordance with §1.45-12. A taxpayer must also keep all information, including raw data, used for or related to any petition for a PER.

(2) *Safe harbor for substantiation of emissions rate*. A taxpayer may substantiate the emissions rate for a non-SAF transportation fuel that was determined using the 45ZCF-GREET model by obtaining certification with respect to such fuel substantially in the form and manner described in §1.45Z-5 for certifying a SAF transportation fuel emissions rate determined using the 45ZCF-GREET model and attaching such certification to its Form 7218 for the taxable year in which it claims a section 45Z credit for such fuel. To qualify for this emissions rate substantiation safe harbor, a taxpayer must provide the qualified certifier with all information necessary to determine the emissions rate for a non-SAF transportation fuel using the 45ZCF-GREET model, including all information the taxpayer entered into 45ZCF-GREET, the specific type and category under the applicable emissions rate table for such fuel, and all other applicable information described in §1.45Z-5. The Secretary may provide other methods through which a taxpayer may substantiate the emissions rate for a non-SAF transportation fuel. The Secretary will describe any such methods in guidance published in the Internal Revenue Bulletin or in IRS forms, instructions, or publications. *See* §601.601 of this chapter.

(f) *Applicability date*. This section applies to qualifying sales occurring on or after the date proposed regulations are published in the ***Federal Register***.

§1.45Z-5 Procedures for certification of lifecycle greenhouse gas emissions rates.

(a) *In general*. This section provides rules on unrelated party certification for SAF transportation fuel pursuant to section 45Z(f)(1)(A)(i)(II) of the Code.

(b) *Certification requirements*—(1) *In general*. A taxpayer must attach a certification to the taxpayer's Form 7218 (as provided in the Form 7218 instructions), which is filed with the taxpayer's Federal income tax return or Federal information return, for each qualified facility at which the taxpayer produces SAF transportation fuel and for each taxable year in which the taxpayer claims the section 45Z credit.

(2) A certification specified in this paragraph (b) must be prepared by a qualified certifier under penalties of perjury and must contain—

(i) A statement from the qualified certifier regarding the production of SAF transportation fuel, including that the inputs used to determine the lifecycle greenhouse gas emissions rate of the production process are accurate (production statement);

(ii) A statement from the qualified certifier regarding the amount of SAF transportation fuel sold (sale statement);

(iii) A statement from the qualified certifier regarding conflicts of interest (conflict statement);

(iv) Information regarding the qualified certifier, including documentation of the qualified certifier's qualifications (qualified certifier statement);

(v) Certain general information about the qualified facility at which the SAF transportation fuel production undergoing certification occurred;

(vi) Any documentation necessary to substantiate the certification process given the standards and best practices prescribed by the qualified certifier's accrediting body and the circumstances of the taxpayer and the qualified facility; and

(vii) Any other information or documentation required by applicable IRS tax forms or instructions.

(3) *Qualified certifier*. (i) For taxpayers using CORSIA Default or CORSIA Actual to determine the emissions rate for SAF transportation fuel, the term qualified certifier means any individual or organization with active accreditation from International Sustainability and Carbon Certification, Roundtable on Sustainable Biomaterials, or other sustainability certification scheme approved by the International Civil Aviation Organization.

(ii) For taxpayers using the 45ZCF-GREET model to determine the emissions rate for SAF transportation fuel, the term qualified certifier means any individual or organization with active accreditation—

(A) From the American National Standards Institute National Accreditation Board to conduct validation and verification in accordance with the requirements of ISO 14065; or

(B) As a verifier, lead verifier, or verification body under the California Air Resources Board Low Carbon Fuel Standard program.

(iii) Qualified certifiers are qualified to provide certification only for the associated methodologies identified in this paragraph (b)(3). A qualified certifier must have active accreditation for the associated methodology as of the date it provides a certification to a taxpayer. A taxpayer must use the qualified certifier identified in this paragraph (b)(3) for the identified emissions rate methodology used by the taxpayer.

(c) *Requirements for the production statement*. The requirements set forth in this paragraph (c) apply to the production statement.

(1) The production statement must be a statement that the qualified certifier performed a certification sufficient to determine that any lifecycle greenhouse gas emissions data inputs and the operation, during the applicable taxable year, of the qualified facility that produced the SAF transportation fuel for which the section 45Z credit is claimed are accurately reflected in—

(i) The number of gallons of SAF transportation fuel produced by the taxpayer that is entered on the Form 7218 to which the certification is attached; and

(ii) Either—

(A) The data the taxpayer entered into the methodology under §1.45Z-2(e)(3)(iii) the taxpayer selected to determine the lifecycle greenhouse gas emissions rate that is entered on the Form 7218 to which the certification is attached; or

(B) The data the taxpayer submitted in a provisional emissions rate (PER) petition relating to the SAF transportation fuel for which the section 45Z credit is claimed, including data provided to the DOE in support of the taxpayer's request for the emissions value provided in the PER petition.

(2) If the production statement includes the information specified in paragraph (c)(1)(ii)(B) of this section, then the production statement must also specify the emissions value received from the DOE that was calculated using such data, expressed in kilograms of CO_2e per mmBTU.

(3) The production statement must specify the lifecycle greenhouse gas emissions rate (expressed in kilograms of CO_2e per mmBTU) and the amount of SAF transportation fuel produced by the taxpayer (expressed in gallons), that are entered on the Form 7218 to which the certification is attached.

(d) *Requirements for the sale statement*. The sale statement must state that the qualified certifier performed a certification sufficient to determine that the number of gallons of SAF transportation fuel that is specified in the production statement pursuant to paragraph (c)(1) of this section, and that is entered on the Form 7218 to which the certification is attached, has been sold in a qualifying sale.

(e) *Requirements for the conflict statement*—(1) *In general*. The conflict statement must state that—

(i) The qualified certifier has not received a fee based to any extent on the value of any section 45Z credit that has been or is expected to be claimed by the taxpayer and no arrangement has been made for such fee to be paid at any time in the future;

(ii) The qualified certifier has not been a party to any transaction involving the sale of SAF transportation fuel the taxpayer produced or in which the taxpayer purchased primary feedstocks for the production of such SAF transportation fuel;

(iii) The qualified certifier is not related, within the meaning of section 267(b) or 707(b)(1) of the Code, to the taxpayer, or an employee of, the taxpayer; and

(iv) The qualified certifier is not married to anyone who is related to, or an employee of, the taxpayer.

(2) *Additional attestations required in certain circumstances*. If the qualified certifier is acting in his or her capacity as a partner in a partnership, an employee of any person, whether an individual, corporation, or partnership, or an independent contractor engaged by a person other than the taxpayer, the attestations under paragraphs (e)(1)(i) through (iv) of this section must also be made with respect to the partnership or the person that employs or engages the qualified certifier.

(f) *Requirements for the qualified certifier statement*. The qualified certifier statement must include the items set forth in this paragraph (f).

(1) The qualified certifier's name, address, and certifier identification number (ex. CARB LCFS Verifier Executive Order Number);

(2) The qualified certifier's qualifications to conduct the certification, including a description of the certification the qualified certifier received from the accrediting body;

(3) If the qualified certifier is acting in his or her capacity as a partner in a partnership, an employee of any person, whether an individual, corporation, or partnership, or an independent contractor engaged by a person other than the taxpayer, the name, address, and certifier identification number of the partnership or the person that employs or engages the qualified certifier;

(4) The signature of the qualified certifier and the date of signature; and

(5) A statement that the certification was conducted for Federal tax purposes.

(g) *General information on qualified facility*. The certification must include the information set forth in this paragraph (g) for the qualified facility at which the SAF transportation fuel production undergoing certification occurred:

(1) The location of the qualified facility;

(2) A description of the qualified facility, including its method of producing SAF transportation fuel;

(3) The type(s) of primary feedstock(s) used by the qualified facility to produce SAF transportation fuel during the taxable year of production;

(4) The amount(s) of primary feedstock(s) used by the qualified facility during the taxable year of production;

(5) The locations from which primary feedstock(s) used by the qualified facility during the taxable year of production are sourced;

(6) A list of the metering devices used to record any data used by the qualified certifier to support the production statement under paragraph (c) of this section along with a statement that the qualified certifier is reasonably assured that the device(s) underwent industry-appropriate quality assurance and quality control, and the accuracy and calibration of the device has been tested in the last year prior to the time of observation; and

(7) Confirmation that the emissions rate is accurate to the higher of +/-5% or 2 grams of CO_2e per mmBTU.

(h) *Timely certification*—(1) *In general*. A certification must be signed and dated by the qualified certifier no later than—

(i) The due date, including extensions, of the Federal income tax return or Federal information return for the taxable year during which the SAF transportation fuel undergoing certification is sold; or

(ii) In the case of a credit first claimed for the taxable year on an amended return or administrative adjustment request, the date on which the amended return or administrative adjustment request is filed.

(2) *Certification in a year other than the year of sale*. A taxpayer may obtain a certification with respect to a SAF transportation fuel in a different taxable year than the taxable year in which the qualifying sale of such fuel occurs.

(i) *Applicability date*. This section applies to qualifying sales occurring on or after the date proposed regulations are published in the ***Federal Register***.

§1.45Z-6 Procedures for filing a claim for the clean fuel production credit.

(a) *Time and manner of filing a claim*. To claim the section 45Z credit, a taxpayer must file a completed Form 7218 with the taxpayer's timely filed (including extensions) Federal income tax return or Federal information return for the taxable year in which the taxpayer claims the section 45Z credit. A taxpayer must file a separate Form 7218 for each qualified facility at which transportation fuel for which the taxpayer is claiming the section 45Z credit is produced. A taxpayer must complete Form 7218 in accordance with the instructions to that form. A taxpayer must include with its Form 7218 any applicable certification required by §1.45Z-5.

(b) *Special rules if producer is not credit claimant*—(1) *Producer that is a disregarded entity or a qualified subchapter S subsidiary*. If an entity that is disregarded as an entity separate from its owner within the meaning of §301.7701-2(c)(2)(i) of this chapter (disregarded entity) or a qualified subchapter S subsidiary within the meaning of section 1361(b)(3)(B) (QSub) produces transportation fuel that is eligible for the section 45Z credit, the owner of such disregarded entity or QSub will be treated as registered as a producer of clean fuel under section 4101 for purposes of claiming the section 45Z credit. The producer's registration number (within the meaning of section 45Z(f)(1)(A)(i)(I) and §1.4101-1) of a disregarded entity or a QSub will be attributed to its owner. The owner of a disregarded entity or QSub that claims and is allowed a section 45Z credit with respect to transportation fuel produced by such disregarded entity or QSub must satisfy the recordkeeping requirements in §1.45Z-4(e).

(2) *Producer that is a member of a consolidated group*. If a member of a consolidated group (as defined in §1.1502-1(b) and (h), respectively) produces transportation fuel that is eligible for the section 45Z credit, such member is the person eligible to claim the section 45Z credit. The member must satisfy all requirements under section 45Z (for example, the recordkeeping requirements in §1.45Z-4(e)). For rules regarding the status of the common parent as generally the agent for members of its consolidated group, see §1.1502-77. The agent of a consolidated group, when filing a Form 7218 to claim the section 45Z credit, must use the producer's registration number (within the meaning of section 45Z(f)(1)(A)(i)(I) and §1.4101-1) of the member that produced the transportation fuel.

(c) *Applicability date*. This section applies to qualifying sales occurring on or after the date proposed regulations are published in the ***Federal Register***.

§1.4101-1 Registration

(a) *In general*. This section provides rules relating to registration for purposes of the section 45Z credit.

(1) *Letter of Registration required*. A person is registered under section 4101 of the Code only if the IRS has issued a Letter of Registration to the person and the registration has not been revoked or suspended.

(2) *Separate entity treatment*—(i) *In general*. Each business unit that has, or is required to have, a separate employer identification number is treated as a separate person. Thus, two business units (for example, a parent corporation and a subsidiary corporation), each of which has a different employer identification number, are two persons.

(ii) *Disregarded entity*. Section 301.7701-2(c)(2)(i) of this chapter (relating to certain wholly owned entities) does not apply for purposes of registration under this section. An entity that is disregarded as an entity separate from its owner for any purpose under §301.7701-2 of this chapter and that has, or is required to have, an employer identification number is treated as a corporation (consistent with §301.7701-2(c)(2)(v)(B) of this chapter) for purposes of registration under this section. Therefore, an entity that is treated as a corporation, that has an employer identification number, and that is a producer of transportation fuel for purposes of the section 45Z credit must register as a producer of clean fuel in order to be eligible to claim the section 45Z credit.

(iii) *Qualified subchapter S subsidiary*. Section 1.1361-4(a)(1)(i) (providing that a corporation that is a qualified subchapter S subsidiary as defined in section 1361(b)(3)(B) (QSub) is not treated as a separate corporation) does not apply for purposes of registration under this section. Therefore, a QSub that has an employer identification number and that is a producer of transportation fuel for purposes of the section 45Z credit must register as a producer of clean fuel to be eligible to claim the section 45Z credit.

(3) *Reregistration*—(i) *Reregistration in the event of change of ownership*. As provided in section 4101(a)(5), a person is required to reregister under this section if after a transaction (or series of related transactions) more than 50 percent of ownership interests in, or assets of, such person are held by persons other than persons (or persons related thereto) who held more than 50 percent of such interests or assets before the transaction (or series of related transactions). Reregistration does not apply to a company whose stock is regularly traded on an established securities market, but such companies are required to notify the IRS about the change in ownership.

(ii) *Reregistration in the event of change of employer identification number*. If a registrant changes its employer identification number, such registrant must reregister under this section using its new employer identification number.

(iii) *Safe harbor for purposes of section 45Z credit*. A person that is approved for reregistration is eligible to claim a section 45Z credit (provided that all requirements of section 45Z are met) as of the date the IRS received the application for reregistration, even if, at the time of fuel production, the IRS has not yet approved the reregistration.

(b) *Definitions*—(1) *Applicant*. An *applicant* is a person that has applied for registration under paragraph (d) of this section.

(2) *Letter of registration.* A *Letter of Registration* is a letter issued by the IRS to confirm approval of a registration required under section 4101 and this section. A *Letter of Registration* includes the registrant's registration number and the effective date of the registration.

(3) *Penalized for a wrongful act*. A person has been *penalized for a wrongful act* if the person has—

(i) Been assessed any penalty under chapter 68 of the Code (or similar provision of the law of any State) for fraudulently failing to file any return or pay any tax, and the penalty has not been wholly abated, refunded, or credited;

(ii) Been assessed any penalty under chapter 68 of the Code, such penalty has not been wholly abated, refunded, or credited, and the IRS determines that the conduct resulting in the penalty is part of a consistent pattern of failing to deposit, pay, or pay over a substantial amount of tax;

(iii) Been convicted of a crime under chapter 75 of the Code (or similar provision of the law of any State), or of conspiracy to commit such a crime, and the conviction has not been wholly reversed by a court of competent jurisdiction;

(iv) Been convicted, under the laws of the United States or any State, of a felony for which an element of the offense is theft, fraud, or the making of false statements, and the conviction has not been wholly reversed by a court of competent jurisdiction;

(v) Been assessed any tax under section 4103 of the Code and the tax has not been wholly abated, refunded, or credited; or

(vi) Had its registration under section 4101, 4222, 4662, or 4682 of the Code revoked.

(4) *Related person*. A *related person* is a person that—

(i) Directly or indirectly exercises control over an activity of the applicant;

(ii) Owns, directly or indirectly, five percent or more of the applicant;

(iii) Is under a duty to assure the payment of a tax for which the applicant is responsible;

(iv) Is a member, with the applicant, of a group of organizations (as defined in §1.52-1(b)) that would be treated as a group of trades or businesses under common control for purposes of §1.52-1; or

(v) Distributed or transferred assets to the applicant in a transaction in which the applicant's basis in the assets is determined by reference to the basis of the assets in the hands of the distributor or transferor.

(5) *Registrant*. A *registrant* is a person that the IRS has, in accordance with paragraph (f)(3) of this section, registered under section 4101 and whose registration has not been revoked or suspended.

(c) *Requirement to register*—(1) *In general*. Every person intending to claim a section 45Z credit with respect to the production of a fuel eligible for the section 45Z credit is required to register with the IRS under this section.

(2) *Consequences of failing to register*. For the criminal penalty imposed for failure to register, see section 7232 of the Code. For the civil penalty imposed for failure to register or reregister, see section 7272 of the Code. For the civil penalty imposed for failure to register or reregister under section 4101, see section 6719 of the Code.

(d) *Application instructions*. Application for registration under section 4101 must be made in accordance with the instructions for Form 637, *Application for Registration (For Certain Excise Tax Activities),* or such other form as the Commissioner may designate. *See* §601.602 of this chapter.

(e) *Registration tests*—(1) *In general.* The IRS will register an applicant only if the IRS determines that the applicant meets the following three tests (collectively, the registration tests):

(i) The activity test of paragraph (e)(2) of this section.

(ii) The acceptable risk test of paragraph (e)(3) of this section.

(iii) The satisfactory tax history test of paragraph (e)(4) of this section.

(2) *Activity test*—(i) *In general*. An applicant meets the activity test of this paragraph (e)(2) only if the IRS determines that the applicant—

(A) Is, in the course of its trade or business, regularly engaged in the activity for which they are requesting registration; or

(B) Is likely to be (because of such factors as the applicant's business experience, financial standing, or trade connections), in the course of its trade or business, regularly engaged in the activity for which they are requesting registration, within a reasonable time after becoming registered under section 4101.

(ii) *Example 1. Reasonable time standard; production to begin more than 6 months after registration*. An applicant submits a Form 637 requesting to become registered as a producer of fuel that may be eligible for the section 45Z credit, stating in its application that it will not be able to produce such fuel for at least three years from the date of the application. Such applicant is not likely to be, in the course of its trade or business, regularly engaged as a producer of transportation fuel within a reasonable time (6 months) after becoming registered under section 4101.

(iii) *Example 2. Reasonable time standard; production to begin within 6 months of registration*. An applicant submits a Form 637 requesting to become registered as a producer of fuel that may be eligible for the section 45Z credit, stating in its application that it will be able to produce such fuel within six months after it becomes registered. Such applicant is likely to be, in the course of its trade or business, regularly engaged as a producer of transportation fuel within a reasonable time after becoming registered under section 4101.

(3) *Acceptable risk test*—(i) *In general*. An applicant meets the acceptable risk test of this paragraph (e)(3) if neither the applicant nor a related person has been penalized for a wrongful act. If an applicant or a related person has been penalized for a wrongful act, the IRS may nonetheless determine that an applicant meets the acceptable risk test based on consideration of the factors enumerated in paragraph (e)(3)(ii) of this section.

(ii) *Factors to consider*. In making the determination described in paragraph (e)(3)(i) of this section, the IRS may consider factors such as the following:

(A) The time elapsed since the applicant or related person was penalized for a wrongful act.

(B) The present relationship between the applicant and any related person that was penalized for any wrongful act.

(C) The degree of rehabilitation of the person penalized for any wrongful act.

(4) *Satisfactory tax history test*—(i) *In general*. An applicant meets the satisfactory tax history test of this paragraph (e)(4) only if the IRS determines that the applicant has a satisfactory tax history as described in paragraph (e)(4)(ii) of this section.

(ii) *Satisfactory tax history*. An applicant has a satisfactory tax history only if the Commissioner determines that the filing, deposit, and payment history for all Federal taxes of the applicant and any related person support the conclusion that the applicant will comply with its obligations under this section.

(f) *Action on the application by the IRS*—(1) *Review of application*. The IRS may investigate the accuracy and completeness of any representations made by an applicant and request any additional relevant information from the applicant.

(2) *Denial*. If the IRS determines that an applicant does not meet all of the registration tests described in paragraph (e) of this section, the IRS will notify the applicant, in writing, that its application for

registration is denied and state the basis for the denial.

(3) *Approval*. If the IRS determines that an applicant meets all of the registration tests described in paragraph (e) of this section, the IRS will register the applicant under section 4101 and issue the applicant a Letter of Registration containing the effective date of the registration. The effective date of a registration under this section is the effective date provided in the Letter of Registration. A copy of an application for registration (Form 637) is not a Letter of Registration.

(g) *Terms and conditions of registration*—(1) *Affirmative duties*. Each applicant or registrant must—

(i) Make deposits, file returns, and pay taxes as required by the Code and the regulations;

(ii) Keep records sufficient to show eligibility for the section 45Z credit;

(iii) Notify the IRS of any change in the information the registrant submitted in connection with its application for registration, or previously submitted under this paragraph (g)(1)(iii), within 10 days after the change occurs. Changes requiring IRS notification include, but are not limited to, changes in ownership, address, and business activities.

(2) *Prohibited actions*. A registrant or applicant may not—

(i) Sell, lease, or otherwise allow another person to use its registration, or

(ii) Make any false statement to the IRS in connection with a submission under section 4101.

(h) *Effect of Letter of Registration*. A Letter of Registration is not a determination of liability for tax, eligibility for a tax credit or deduction, or any other tax treatment under the Code. For example, a Letter of Registration issued to a registrant producing a fuel that may be eligible for the section 45Z credit is not a determination that the fuel that the registrant produces is a transportation fuel under section 45Z(d)(5)(A) or that the facility at which the registrant produces such fuel is a qualified facility under section 45Z(d)(4). A Letter of Registration is also not a determination letter, as defined in §601.201(a)(3) of this chapter.

(i) *Adverse actions by the IRS against a registrant*—(1) *Mandatory revocation or suspension*. The IRS will revoke or suspend the registration of any registrant if the IRS determines that the registrant, at any time—

(i) Does not meet one or more of the registration tests under paragraph (e) of this section and has not corrected the deficiency within a reasonable period of time after notification by the IRS;

(ii) Has used its registration to evade, or attempt to evade, the payment of any tax, or to postpone or in any manner to interfere with the collection of any such tax, or to make a fraudulent claim for a credit or payment;

(iii) Has aided or abetted another person in evading, or attempting to evade, payment of any tax, or in making a fraudulent claim for a credit or payment; or

(iv) Has sold, leased, or otherwise allowed another person to use its registration.

(2) *Remedial action permitted in other cases*. If the IRS determines that a registrant has, at any time, failed to comply with the terms and conditions of registration under paragraph (g) of this section, made a false statement to the IRS in connection with its application for registration or retention of registration, or otherwise used its registration in a manner that creates a significant risk of nonpayment or late payment of tax, then the IRS may revoke or suspend the registrant's registration.

(3) *Action by the IRS to revoke or suspend a registration*. If the IRS revokes or suspends a registration, the IRS will notify the registrant in writing and state the basis for the revocation or suspension. The effective date of the revocation or suspension may not be earlier than the date on which the IRS notifies the registrant.

(j) *Applicability date*. This section applies to persons producing transportation fuel on or after the date proposed regulations are published in the ***Federal Register***.

Section 45Z Clean Fuel Production Credit; Emissions Rates; Request for Comments

Notice 2025-11

SECTION 1. PURPOSE

This notice provides initial guidance on emissions rates under § 45Z(b)(1)(B) of the Internal Revenue Code (Code)[1] for the clean fuel production credit determined under § 45Z (§ 45Z credit). This notice also requests comments from the public related to emissions rates for the § 45Z credit to assist the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) in developing additional guidance. *See also* Notice 2025-10, this Bulletin, that describes forthcoming proposed regulations that the Treasury Department and the IRS intend to issue that would address definitions, emissions rates, credit eligibility, calculation of the credit amount, registration, certification, claim filing, and required recordkeeping.

The Treasury Department and the IRS developed this notice and Notice 2025-10 in consultation with the Department of Energy (DOE), the Environmental Protection Agency (EPA), the United States Department of Agriculture, and other federal agencies.

SECTION 2. BACKGROUND

.01 *In general*. Section 45Z, added to the Code by § 13704 of Public Law 117-169, 136 Stat. 1818, 1997 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022, provides an income tax credit for clean transportation fuel produced domestically after December 31, 2024, and sold by December 31, 2027. The § 45Z credit is a general business credit under § 38.

A taxpayer must meet several requirements to be eligible to claim the § 45Z credit. Generally, a taxpayer must: (1) produce a transportation fuel that has a lifecycle greenhouse gas emissions rate

[1] Unless otherwise specified, all references to "section" or "§" are references to sections of the Code.

(emissions rate) of not greater than 50 kilograms (kg) of carbon dioxide equivalent based on relative global warming potential (CO_2e) per million British thermal units (mmBTU) and that satisfies certain suitability and coprocessing requirements; (2) produce the fuel in the United States at a qualified facility; (3) be registered as a producer of clean fuel under § 4101 at the time of production; and (4) sell the fuel to an unrelated person in a qualifying manner during the taxable year. *See* § 45Z(a)(1) & (4), (d)(4)-(5)(A), and (f)(1). A taxpayer producing a transportation fuel that is sustainable aviation fuel (SAF transportation fuel) must also provide unrelated party certification demonstrating compliance with certain requirements. *See* § 45Z(f)(1)(A)(i)(II).

For purposes of § 38, the § 45Z credit is an amount equal to the product of (A) the applicable amount per gallon (or gallon equivalent) with respect to any transportation fuel which is produced by the taxpayer at a qualified facility and sold in the manner described in § 45Z(a)(4) during the taxable year and (B) the emissions factor for such fuel as determined under § 45Z(b). *See* § 45Z(a)(1).

For a fuel to be eligible for the § 45Z credit, one requirement is that it must have an emissions rate that is not greater than 50 kg of CO_2e per mmBTU. *See* § 45Z(d)(5)(A)(ii). This is the baseline emissions rate. The amount of the credit is based on the transportation fuel's emissions factor, which is a calculation of the fuel's emissions rate against the baseline emissions rate. *See* § 45Z(b)(1)(A)(i).

.02 *Emissions factor*. The emissions factor for a transportation fuel is the quotient of 50 kilograms of CO_2e per mmBTU, minus the emissions rate for such fuel, divided by 50 kilograms of CO_2e per mmBTU. *See* § 45Z(b)(1)(A)(i). Expressed mathematically, the calculation is as follows: Emissions factor = (50 kg of CO_2e per mmBTU - emissions rate in kg of CO_2e per mmBTU) ÷ 50 kg of CO_2e per mmBTU.

Under § 45Z(b)(2), if any amount determined under § 45Z(b)(1)(A) is not a multiple of 0.1, such amount must be rounded to the nearest multiple of 0.1.

.03 *Applicable amount*. Section 45Z(a)(2) and (3) provide the applicable amounts for transportation fuels. Section 45Z(c)(1) provides that for calendar years beginning after 2024, the applicable amounts in § 45Z(a)(2) and (3) must each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale of the transportation fuel occurs. Section 45Z(c)(2) provides that the inflation adjustment factor for the § 45Z credit is the inflation adjustment factor determined and published by the Secretary of the Treasury or her delegate (Secretary) pursuant to § 45Y(c), determined by substituting "calendar year 2022" for "calendar year 1992" in § 45Y(c)(3).[2] The Treasury Department and the IRS intend to provide guidance on the inflation adjustment factor for the 2025 calendar year at a later time. Such guidance will be published in the Internal Revenue Bulletin.

04. *Emissions rates*. Section 45Z divides transportation fuel into two categories: non-SAF transportation fuel and SAF transportation fuel. Section 45Z(b)(1)(B)(ii) and (iii) provides the methods for determining emissions rates for non-SAF transportation fuel and SAF transportation fuel.

Section 45Z(b)(1)(B)(i) directs the Secretary, subject to § 45Z(b)(1)(B)(ii) and (iii), to annually publish a table that sets forth the emissions rates for similar types and categories of transportation fuels based on the amount of lifecycle greenhouse gas emissions[3] as described in § 211(o)(1)(H) of the Clean Air Act (42 U.S.C. 7545(o)(1)(H)) as in effect on August 16, 2022 (CAA)[4] for such fuels, expressed as kg of CO_2e per mmBTU. This notice contains the initial table that sets forth such emissions rates for purposes of the § 45Z credit. *See* section 4.05 of this notice and the appendix to this notice.

Regarding the determination of emissions rates, § 45Z(b)(1)(B)(ii) provides that in the case of non-SAF transportation fuel, the lifecycle greenhouse gas emissions of such fuel must be based on the most recent determinations under the Greenhouse gases, Regulated Emissions, and Energy use in Transportation model developed by the Argonne National Laboratory (ANL), or a successor model as determined by the Secretary.

Section 45Z(b)(1)(B)(iii) provides that for SAF transportation fuel, the lifecycle greenhouse gas emissions of such fuel is determined in accordance with (I) the most recent Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) which has been adopted by the International Civil Aviation Organization (ICAO) with the agreement of the United States or (II) any methodology similar to the most recent CORSIA that satisfies the criteria under § 211(o)(1)(H) of the CAA.

Section 3 of this notice provides background on the methodologies used to determine emissions rates.

Section 4 of this notice instructs taxpayers how to calculate emissions rates using either (1) determinations under the most recent version of the 45ZCF-GREET model or (2) determinations from fuel pathways approved under the most recent CORSIA Default Life Cycle Emissions Values for CORSIA Eligible Fuels lifecycle approach (CORSIA Default) or the most recent CORSIA Methodology for Calculating Actual Life Cycle Emissions Values lifecycle approach (CORSIA Actual).

Section 45Z(b)(1)(D) provides that in the case of any transportation fuel for

[2] Accordingly, the inflation adjustment factor for purposes of § 45Z means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 2022. In this context, the term "GDP implicit price deflator" means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the Department of Commerce before March 15 of the calendar year. *See* § 45Y(c)(3).

[3] Section § 211(o)(1)(H) of the Clean Air Act defines the term "lifecycle greenhouse gas emissions" as "the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions such as significant emissions from land use changes), as determined by the [EPA] Administrator, related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential." *See also* 42 U.S.C. 7602(a).

[4] This notice cites to the CAA as added by § 1501(a)(2) of the Energy Policy Act of 2005, Public Law 109-58, 119 Stat. 594, 1067 (2005) and amended by § 202(a)(1) of the Energy Independence and Security Act of 2007, Public Law 110-140, 121 Stat. 1492, 1521-22 (2007).

which an emissions rate has not been established under § 45Z(b)(1)(B), a taxpayer producing such fuel may file a petition with the Secretary for determination of the emissions rate with respect to such fuel, also known as a provisional emissions rate (PER). *See* section 4.05 and 4.06 of this notice.

SECTION 3. ALLOWED METHODOLOGIES FOR DETERMINING EMISSIONS RATES

.01 *CORSIA Program*. Emissions rates for SAF transportation fuels are determined under the CORSIA program based on the modeling of the fuel lifecycle, including all stages of fuel and feedstock production through to the end use of the finished fuel, to calculate and reduce greenhouse gas emissions from international aviation. In 2016, ICAO adopted CORSIA, which is set out in Annex 16 - Environmental Protection: Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) (2018), *https://elibrary.icao.int/home/product-details/229739*.

Using the CORSIA program, there are two ways of obtaining the lifecycle emissions value of a SAF transportation fuel: (1) CORSIA Default and (2) CORSIA Actual. Additional information about CORSIA Default and CORSIA Actual is available at *https://www.icao.int/environmental-protection/CORSIA/Pages/CORSIA-Eligible-Fuels.aspx*.

.02 *45ZCF-GREET model*.

Administration of the § 45Z credit requires a determination of the emissions rates of different types and categories of fuels consistently and accurately, including fuels made from different pathways and primary feedstocks (as provided in the emissions rate table). ANL developed, and the DOE published, the 45ZCF-GREET model to determine emissions rates for the § 45Z credit that also meets three key parameters: (1) user-friendliness and consistency, (2) technical robustness of the pathways represented, and (3) consistency with the other requirements of § 45Z.

The first version of the 45ZCF-GREET model, anticipated to be released on January 10, 2025, is available at *https://www.energy.gov/eere/greet*. The first version of the 45ZCF-GREET model includes the most commonly used types and categories of fuel that are anticipated to meet the eligibility requirements to claim the § 45Z credit. Additional types and categories of fuel may be added in future versions of the 45ZCF-GREET model. See the 45ZCF-GREET User Manual[5] for additional background.

SECTION 4. DETERMINATION OF EMISSIONS RATES

.01 *Most recent determinations under the 45ZCF-GREET model*. Taxpayers must use the most recent determinations under the 45ZCF-GREET model for non-SAF and SAF transportation fuels. The term "the most recent determinations" means determinations under the latest version of the 45ZCF-GREET model (described in section 3.02 of this notice) that is publicly available on the first day of the taxable year in which the transportation fuel for which the taxpayer is claiming the § 45Z credit was produced. *See also* Notice 2025-10.

If a version of the 45ZCF-GREET model adds a type or category of fuel after the first day of a taxable year, taxpayers must use such version of the 45ZCF-GREET model for the new type or category of fuel for the entire taxable year. Additionally, if an updated version of the 45ZCF-GREET model becomes publicly available after the first day of the taxable year of production (but still within such taxable year), then the taxpayer may, in its discretion, treat such updated version as the most recent version of the 45ZCF-GREET model.

.02 *Most recent version of CORSIA Default or CORSIA Actual*. For purposes of § 45Z(b)(1)(B)(iii)(I), the term "most recent" means the latest version of CORSIA Default or CORSIA Actual (described in section 3.01 of this notice) that is publicly available on the first day of the taxable year in which the SAF transportation fuel for which the taxpayer is claiming the § 45Z credit was produced. Additionally, if an updated version of CORSIA Default or CORSIA Actual becomes publicly available after the first day of the taxable year of production (but still within such taxable year), then the taxpayer may, in its discretion, treat such updated version as the most recent version of CORSIA Default or CORSIA Actual.

At the time of publication of this notice, the most recently published versions of CORSIA Default (Sixth Edition, October 2024) and CORSIA Actual (Fifth Edition, October 2024) are both available at: *https://www.icao.int/environmental-protection/CORSIA/Pages/CORSIA-Eligible-Fuels.aspx*

.03 *Determining emissions rates for non-SAF transportation fuels*. If an emissions rate for a non-SAF transportation fuel is established under § 45Z(b)(1)(B)(i) (which means that the type and category of non-SAF transportation fuel is established in the most recent determinations under the emissions rate table), a taxpayer producing such type and category of fuel must use the most recent determinations under the emissions rate table to determine the fuel's emissions rate. *See* section 4.06 of this notice if the non-SAF transportation fuel is not established in the most recent determinations under the 45ZCF-GREET model.

.04 *Determining emissions rates for SAF transportation fuel*. If an emissions rate for a SAF transportation fuel is established under § 45Z(b)(1)(B)(i) (which means that the type and category of SAF transportation fuel is established in the most recent determinations under the emissions rate table), a taxpayer producing such type and category of fuel must determine the SAF emissions rate pursuant to (1) an analysis using the most recent version of CORSIA Default or CORSIA Actual (see section 4.02 of this notice or (2) an analysis using the most recent determinations under the 45ZCF-GREET model (see section 4.01 of this notice). For a given SAF transportation fuel, a taxpayer must use the same methodology for determining the emissions associated with all stages of fuel feedstock production and distribution.

If the Treasury Department and the IRS conclude that an additional methodology

[5] The 45ZCF-GREET User Manual, along with the 45ZCF-GREET model, is available at: https://www.energy.gov/eere/greet.

qualifies under § 45Z(b)(1)(B)(iii)(II), instructions for how to use such methodology will be provided in additional guidance.

See section 4.06 of this notice if a type or category of SAF transportation fuel is not established in the most recent version of CORSIA Default or CORSIA Actual.

.05 *Initial emissions rate table*. The initial emissions rate table required by § 45Z(b)(1)(B)(i) is provided in the appendix of this notice. Each emissions rate determined under section 4 of this notice must be determined by calculating the lifecycle greenhouse gas emissions (as defined in § 211(o)(1)(H) of the CAA) for such type and category of fuel and must be expressed in kg of CO_2e per mmBTU.

When calculating the emissions rate for purposes of determining the amount of the § 45Z credit, the taxpayer must accurately enter all information requested for the allowed methodology and must follow the publicly available instructions provided by the relevant authority (the DOE or ICAO). For example, a taxpayer calculating an emissions rate using the most recent determinations under the 45ZCF-GREET model must enter all information requested within the interface of the 45ZCF-GREET model and must follow the instructions in the most recent version of the 45ZCF-GREET User Manual.

.06 *Provisional emissions rate (PER)*. Section 45Z(b)(1)(D) provides that for any transportation fuel for which an emissions rate has not been established under § 45Z(b)(1)(B), meaning a type or category of fuel that is not established in the most recent determinations under the 45ZCF-GREET model (for non-SAF transportation fuel) or that is not established in the most recent determinations under the 45ZCF-GREET model or the most recent version of CORSIA Default or CORSIA Actual (for SAF transportation fuel), a taxpayer producing such type or category of fuel may file a petition with the Secretary for determination of a PER. A taxpayer requesting a PER is referred to as an "applicant."

The Treasury Department and the IRS intend to provide guidance related to the PER petition process, including the process for obtaining an emissions value from the DOE that an applicant will use to request a PER determination, at a later time. The IRS will not accept requests for PER determinations for the § 45Z credit, and the DOE will not issue emissions values, until after such guidance is published. For purposes of the § 45Z PER process, an emissions value is a value obtained from the DOE setting forth the DOE's analytical assessment of the lifecycle greenhouse gas emissions rate associated with the production of a type of transportation fuel using a particular primary feedstock and pathway.

.07 *New emissions rates (including PER) apply on January 1, 2025*. The emissions rate for any new type or category of fuel established on the applicable emissions rate table or determined through the PER process will apply on January 1, 2025, regardless of when the Treasury Department and the IRS publish guidance establishing an emissions rate or PER.

SECTION 5. DEFINITIONS AND ADDITIONAL GUIDANCE

Terms used in this notice have the same meaning as in § 45Z and in the appendix to Notice 2025-10. For additional guidance regarding the § 45Z credit, *see* Notice 2025-10.

SECTION 6. REQUEST FOR COMMENTS

.01 *General request for comments*. The Treasury Department and the IRS generally request comments about all aspects of this notice.

.02 *Specific request for comments*. The Treasury Department and the IRS specifically request comments on how the fuel pathways approved under the EPA's Renewable Fuel Standards Program (RFS) could be adapted for purposes of the emissions rate table if the Treasury Department and the EPA were to determine that the RFS program is a methodology "similar" to CORSIA that also satisfies the criteria under § 211(o)(1)(H) of the CAA (as required by § 45Z(b)(1)(B)(iii)(II)).

SECTION 7. SUBMISSION OF COMMENTS

Written comments should be submitted by April 10, 2025. The subject line for the comments should include a reference to Notice 2025-11. Comments may be submitted in one of two ways:

(1) electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (type IRS-2025-0002 in the search field on the regulations.gov homepage to find this notice and submit comments); or

(2) by mail to: Internal Revenue Service, CC:PA:01:PR (Notice 2025-11), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically, or on paper, to its public docket on *www.regulations.gov*.

SECTION 8. EFFECTIVE DATE

This notice is effective January 10, 2025.

SECTION 9. DRAFTING INFORMATION

The principal author of this notice is Camille Edwards Bennehoff of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For questions regarding this notice, contact Ms. Edwards Bennehoff at (202) 317-6855 (not a toll-free number).

Appendix
Section 45Z Emissions Rate Table
For Use For Fuel Produced After 12/31/2024

Type of Fuel	Category of Fuel		Determination of Emissions Rate (calculated to be expressed in kg of CO_2e/mmBTU)
	Pathway	Primary feedstock	
Ethanol	Fermentation	U.S. corn starch	Calculate using the most recent determinations under the 45ZCF-GREET model (see section 4.01 of this notice).
		U.S. sorghum grain	
		Brazilian sugarcane (for use as feedstock for SAF-Alcohol-to-Jet (ATJ) only)	
	Hydrolysis and Fermentation	U.S. corn stover	
Biodiesel	Transesterification	U.S. soybean oil	Calculate using the most recent determinations under the 45ZCF-GREET model (see section 4.01 of this notice).
		U.S./Canadian canola oil/rapeseed oil	
		U.S. used cooking oil (UCO)	
		Tallow	
		U.S. distillers corn oil (DCO)	
		U.S. carinata oil (intermediate crop)	
		U.S. camelina oil (intermediate crop)	
		U.S. pennycress oil (intermediate crop)	
Renewable Diesel	Hydroprocessed esters and fatty acids (HEFA)	U.S. soybean oil	Calculate using the most recent determinations under the 45ZCF-GREET model (see section 4.01 of this notice).
		U.S./Canadian canola oil/rapeseed oil	
		U.S. UCO	
		Tallow	
		U.S. DCO	
		U.S. carinata oil (intermediate crop)	
		U.S. camelina oil (intermediate crop)	
		U.S. pennycress oil (intermediate crop)	
	ATJ	Ethanol (from fermentation pathways listed above)	
	Gasification and Fischer-Tropsch	U.S. corn stover	
Renewable Natural Gas	Anaerobic Digestion and Biogas Upgrading	U.S. wastewater sludge	Calculate using the most recent determinations under the 45ZCF-GREET model (see section 4.01 of this notice).
		U.S. animal manures	
		U.S. landfill gas	
Propane	HEFA	U.S. soybean oil	Calculate using the most recent determinations under the 45ZCF-GREET model (see section 4.01 of this notice).
		U.S./Canadian canola/rapeseed oil	
		U.S. UCO	
		Tallow	
		U.S. DCO	
		U.S. carinata oil (intermediate crop)	
		U.S. camelina oil (intermediate crop)	
		U.S. pennycress oil (intermediate crop)	

Type of Fuel	Category of Fuel		Determination of Emissions Rate (calculated to be expressed in kg of CO_2e/mmBTU)
	Pathway	**Primary feedstock**	
Naphtha	HEFA	U.S. soybean oil	Calculate using the most recent determinations under the 45ZCF-GREET model (see section 4.01 of this notice).
		U.S. /Canadian Canola/rapeseed oil	
		U.S. UCO	
		Tallow	
		U.S. DCO	
		U.S. carinata oil (intermediate crop)	
		U.S. camelina oil (intermediate crop)	
		U.S. pennycress oil (intermediate crop)	
Hydrogen	Various, as defined in the user manual for the most recent 45VH2-GREET model*	Various, as defined in the user manual for the most recent 45VH2-GREET model	Calculate well-to-gate emissions using the most recent determinations under the 45VH2-GREET model; then calculate the full well-to-wheel emissions using the most recent determinations under the 45ZCF-GREET model (see section 4.01 of this notice). See the 45ZCF-GREET User Manual for additional instructions.
Sustainable Aviation Fuel (SAF)	HEFA	U.S. soybean oil	Calculate using one of the following: 1) the most recent determinations under the 45ZCF-GREET model (see section 4.01 of this notice) or 2) the most recent version of CORSIA Default or CORSIA Actual (see section 4.02 of this notice).
		U.S./Canadian canola/rapeseed oil	
		U.S. UCO	
		Tallow	
		U.S. DCO	
		U.S. carinata oil (intermediate crop)	
		U.S. camelina oil (intermediate crop)	
		U.S. pennycress oil (intermediate crop)	
	ATJ	Ethanol (from fermentation pathways above)	
	Gasification and Fischer-Tropsch	U.S. corn stover	
	Any pathway established in CORSIA Default or CORSIA Actual for a transportation fuel that is SAF that is not represented above.	Any feedstock for a pathway established in CORSIA Default or CORSIA Actual for a transportation fuel that is SAF that is not represented above.	Calculate using the most recent version of CORSIA Default or CORSIA Actual (see section 4.02 of this notice).

* The 45VH2-GREET model and the 45VH2-GREET User Manual are both available at https://www.energy.gov/eere/greet.

Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

Notice 2025-13

This notice provides guidance on the corporate bond monthly yield curve, the corresponding spot segment rates used under § 417(e)(3), and the 24-month average segment rates under § 430(h)(2) of the Internal Revenue Code. In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008 and the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I).

YIELD CURVE AND SEGMENT RATES

Section 430 specifies the minimum funding requirements that apply to single-employer plans (except for CSEC plans under § 414(y)) pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. To the extent provided under § 430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the calendar year in which the plan year begins.[1] However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Section 1.430(h)(2)-1(d) provides rules for determining the monthly corporate bond yield curve,[2] and § 1.430(h)(2)-1(c) provides rules for determining the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Consistent with the methodology specified in § 1.430(h)(2)-1(d), the monthly corporate bond yield curve derived from December 2024 data is in Table 2024-12 at the end of this notice. The spot first, second, and third segment rates for the month of December 2024 are, respectively, 4.65, 5.28, and 5.63.

The 24-month average segment rates determined under § 430(h)(2)(C)(i) through (iii) must be adjusted pursuant to § 430(h)(2)(C)(iv) to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates. Those percentages are 95% and 105% for plan years beginning in 2023, 2024 and 2025. For this purpose, any 25-year average segment rate that is less than 5% is deemed to be 5%. The 25-year average segment rates for plan years beginning in 2023, 2024 and 2025 were published in Notice 2022-40, 2022-40 I.R.B. 266, Notice 2023-66, 2023-40 I.R.B. 992, and Notice 2024-67, 2024-41 I.R.B. 726, respectively.

24-MONTH AVERAGE CORPORATE BOND SEGMENT RATES

The three 24-month average corporate bond segment rates applicable for January 2025 without adjustment for the 25-year average segment rate limits are as follows:

24-Month Average Segment Rates Without 25-Year Average Adjustment

Applicable Month	First Segment	Second Segment	Third Segment
January 2025	5.00	5.27	5.40

The adjusted 24-month average segment rates set forth in the chart below reflect § 430(h)(2)(C)(iv) of the Code. The 24-month averages applicable for January 2025, adjusted to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates in accordance with § 430(h)(2)(C)(iv) of the Code, are as follows:

Adjusted 24-Month Average Segment Rates

For Plan Years Beginning In	Applicable Month	First Segment	Second Segment	Third Segment
2023	January 2025	5.00	5.27	5.74
2024	January 2025	5.00	5.27	5.59
2025	January 2025	5.00	5.27	5.50

[1] Pursuant to § 433(h)(3)(A), the third segment rate determined under § 430(h)(2)(C) is used to determine the current liability of a CSEC plan (which is used to calculate the minimum amount of the full funding limitation under § 433(c)(7)(C)).

[2] For months before February 2024, the monthly corporate bond yield curve was determined in accordance with Notice 2007-81, 2007-44 I.R.B. 899. Section 1.430(h)(2)-1(d) generally adopts the methodology for determining the monthly corporate bond yield curve under Notice 2007-81 but includes two enhancements to take into account subsequent changes in the bond market. Those enhancements are described in the preamble to TD 9986 (89 FR 2127).

30-YEAR TREASURY SECURITIES INTEREST RATES

Section 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in § 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The rate of interest on 30-year Treasury securities for December 2024 is 4.58 percent. The Service determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in November 2054. For plan years beginning in January 2025, the weighted average of the rates of interest on 30-year Treasury securities and the permissible range of rates used to calculate current liability are as follows:

Treasury Weighted Average Rates

For Plan Years Beginning In	30-Year Treasury Weighted Average	Permissible Range 90% to 105%
January 2025	3.82	3.44 to 4.01

MINIMUM PRESENT VALUE SEGMENT RATES

In general, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. Section 1.417(e)-1(d)(3) provides guidelines for determining the minimum present value segment rates. Pursuant to that section, the minimum present value segment rates determined for December 2024 are as follows:

Minimum Present Value Segment Rates

Month	First Segment	Second Segment	Third Segment
December 2024	4.65	5.28	5.63

DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan at 202-317-6700 or Tony Montanaro at 626-927-1475 (not toll-numbers).

Table 2024-12
Monthly Yield Curve for December 2024
Derived from December 2024 Data

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	4.60	20.5	5.56	40.5	5.64	60.5	5.69	80.5	5.72
1.0	4.60	21.0	5.57	41.0	5.64	61.0	5.69	81.0	5.72
1.5	4.60	21.5	5.57	41.5	5.64	61.5	5.69	81.5	5.72
2.0	4.60	22.0	5.57	42.0	5.64	62.0	5.69	82.0	5.72
2.5	4.62	22.5	5.58	42.5	5.64	62.5	5.69	82.5	5.72
3.0	4.63	23.0	5.58	43.0	5.65	63.0	5.69	83.0	5.72
3.5	4.66	23.5	5.58	43.5	5.65	63.5	5.70	83.5	5.72
4.0	4.69	24.0	5.58	44.0	5.65	64.0	5.70	84.0	5.72
4.5	4.72	24.5	5.58	44.5	5.65	64.5	5.70	84.5	5.72
5.0	4.76	25.0	5.58	45.0	5.65	65.0	5.70	85.0	5.72
5.5	4.80	25.5	5.57	45.5	5.65	65.5	5.70	85.5	5.72
6.0	4.84	26.0	5.57	46.0	5.66	66.0	5.70	86.0	5.72
6.5	4.88	26.5	5.57	46.5	5.66	66.5	5.70	86.5	5.72
7.0	4.93	27.0	5.57	47.0	5.66	67.0	5.70	87.0	5.72
7.5	4.97	27.5	5.57	47.5	5.66	67.5	5.70	87.5	5.72
8.0	5.01	28.0	5.57	48.0	5.66	68.0	5.70	88.0	5.72
8.5	5.06	28.5	5.57	48.5	5.66	68.5	5.70	88.5	5.73
9.0	5.10	29.0	5.57	49.0	5.67	69.0	5.70	89.0	5.73
9.5	5.13	29.5	5.58	49.5	5.67	69.5	5.70	89.5	5.73
10.0	5.17	30.0	5.58	50.0	5.67	70.0	5.71	90.0	5.73
10.5	5.20	30.5	5.58	50.5	5.67	70.5	5.71	90.5	5.73
11.0	5.24	31.0	5.59	51.0	5.67	71.0	5.71	91.0	5.73
11.5	5.27	31.5	5.59	51.5	5.67	71.5	5.71	91.5	5.73
12.0	5.30	32.0	5.59	52.0	5.67	72.0	5.71	92.0	5.73
12.5	5.32	32.5	5.60	52.5	5.67	72.5	5.71	92.5	5.73
13.0	5.35	33.0	5.60	53.0	5.68	73.0	5.71	93.0	5.73
13.5	5.37	33.5	5.60	53.5	5.68	73.5	5.71	93.5	5.73
14.0	5.40	34.0	5.61	54.0	5.68	74.0	5.71	94.0	5.73
14.5	5.42	34.5	5.61	54.5	5.68	74.5	5.71	94.5	5.73
15.0	5.44	35.0	5.61	55.0	5.68	75.0	5.71	95.0	5.73
15.5	5.45	35.5	5.61	55.5	5.68	75.5	5.71	95.5	5.73
16.0	5.47	36.0	5.62	56.0	5.68	76.0	5.71	96.0	5.73
16.5	5.49	36.5	5.62	56.5	5.68	76.5	5.71	96.5	5.73
17.0	5.50	37.0	5.62	57.0	5.68	77.0	5.71	97.0	5.73
17.5	5.51	37.5	5.62	57.5	5.69	77.5	5.71	97.5	5.73
18.0	5.53	38.0	5.63	58.0	5.69	78.0	5.72	98.0	5.73
18.5	5.54	38.5	5.63	58.5	5.69	78.5	5.72	98.5	5.73
19.0	5.54	39.0	5.63	59.0	5.69	79.0	5.72	99.0	5.73
19.5	5.55	39.5	5.63	59.5	5.69	79.5	5.72	99.5	5.73
20.0	5.56	40.0	5.63	60.0	5.69	80.0	5.72	100.0	5.73

[26 CFR 601.204]: Changes in accounting periods and in methods of accounting.
(Also: Part 1, §§ 442: 1.442-1)

Rev. Proc. 2025-6

SECTION 1. PURPOSE

This revenue procedure provides the exclusive procedures for certain applicable entities, as defined in § 6417(d)(1)(A) of the Internal Revenue Code (Code)[1] and the regulations thereunder that are not required to file either a federal income tax return under § 6011[2] or an annual information return under § 6033(a), but previously filed a Form 990-T solely to make an elective payment election under § 6417, to change their annual accounting period. An in-scope applicable entity (as defined in section 3.02 of this revenue procedure) that complies with all the applicable provisions of this revenue procedure will have obtained the approval of the Commissioner of Internal Revenue (Commissioner) to change its annual accounting period.

SECTION 2. BACKGROUND

.01 *Definitions*. The following definitions apply solely for purposes of this revenue procedure.

(1) *Annual accounting period*. The term "annual accounting period" means the annual period (calendar year or fiscal year) on the basis of which an in-scope applicable entity regularly keeps its books and records for purposes of making an elective payment election under § 6417.

(2) *First Effective Year*. The "first effective year" for an in-scope applicable entity that adopted a taxable year by filing its first Form 990-T solely to make an elective payment election under § 6417 is the first taxable year for which a change in annual accounting period is effective and for which an in-scope applicable entity must comply with all the terms and conditions under this revenue procedure. The first effective year generally is the short period required to effect the change.

(3) *Short Period*. In the case of a change in annual accounting period, an in-scope applicable entity's "short period" is the period beginning with the day following the close of the old taxable year and ending with the day preceding the first day of the new taxable year.

(4) *Taxable year*. The term "taxable year" generally means the in-scope applicable entity's annual accounting period, regardless of whether it is a calendar or fiscal year.

.02 *Adoption of Taxable Year*.

(1) *In general*. A taxpayer may adopt any taxable year that satisfies § 441 and the regulations thereunder without the approval of the Commissioner. *See* § 1.441-1(c).

(2) *Adopting a taxable year for purposes of § 6417*. The regulations under § 6417 provide that an applicable entity that is not required to file a federal income tax return under § 6011 or an annual information return under § 6033(a), but is filing an annual return solely to make an elective payment election under § 6417, adopts a taxable year upon filing an initial Form 990-T to make the elective payment election. The applicable entity may choose to adopt a taxable year for purposes of § 6417 based upon either a calendar or fiscal year. The applicable entity must maintain adequate books and records, including a reconciliation of any differences between its regular books of account and those using its chosen taxable year, to support making an elective payment election on the basis of its chosen taxable year.

.03 *Change in Taxable Year*.

(1) *In general*. A taxpayer that wants to change its annual accounting period and use a new taxable year generally must obtain the approval of the Commissioner. To secure such approval, a taxpayer must file an application, generally on Form 1128, *Application to Adopt, Change, or Retain a Tax Year*, with the Commissioner within such time and in such manner as is provided in administrative procedures published by the Commissioner. In general, a change in annual accounting period will be approved if the taxpayer establishes a business purpose for the requested annual accounting period, agrees to the Commissioner's prescribed terms, conditions, and adjustments for effecting the change, and files the requested change in annual accounting period under the Commissioner's prescribed administrative procedures.

(2) *No retroactive change in annual accounting period*. Unless specifically authorized by the Commissioner, a taxpayer may not request, or otherwise make, a retroactive change in annual accounting period, regardless of whether the change is to a required taxable year.

SECTION 3. SCOPE

.01 *Applicability*. The procedures in section 4 of this revenue procedure apply only to in-scope applicable entities described in section 3.02 of this revenue procedure.

.02 *In-scope applicable entity*. An in-scope applicable entity is an applicable entity described in section 3.02(1) of this revenue procedure that is also described in section 3.02(2) of this revenue procedure.

(1) An applicable entity is described in this section 3.02(1) if it is one of the following—

(a) An organization exempt from the tax imposed by subtitle A of the Code because it is the government of any U.S. territory or a political subdivision thereof. *See* § 1.6417-1(c)(1)(ii).

(b) Any State, the District of Columbia, or political subdivision thereof. *See* § 1.6417-1(c)(2).

(c) A Tribal entity that is—

(i) An Indian Tribal government or a subdivision thereof (*See* § 1.6417-1(c)(3)),

(ii) A Tribe incorporated under § 17 of the Indian Reorganization Act of 1934, as amended, or incorporated under § 3 of the Oklahoma Indian Welfare Act, as amended, that seeks to make an elective

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

[2] For this purpose, filing Form 990-T, *Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e))*, solely to make an elective payment election under § 6417 is not considered a requirement to file a federal income tax return under § 6011.

payment election with respect to any applicable section 6417 credit,[3] or

(iii) A wholly owned entity organized or incorporated under the laws of the Indian Tribal government(s) that owns it and that seeks to make an elective payment election with respect to any applicable § 6417 credit.[4]

(d) An agency of any applicable entity described in section 3.02(1)(a), (b), or (c) of this revenue procedure.

(2) An applicable entity is described in this section 3.02(2) if it—

(a) Is not required to file either a federal income tax return under § 6011 or an annual information return under § 6033(a),

(b) Has adopted a taxable year by filing a Form 990-T for the sole purpose of making an elective payment election under § 6417, and

(c) Desires to change its taxable year to match the accounting period used in keeping its books and records.

.03 *Inapplicability*. The procedures in section 4 of this revenue procedure do not apply to entities that are not in-scope applicable entities described in section 3.02 of this revenue procedure, including entities that have either filed a federal income tax return under § 6011 or filed an annual information return under § 6033(a) with the Internal Revenue Service Center and were required to use their established taxable year when making an elective payment election under § 6417. Entities described in the preceding sentence may request a change in annual accounting period under Rev. Proc. 2006-45, 2006-45 I.R.B. 851 (relating to corporations and certain other entities), Rev. Proc. 2006-46, 2006-45 I.R.B. 859 (relating to partnerships, S corporations, electing S corporations (as described therein), and personal service corporations), Rev. Proc. 85-58, 1985-2 C.B. 740 (relating to organizations exempt from federal income tax under § 501(a)), or Rev. Proc. 2002-39, 2002-22 I.R.B. 1046 (relating to entities not eligible under the automatic approval procedures), as applicable.

SECTION 4. PROCEDURE

.01 *In-scope applicable entities changing their annual accounting period*. An in-scope applicable entity that desires to change its taxable year may effectuate the change by timely filing the Form 990-T for the first effective year with the appropriate Internal Revenue Service Center. The Form 990-T must be filed by the fifteenth day of the fifth month following the close of the short period (absent filing a Form 8868, *Application for Extension of Time to File an Exempt Organization Return or Excise Taxes Related to Employee Benefit Plans*, requesting an extension to file a Form 990-T). The Form 990-T should indicate that a change of annual accounting period is being made and include a statement describing the present annual accounting period and the proposed annual accounting period. The in-scope applicable entity is not required to file Form 1128 with the Form 990-T.

.02 *Automatic approval*. An in-scope applicable entity that complies with all the applicable provisions of this revenue procedure will have obtained the approval of the Commissioner for a change in annual accounting period, beginning with the first effective year.

.03 *Examples*.

(1) *Example (1)*. XYZ is an applicable entity described in section 3.02(1) of this revenue procedure. XYZ is not required to file either a federal income tax return under § 6011 or an annual information return under § 6033(a) and has never filed a return or adopted a taxable year. XYZ keeps its books and records on the basis of a fiscal year that ends on September 30. In February 2023, XYZ places into service an applicable credit property, as defined in § 1.6417-1(e), that meets the requirements to generate an applicable credit under § 6417. XYZ desires to make an elective payment election under § 6417. Applying § 1.6417-2(b)(3)(i), XYZ adopts a calendar year taxable year ending on December 31, 2023, for the sole purpose of making an elective payment election under § 6417, by timely filing Form 990-T on the basis of a calendar year and by declaring on Form 990-T that XYZ has adopted as its taxable year a calendar year ending December 31, 2023. XYZ maintains adequate books and records, including a reconciliation of any differences between its regular books and records year and those of its chosen taxable year, to support making an elective payment election based on its chosen taxable year. XYZ has adopted a calendar tax year. If XYZ desires to change its taxable year to an accounting period that matches its books and records, it will be an "in-scope applicable entity" within the meaning of section 3.02 of this revenue procedure.

(2) *Example (2)*. Same facts as Example (1), except that XYZ now wishes to conform its taxable year to its accounting period used in keeping its books and records and, accordingly, wants to change to a taxable year ending September 30 effective for the taxable year beginning January 1, 2024, and ending September 30, 2024 (that is, the first effective year). Pursuant to section 4.01 of this revenue procedure, XYZ files a Form 990-T for the short period beginning January 1, 2024, and ending September 30, 2024, by the fifteenth day of the fifth month after the end of XYZ's short taxable year (or Tuesday, February 18, 2025, accounting for February 15 falling on a Saturday and Monday, February 17 being a Federal holiday) and attaches a statement to the Form 990-T indicating that a change of taxable year from a calendar year taxable year to a taxable year ending September 30 is being made. XYZ has changed its taxable year to a taxable year ending September 30 and has obtained the approval of the Commissioner for the requested change.

(3) *Example (3)*. Same facts as Example (2), except that XYZ, instead of timely filing its Form 990-T on or before February 18, 2025, timely files the Form 8868 on or before February 18, 2025. XYZ is now entitled to a 6-month automatic extension to file its Form 990-T. Thus, XYZ has until August 15, 2025, to timely file the Form 990-T on which it makes the desired change in its taxable year to a taxable year ending September 30 and to obtain the approval of the Commissioner for the requested change.

SECTION 5. RECORDS

The books and records of the in-scope applicable entity must be closed as of the last day of the first effective year. An in-scope applicable entity must continue to maintain adequate books and records. *See* § 6001.

[3] *See* Notice of Proposed Rulemaking (REG-113628-21) published October 9, 2024, 89 F.R. 81877. (The proposed regulations would amend the § 6417 final regulations published on March 11, 2024, which provide that these entities are disregarded. *See* § 1.6417-1(f), T.D. 9988, 89 F.R. 17585.)

REG-113628-21 would, upon being finalized after a notice and comment period, apply to taxable years ending after October 9, 2024. REG-113628-21 would also generally allow an entity the option to apply proposed § 1.6417-1(c)(7) and (f) to taxable years ending on or before October 9, 2024, provided that the Indian Tribal government(s) that own the entity also apply proposed § 1.6417-1(c)(7) and (f) consistently with respect to such entity for all such taxable years. However, this option would not be available for any taxable period for a federal excise tax or employment tax with respect to which the entity was, as of October 9, 2024, a party to any administrative or judicial proceeding.

A taxpayer may rely upon proposed § 1.6417-1(c)(7) before it is finalized for purposes of this revenue procedure if the taxpayer complies with the requirement to apply proposed § 1.6417-1(c)(7) and (f) consistently with respect to such entity for all such taxable years.

[4] This rule would encompass wholly owned Tribal housing authorities and utilities. *See* Notice of Proposed Rulemaking (REG-113628-21), described in footnote 3.

SECTION 6. EXTENSION OF TIME FOR CHANGE IN ACCOUNTING PERIOD

An in-scope applicable entity described in section 3.02 of this revenue procedure that timely files Form 8868 is granted an automatic extension of 6 months from the original due date of Form 990-T to request a change in accounting period under section 4 of this revenue procedure. (If the entity is also filing the Form 990-T to make an elective payment election, the Form 8868 extends the due date for that election as well.)

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for changes in annual accounting periods of in-scope applicable entities for which the first effective year begins on or after January 1, 2024, and the period for filing the Form 990-T for such year has not yet expired.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Peter A. Holiat of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this revenue procedure contact Mr. Holiat on (202) 317-4541 (not a toll-free number).

Part IV

Notice of Proposed Rulemaking

Excise Tax on Designated Drugs

REG-115560-23

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the excise tax on certain sales of designated drugs by manufacturers, producers, and importers during statutorily defined periods. The proposed regulations would provide substantive rules that relate to the imposition and calculation of the tax. The proposed regulations would affect manufacturers, producers, and importers of designated drugs that sell such drugs during statutorily defined periods.

DATES: Written or electronic comments and requests for a public hearing must be received by March 3, 2025. Requests for a public hearing must be submitted as prescribed in the "Comments and Requests for a Public Hearing" section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG-115560-23) by following the online instructions for submitting comments. 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-115560-23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, contact James S. Williford or Jacob W. Peeples at (202) 317-6855 (not a toll-free number); concerning the submission of comments and requests for a public hearing, contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by phone at (202) 317-6901 (not a toll-free number) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This notice of proposed rulemaking contains proposed regulations that would amend 26 CFR part 47 (Designated Drugs Excise Tax Regulations) related to the excise tax imposed by section 5000D of the Internal Revenue Code (Code) on certain sales by manufacturers, producers, or importers of designated drugs (section 5000D tax). These proposed regulations are issued under the express delegation of authority granted to the Secretary of the Treasury or her delegate (Secretary) by section 5000D(h), which states: "The Secretary shall prescribe such regulations and other guidance as may be necessary to carry out the provisions of this section." These proposed regulations are also issued under the express delegation of authority provided in section 7805(a), which authorizes the Secretary 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

Sections 1191 through 1198 of the Social Security Act (SSA) (42 U.S.C. 1320f to 1320f-7), added by sections 11001 and 11002 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), require the Secretary of Health and Human Services (HHS) to establish a Medicare prescription drug price negotiation program (Program) to negotiate maximum fair prices (MFPs) for certain high expenditure, single-source drugs covered by Medicare. Under the Program, the Secretary of HHS must, among other things: (1) publish a list of selected drugs in accordance with section 1192 of the SSA; (2) enter into agreements with willing manufacturers of selected drugs in accordance with section 1193 of the SSA; and (3) negotiate MFPs for such selected drugs in accordance with section 1194 of the SSA. Under section 1193(a)(3) of the SSA, manufacturers of selected drugs that choose to enter into agreements with the Secretary of HHS and that agree to an MFP commit to provide access to selected drugs at the negotiated prices to MFP-eligible individuals (as defined in section 1191(c)(2) of the SSA), as well as to pharmacies and other dispensers, hospitals, physicians, other providers of services, and suppliers with respect to MFP-eligible individuals.

Section 5000D was added to a new chapter 50A of the Code by section 11003 of the IRA and is effective for sales on and after August 16, 2022. Section 5000D(a) imposes the section 5000D tax on the sale by the manufacturer, producer, or importer of any designated drug during a day described in section 5000D(b), referred to herein as a "statutory period," with respect to such designated drug. In the case of a sale of a designated drug timed for the purpose of avoiding the section 5000D tax, section 5000D(f)(2) authorizes the Secretary to treat such sale as occurring during a statutory period.

Section 5000D(e)(1) provides that a "designated drug" is any "negotiation-eligible drug," as defined in section 1192(d) of the SSA, included on the list published under section 1192(a) of the SSA that is manufactured or produced in the United States, as defined in section 5000D(e)(2), or entered into the United States for consumption, use, or warehousing.

Under section 5000D(a), the amount of section 5000D tax imposed on the sale of a designated drug during a statutory period is the amount that causes the ratio of (1) the section 5000D tax, divided by (2) the sum of the section 5000D tax and the price for which the designated drug was sold, when such ratio is expressed as a percentage, to equal the "applicable percentage" (as defined in section 5000D(d)):

$$Applicable\ Percentage = Tax/(Tax + Price)$$

The applicable percentage ranges from 65 percent to 95 percent, depending on the number of days a sale is made after the start of a statutory period. Section 5000D(d).

As noted previously, section 5000D(h) authorizes the Secretary to prescribe such regulations and other guidance as may be necessary to carry out the provisions of section 5000D. On August 28, 2023, the Treasury Department and the IRS published Notice 2023–52, 2023-35 I.R.B. 650, announcing the Secretary's intent to issue proposed regulations addressing substantive and procedural issues related to section 5000D. Notice 2023–52 described certain rules that those proposed regulations would include and provided taxpayers with interim guidance.

On October 2, 2023, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-115559-23) in the ***Federal Register*** (88 FR 67690) proposing amendments to the Excise Tax Procedural Regulations under 26 CFR part 40 to address tax return filing and other procedural requirements related to the section 5000D tax applicable to returns filed for calendar quarters beginning on or after October 1, 2023. On July 5, 2024, the Treasury Department and the IRS published a Treasury decision (T.D. 10003) in the ***Federal Register*** (89 FR 55507) finalizing, with minor modifications, the proposed amendments to 26 CFR part 40 and adding part 47 to 26 CFR.

These proposed regulations would amend the Designated Drugs Excise Tax Regulations by providing substantive rules related to the section 5000D tax, including rules consistent with the substantive rules described in Notice 2023-52. Specifically, these proposed regulations would provide definitions of certain terms, such as "manufacturer, producer, or importer," "sale," and "price," and rules governing the imposition and calculation of the section 5000D tax. Concurrently with the filing for public inspection of these proposed regulations, the Treasury Department and the IRS are releasing Revenue Procedure 2025-9 to provide a safe harbor that taxpayers may use to identify the subset of each sale in units of a designated drug made during a statutory period that is subject to the section 5000D tax. After its release, Revenue Procedure 2025-9 will be published in the Internal Revenue Bulletin (*see* §601.601(d) of the Statement of Procedural Rules (26 CFR part 601)).

Explanation of Provisions

These proposed regulations are organized into two sections: proposed §47.5000D-2 (relating to definitions) and proposed §47.5000D-3 (relating to the imposition and calculation of the section 5000D tax).

I. *Definitions*

Proposed §47.5000D-2 would provide definitions necessary to clarify the application of section 5000D.

A. *Applicable Percentage*

Proposed §47.5000D-2(b)(1) would incorporate the substance of the statutory definition of the term "applicable percentage" provided in section 5000D(d). Proposed §47.5000D-2(b)(1) would also clarify that, to determine the appropriate applicable percentage for a specific applicable sale, days described in section 5000D(b) are cumulative regardless of whether such days are consecutive.

B. *Applicable Sale*

Proposed §47.5000D-2(b)(2) would define the term "applicable sale" to mean the sale transaction that is the subset of each sale in units of a designated drug, as defined in section 5000D(e)(1), by the manufacturer, producer, or importer that will be dispensed, furnished, or administered to MFP-eligible individuals, as defined in section 1191(c)(2) of the Social Security Act (42 U.S.C. 1320f(c)(2)) and any regulations or guidance issued thereunder by the Secretary of HHS. As explained in part II.A of this Explanation of Provisions, the proposed definition of "applicable sale" would reflect the scope of the section 5000D tax provided by the statutory context of its enactment.

C. *Manufacturer, Producer, or Importer*

The section 5000D tax is imposed on the sale of a designated drug by the "manufacturer, producer, or importer" of that designated drug. While the statute does not define "manufacturer, producer, or importer," the language of section 5000D(a) makes clear that these terms are not limited to the persons directly responsible for the conduct that gives rise to statutory periods. Proposed §47.5000D-2(b)(3)(i) would define the term "manufacturer, producer, or importer" to mean the person that makes the first sale (the definition of "sale" is explained in part I.F of this Explanation of Provisions) of units of a designated drug or, in the case of imports, the person that makes the first sale of such units after they are entered into the United States for consumption, use, or warehousing. *See* section 5000D(e)(1). Under this proposed definition, the section 5000D tax would typically be imposed on persons colloquially considered drug makers (that is, persons that physically or chemically create units of a drug).

The proposed definition of "manufacturer, producer, or importer" would also clarify that a sale of units of a designated drug would be the "first sale" if that sale precedes in time all other sales of those units. The "first sale" of any units of a designated drug would not, therefore, generally be the sale of such units to an MFP-eligible individual or other sales of such units that typically occur "down" or "later" in the supply chain that begins with the maker of a drug and ends with its ultimate user. For example, sales of units of a designated drug by a wholesaler, relabeler, repackager,[1] retail pharmacy, healthcare

[1] The Treasury Department and the IRS understand that, for purposes of the SSA and regulations and guidance issued thereunder, relabelers and repackagers are considered "manufacturers," and drugs, once relabeled or repackaged, new drugs. That regulatory regime is, however, nondeterminative with regard to the section 5000D tax.

provider, or other person that typically sells drugs or biological products "down" or "later" in the supply chain, would not, under most circumstances, be the first sale of those units and, consequently, such person would not be the manufacturer, producer, or importer with respect to such units for purposes of the section 5000D tax. That designation would, under most circumstances, fall to a person "up" or "earlier" in the supply chain. If, however, a wholesaler, relabeler, repackager, retail pharmacy, healthcare provider, or other person were to make the first sale of units of a designated drug after entry into the United States for consumption, use, or warehousing, such person would be the manufacturer, producer, or importer with respect to such units for purposes of the section 5000D tax.

The first sale concept is consistent with almost a century of case law regarding the imposition of excise taxes on first or initial sales by manufacturers, producers, or importers. *See, e.g., Indian Motorcycle Co. v. United States*, 283 U.S. 570, 574 (1931) ("[T]he requirement that the tax be paid by 'the manufacturer, producer, or importer' […] is intended to be no more than a comprehensive and convenient mode of reaching all first or initial sales[.]"); *Smith v. United States*, 319 F.2d 776, 778-79 (5th Cir. 1963) (excise tax is designed "to impose a tax on the initial sale made in the United States by a manufacturer, producer, or importer"); *Texas Truck Parts and Tire v. United States*, 118 F.4th 687, 697 (5th Cir. 2024) ("Our reading of the relevant law comports with this principle, providing that Texas Truck is liable for the excise tax upon the initial sale in the United States.").

Proposed §47.5000D-2(b)(3)(ii) would clarify that the proposed definition of "manufacturer, producer, or importer" would apply independently of whether the sale in question occurs during a statutory period, meaning that the person that makes the first sale of a unit of a designated drug is the manufacturer, producer, or importer of that unit, to the exclusion of others in the supply chain, even if such sale is not taxable. *See* the example provided in proposed §47.5000D-2(c)(2).

D. *Sale Prior to Publication of Selected Drug List*

Under proposed §47.5000D-2(b)(3)(iii), a person that would meet the definition of "manufacturer, producer, or importer" but for the timing of the publication of the list of selected drugs published under section 1192(a) of the SSA would be considered a manufacturer, producer, or importer for purposes of the section 5000D tax. As illustrated in the example provided in proposed §47.5000D-2(c)(3), this proposed rule would ensure that subsequent sales by other persons, "down" or "later" in the supply chain, that take possession of a drug or biological product prior to the publication of that list are not subject to taxation if such drugs or biological products become designated drugs while in such persons' possession.

E. *Price*

Under section 5000D(a)(2), the section 5000D tax is calculated, in part, by reference to the price of the designated drug sold during a statutory period; however, section 5000D does not define the term "price" for this purpose. Proposed §47.5000D-2(b)(4) would define "price" broadly,[2] capturing all amounts (other than the amount of the section 5000D tax) required by a manufacturer, producer, or importer to be paid as consideration for, or otherwise as a condition of, a sale of the subset of units of such sale that comprise an applicable sale. Because, as explained in part II.A of this Explanation of Provisions, section 5000D(a) imposes a tax only on sales of designated drugs dispensed, furnished, or administered to MFP-eligible individuals, the price charged by the manufacturer, producer, or importer for such units would generally be the relevant price for purposes of determining the section 5000D tax. For purposes of this proposed definition, it would be immaterial that any amount constituting the price may be paid to a person other than the manufacturer, producer, or importer, or that it may be separately billed to the buyer as an amount earmarked for expenses incurred or to be incurred on such buyer's behalf.

Rebates and other price adjustments are common in the prescription drug supply chain. To account for such adjustments, proposed §47.5000D-2(b)(4)(ii) would allow a manufacturer, producer, or importer to adjust the amount charged in an applicable sale, for purposes of calculating the section 5000D tax, to reflect bona fide discounts, rebates, or allowances that are connected to that applicable sale and either paid to the buyer in such applicable sale, credited to the account of such buyer, or reimbursed to a third party for the benefit of such buyer by such manufacturer, producer, or importer. Under the proposed rule, a bona fide discount, rebate, or allowance would be made when the amount actually paid by, or charged against the account of, the buyer in the applicable sale is reduced by subsequent transactions between the parties. For example, a wholesaler chargeback paid by a manufacturer, producer, or importer to reflect a discounted sale of drugs "downstream" by the wholesaler would constitute a bona fide discount, rebate, or allowance, provided that such chargeback is connected to the applicable sale giving rise to the section 5000D tax liability (and not any other sale, ongoing sales generally, or any other goods or services) and reduces the amount paid by, or charged against the account of, the buyer in that applicable sale (and not any other sale).

Proposed §47.5000D-2(b)(4)(iii) would provide that the amount of any bona fide discount, rebate, or allowance described in §47.5000D-2(b)(4)(ii) that may be used to reduce the amount charged for an applicable sale is limited to the percentage of a sale that constitutes such applicable sale. *See* Identification of Applicable Sales in part II.C of this Explanation of Provisions.

Proposed §47.5000D-2(b)(4)(ii) and (iii) are intended to reflect the amount charged for the applicable sale in light of industry practices related to bona fide discounts, rebates, and allowances. The Treasury Department and the IRS request comments on other types of discounts, rebates, or allowances, including discounts, rebates, and allowances occurring at other points in the supply chain, that

[2] "Price," as defined in proposed §47.5000D-2(b)(4), does not apply beyond section 5000D.

should be considered or treated as price adjustments under proposed §47.5000D-2(b)(4)(ii) and (iii).

Proposed §47.5000D-2(b)(4)(iv) would provide the method for allocating the amount described in proposed §47.5000D-2(b)(4)(iii)—that is, the amount by which any bona fide discount, rebate, or allowance reduces the amount charged in an applicable sale—between tax and price. This proposed rule would treat an applicable sale, including the extent to which the amount charged includes price and tax, as provided in §47.5000D-3(b)(2)(i), as though such applicable sale was initially made at the adjusted price.

Proposed §47.5000D-2(c)(6) would provide an example of a price adjustment under proposed §47.5000D-2(b)(4)(ii) and (iii) and the allocation required under proposed §47.5000D-2(b)(4)(iv).

F. *Sale*

Proposed §47.5000D-2(b)(5) would define "sale" as any agreement by which substantial incidents of ownership in units of a designated drug serve, in whole or in part, as consideration.

II. *Imposition and Calculation of Tax*

Proposed §47.5000D-3 would provide rules relating to the imposition and calculation of the section 5000D tax.

A. *Imposition of Tax*

Proposed §47.5000D-3(a)(1) would provide that section 5000D imposes a tax on an applicable sale made by a manufacturer, producer, or importer during a day described in section 5000D(b). As described in part I.B of this Explanation of Provisions, the term "applicable sale" refers to the subset of a sale in units of a designated drug that will be dispensed, furnished, or administered to MFP-eligible individuals, as defined in section 1191(c)(2) of the SSA and any regulations or guidance issued thereunder by the Secretary of HHS.

The scope of sales potentially subject to the section 5000D tax, as expressed in this proposed rule, reflects the broader statutory context of the Program, which defines both the substance and operation of the tax. Among other things, the objects of the tax, "designated drug[s]," are defined by section 5000D(e)(1), in part, by reference to the "negotiation-eligible drugs," as defined in section 1192(d) of the SSA, included on the list published under section 1192(a) of the SSA. Such negotiation-eligible drugs are identified, under the Program, on the basis of historical Medicare expenditures (*see* section 1192(b) and (c) of the SSA) and for the sole purpose of affecting prices paid by Medicare beneficiaries (*see* section 1192(a)(3) of the SSA). Similarly, the statutory periods during which the section 5000D tax may arise are defined by reference to milestones of the Program. *See* section 5000D(b). And, more generally, the applicability of the section 5000D tax is expressly linked to whether the manufacturer of a designated drug has a statutorily defined agreement with Medicare in place. *See* section 5000D(c). Because the section 5000D tax depends substantively on, and operates only in relation to, the Program, the scope of the Program—which provides access to selected drugs at the negotiated prices only to Medicare beneficiaries and their pharmacies, mail order services, and other dispensers, as well as hospitals, physicians, and other providers of services and suppliers—is reflected in the scope of the tax.

B. *Attachment of and Person Liable for the Tax*

Proposed §47.5000D-3(a)(2) would clarify that the section 5000D tax attaches when a manufacturer, producer, or importer of a designated drug makes an applicable sale of such designated drug during a statutory period. Under proposed §47.5000D-3(a)(3), the manufacturer, producer, or importer of a designated drug that sells units of such designated drug during a statutory period would be liable for any section 5000D tax arising from that sale.

C. *Identification of Applicable Sales*

Consistent with Notice 2023-52, proposed §47.5000D-3(a)(4) would require a manufacturer, producer, or importer to employ a reasonable method to identify any applicable sales it made during a statutory period. The proposed rule would require a manufacturer, producer, or importer's method of identifying such applicable sales to be based on recent transactions reflected in books, records, or other information pertaining to the drug or biological product selected under the Program. For this purpose, recent transactions would include those occurring no more than 24 months before the first day of the calendar quarter in which the applicable sales occurred.

For statutory periods that begin prior to March 1, 2026, proposed §47.5000D-3(a)(4)(iii) would allow a manufacturer, producer, or importer to disregard sales of drugs or biological products furnished or administered by a hospital, physician, or other provider of services or supplier, where the recipient is an individual enrolled under Medicare part B of title XVIII of the SSA, including an individual enrolled in a Medicare Advantage plan under part C of title XVIII of the SSA, if payment may be made under part B for such units, consistent with section 1192(b)(2) of the SSA, which provides for the temporary exclusion of expenditures under part B of title XVIII of the SSA for purposes of ranking negotiation-eligible drugs.

The Treasury Department and the IRS are aware that identifying applicable sales made during a statutory period may be difficult or burdensome. To help a manufacturer, producer, or importer comply with this requirement, the Treasury Department and the IRS are proposing a safe harbor for identifying such applicable sales. Specifically, proposed §47.5000D-3(a)(4)(iv) would provide that a manufacturer, producer, or importer may satisfy the requirement to identify applicable sales by using the safe harbor percentage provided in guidance published in the Internal Revenue Bulletin. A manufacturer, producer, or importer that uses the safe harbor provided in proposed §47.5000D-3(a)(4)(iv) to identify the applicable sales made during a statutory period would be deemed to have complied with the requirements of proposed §47.5000D-3(a)(4)(i) through (iii), as applicable.

To ensure consistent reporting and reduce the potential for abuse, proposed §47.5000D-3(a)(4)(iv)(C) and (D) would require the safe harbor to be applied uniformly to all sales of a designated drug by a manufacturer, producer, or importer subject to the section 5000D tax during a calendar quarter and, unless the safe harbor percentage is changed by subsequent guidance, for a period of three consecutive calendar quarters thereafter.

Under proposed §47.5000D-3(a)(4)(iv)(E), any update of to the safe harbor percentage described in proposed §47.5000D-3(a)(4)(iv)(A) would use a calculation methodology similar to that described in proposed §47.5000D-3(a)(4)(iv)(A), use the most recent analysis that the IRS has received from CMS of data available to CMS, and relieve a manufacturer, producer, or importer from an existing obligation under proposed §47.5000D-3(a)(4)(iv)(C) to use the safe harbor described in proposed §47.5000D-3(a)(4)(iv) as of the effective date of such updated safe harbor percentage. If a manufacturer, producer, or importer continues to use the safe harbor described in proposed §47.5000D-3(a)(4)(iv) after the safe harbor percentage is updated, such manufacturer, producer, or importer would be required to use the updated safe harbor percentage on and after the effective date of such updated safe harbor percentage and for the remainder of any period required by proposed §47.5000D-3(a)(4)(iv)(C).

Finally, proposed §47.5000D-3(a)(4)(v) would provide that once a section 5000D tax liability is reported to the IRS for a particular calendar quarter, the manufacturer, producer, or importer liable for the section 5000D tax may not later recalculate its section 5000D tax liability for that quarter using a different method to identify its applicable sales. However, the correction of a mathematical or clerical error or the use of corrected data from the same historical period used to identify the applicable sales originally would not alone constitute the recalculation of a section 5000D tax liability using a different method.

D. *Calculation of Tax*

Proposed §47.5000D-3(b)(1) would provide the tax rate by restating the statutory formula for calculating the section 5000D tax. As described in the Background section of this preamble, section 5000D(a) provides a formula for calculating the section 5000D tax by which an applicable percentage, ranging from 65 to 95 percent, equals the tax divided by the sum of the tax and the price. The applicable percentage varies depending on the number of days that have passed since a statutory period began.

E. *Effect of Invoicing Tax on Tax Calculation*

Consistent with Notice 2023-52, proposed §47.5000D-3(b)(2)(i) would provide that if a manufacturer, producer, or importer makes no separate charge on its invoice or similar document with respect to a sale, the amount charged is presumed to include the proper amount of the section 5000D tax. The price would, under those circumstances, exclude the portion of the amount charged that is allocable to the section 5000D tax; no section 5000D tax would be calculated on the amount allocated to the section 5000D tax. *See* the example provided in proposed §47.5000D-3(b)(3).

If a manufacturer, producer, or importer includes the section 5000D tax as a separate line item on an invoice or similar document, proposed §47.5000D-3(b)(2)(ii) would provide that the amount of section 5000D tax so charged is not included in the price; thus, no section 5000D tax would be due on the amount of section 5000D tax so charged.

Although this rule is modeled on a similar rule found in §48.4216(a)-2(a) of the Manufacturers and Retailers Excise Tax Regulations, neither that rule nor any other found in 26 CFR part 48 would apply or provide any interpretive guidance with respect to any rule proposed or issued under section 5000D because the part 48 regulations apply to taxes imposed by chapters 31 and 32 of the Code, and section 5000D is in chapter 50A.

F. *Anti-Abuse Rule*

Pursuant to the authority provided in section 5000D(h), proposed §47.5000D-3(c) would provide an anti-abuse rule under which a transaction or series of transactions, including transactions made other than at arm's length, may be adjusted, recharacterized, or otherwise recast by the IRS in circumstances in which the parties engaged in such transaction or series of transactions with a principal purpose of avoiding the section 5000D tax or substantially reducing the purported price on which the section 5000D tax is calculated.

Proposed Applicability Date

These regulations are proposed to apply to sales of designated drugs on and after the date the Treasury decision adopting these rules as final regulations is published in the ***Federal Register***.

Effect on Other Documents

Taxpayers may continue to rely on sections 3.01 and 3.02 of Notice 2023-52 until these proposed regulations are finalized.

Special Analyses

I. *Regulatory Planning and Review—Economic Analysis*

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*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Any collection burden associated with rules described in these proposed regulations is previously accounted for in OMB Control Number 1545-0023, which covers Form 720, *Quarterly Federal Excise Tax Return*. The recordkeeping requirements associated with Form 720 have already been approved by OMB. Moreover, a taxpayer may avail itself of the safe harbor proposed in these proposed regulations without filing any formal election or statement or performing any other affirmative act. These proposed regulations do not, therefore, alter previously accounted for information collection requirements or create new collection requirements. For PRA burden estimated for procedural rules related to the section 5000D tax, see the preamble to TD 10003.

III. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA), the Secretary of the Treasury hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the section 5000D tax is imposed only when certain drug manufacturers, producers, or importers sell certain designated drugs during periods described in section 5000D(b). The periods described in section 5000D(b) relate to milestones in the Program, the scope of which is limited to a subset of drugs with high Medicare expenditures. To the extent any section 5000D tax liability arises, taxpayers will be few and unlikely to meet the relevant definitions of small entities under the RFA and regulations thereunder. These proposed regulations will not, therefore, create additional obligations for, or have a significant economic impact on, a substantial number of small entities, and analysis under the RFA is not required. Notwithstanding this certification, the Treasury Department and the IRS welcome comments on the impact of these proposed regulations on small entities.

IV. *Section 7805(f)*

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

V. *Unfunded Mandates Reform Act*

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

VI. *Executive Order 13132: Federalism*

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

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 commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket on *https://www.regulations.gov.*

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***.

Statement of Availability of IRS Documents

The IRS notice cited in this preamble is published in the Internal Revenue Bulletin and is 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*.

Drafting Information

The principal author of these regulations is the Office of the Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 47

Excise taxes.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 47 as follows:

PART 47—DESIGNATED DRUGS EXCISE TAX REGULATIONS

Paragraph 1. The authority citation for part 47 is amended by adding entries in numerical order for §§47.5000D-2 and 47.5000D-3 to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Section 47.5000D-2 also issued under 26 U.S.C. 5000D(h).

Section 47.5000D-3 also issued under 26 U.S.C. 5000D(h).

Par. 2. Section 47.5000D-0 is amended by:

a. Removing the entry "§§ 47.5000D-2—47.5000D-4 [Reserved]".

b. Adding entries for §§47.5000D-2 and 47.5000D-3 and the entry "§47.5000D-4 [Reserved]" in numerical order.

The additions read as follows:

§47.5000D-0 Table of contents.

* * * * *

§47.5000D-2 Definitions.

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(B) Step 1.
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(D) Step 3.
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(c) Anti-abuse rule.
(d) Severability.
(e) Applicability date.

§47.5000D-4 [Reserved]

Par. 3. Sections 47.5000D-2 and 47.5000D-3 are added to read as follows:

§47.5000D-2 Definitions.

(a) *Overview*. This section provides definitions for purposes of section 5000D of the Internal Revenue Code (Code) and the Designated Drugs Excise Tax Regulations in this part.

(b) *Definitions*—(1) *Applicable percentage*. The term *applicable percentage* has the meaning provided in section 5000D(d). To determine the applicable percentage with respect to a specific applicable sale, days described in section 5000D(b) are cumulative regardless of whether such days are consecutive.

(2) *Applicable sale*. The term *applicable sale* means the sale transaction that is the subset of each sale in units of a designated drug, as defined in section 5000D(e)(1), made by the manufacturer, producer, or importer that will be dispensed, furnished, or administered to maximum fair price-eligible individuals, as defined in section 1191(c)(2) of the Social Security Act (42 U.S.C. 1320f(c)(2)) and any regulations (in title 42 of the Code of Federal Regulations) or guidance issued thereunder by the Secretary of Health and Human Services. *See* §47.5000D-3(a)(4) for methods of identifying applicable sales.

(3) *Manufacturer, producer, or importer*—(i) *In general*. With respect to any units of a designated drug, the term *manufacturer, producer, or importer* means the person that makes the first sale of such units or, in the case of imports, the person that makes the first sale of such units after such units are entered into the United States for consumption, use, or warehousing. A sale is the first sale if it precedes in time any other sale of the same units. Each unit of a designated drug, therefore, has only one manufacturer, producer, or importer.

(ii) *Sale made other than on a day described in section 5000D(b)*. A person that meets the criteria of paragraph (b)(3)(i) of this section is a manufacturer, producer, or importer regardless of whether the sale described in paragraph (b)(3)(i) is made during a day described in section 5000D(b). *See Example 2* provided in paragraph (c)(2) of this section.

(iii) *Sale made prior to publication of the list of selected drugs under section 1192(a) of the Social Security Act*. With respect to particular units of a drug or biological product, if a person would be described in paragraph (b)(3)(i) of this section but for the timing of the publication of the list of selected drugs under section 1192(a) of the Social Security Act, such person will nevertheless be considered the manufacturer, producer, or importer of such units. Subsequent sellers of such units would not, therefore, be the manufacturer, producer, or importer of such units. *See Example 3* provided in paragraph (c)(3) of this section.

(4) *Price*—(i) *In general*. Except as provided in §47.5000D-3(b)(2)(i) and (ii), the term *price* means, with respect to an applicable sale of units of a designated drug sold during a day described in section 5000D(b), any amount (whether in cash or in kind) that is required by a manufacturer, producer, or importer to be paid as a condition of such applicable sale. It is immaterial, for purposes of this paragraph (b)(4), that such amount may be paid to a person other than the manufacturer, producer, or importer, or that it may be separately billed to the buyer as an amount earmarked for expenses incurred or to be incurred on such buyer's behalf.

(ii) *Adjustment to amount charged*. A manufacturer, producer, or importer may adjust the amount charged in an applicable sale to reflect a bona fide discount, rebate, or allowance that is connected to such applicable sale and paid or credited by such manufacturer, producer, or importer against such amount. The basic consideration in determining, for purposes of this section, whether a bona fide discount, rebate, or allowance has been made is whether the amount actually paid by, or charged against the account of, the buyer in the applicable sale has been reduced. Such amount will be considered reduced by reason of a bona fide discount, rebate, or allowance only if the manufacturer, producer, or importer repays part or all of the amount charged to the buyer, credits the buyer's account, or reimburses a third party for part or all of the amount charged for the benefit of the buyer.

(iii) *Amount of adjustment*. The amount of any bona fide discount, rebate, or allowance described in paragraph (b)(4)(ii) of this section that may be used to reduce the amount charged for an applicable sale is limited by the percentage of a sale that constitutes such applicable sale.

(iv) *Allocation between price and tax*. The amount described in paragraph (b)(4)(iii) of this section must be allocated between price and the tax imposed by section 5000D(a) (section 5000D tax) in the same manner as the amount charged for the applicable sale absent such adjustment. *See Example 6* provided in paragraph (c)(6) of this section.

(5) *Sale*. The term *sale* means any agreement by which substantial incidents of ownership in units of a designated drug serve as consideration.

(c) *Examples*. The following examples illustrate the application of the definitions provided in this section and the rules provided in §47.5000D-3. For purposes of this paragraph (c), all sales are applicable sales (*see* paragraph (b)(2) of this section and §47.5000D-3(a)(4)) and, unless otherwise provided, all designated drugs are manufactured or produced in the United States.

(1) *Example 1: First sale of units of a designated drug*—(i) *Facts*. Manufacturer D is a manufacturer of Designated Drug Y. During the fourth quarter of 2024, Manufacturer D sells 1,000,000 units of Designated Drug Y to Wholesaler E, a drug wholesaler. With respect to Designated Drug Y, every day of the fourth quarter of 2024 is a day described in section 5000D(b).

(ii) *Analysis*. Manufacturer D incurs liability under section 5000D(a) and §47.5000D-3(a) for its sale of the 1,000,000 units of Designated Drug Y to Wholesaler E. No other person incurs liability under section 5000D(a) and §47.5000D-3(a) with respect to those units. Under paragraph (b)(3)(i) of this section, Manufacturer D's sale of the 1,000,000 units of Designated Drug Y to Wholesaler E is the first sale of such units of the designated drug. As a result, Manufacturer D is the manufacturer, producer, or importer with respect to such units of Designated Drug Y. Because Manufacturer D's sale of the 1,000,000 units of Designated Drug Y is made during a day described in section 5000D(b), that sale is subject to taxation under section 5000D(a) and §47.5000D-3(a). No tax liability under section 5000D arises with respect to any subsequent sale of the 1,000,000 units of Designated Drug Y because no subsequent sale would qualify as the first sale of such units; therefore, no other person is the manufacturer, producer, or importer with respect to such units.

(2) *Example 2: Manufacturer sale prior to day described in section 5000D(b)*—(*i*) *Facts*. The facts are the same as those described in paragraph (c)(1)(i) of this section (*Example 1*), except that Manufacturer D's sale of the 1,000,000 units of Designated Drug Y is made after it is included on the list published under section 1192(a) of the Social Security Act, but before a day described in section 5000D(b).

(ii) *Analysis*. Manufacturer D incurs no liability under section 5000D(a) and §47.5000D-3(a) for its sale of the 1,000,000 units of Designated Drug Y to Wholesaler E. In addition, no other person incurs liability under section 5000D(a) and §47.5000D-3(a) with respect to those units. Under paragraph (b)(3)(i) of this section, Manufacturer D's sale of the 1,000,000 units of Designated Drug Y to Wholesaler E is the first sale of such units of the designated drug. As a result, Manufacturer D is the manufacturer, producer, or importer with respect to such units of Designated Drug Y. No tax liability under section 5000D, however, arises in relation to that sale because it was not made during a day described in section 5000D(b). Moreover, no tax liability under section 5000D arises with respect to any subsequent sale of the 1,000,000 units of Designated Drug Y because no subsequent sale would qualify as the first sale of such units, and therefore no other person is the manufacturer, producer, or importer with respect to such units.

(3) *Example 3: Sale made prior to publication of the list of selected drugs*—(i) *Facts*. Manufacturer B, a drug manufacturer, sells 1,000,000 units of Drug J to Wholesaler V, a drug wholesaler. After such sale and before Wholesaler V resells those 1,000,000 units, Drug J is identified as a selected drug on the list published under section 1192(a) of the Social Security Act, making it a designated drug (Designated Drug J), as defined in section 5000D(e)(1). Wholesaler V subsequently sells the 1,000,000 units of Designated Drug J to pharmacies; these sales occur on a day described in section 5000D(b).

(ii) *Analysis*. Manufacturer B incurs no liability under section 5000D(a) and §47.5000D-3(a) for its sale of the 1,000,000 units of Designated Drug J to Wholesaler V. In addition, no other person incurs liability under section 5000D(a) and §47.5000D-3(a) with respect to those units. At the time of Manufacturer B's sale to Wholesaler V, Drug J had not been included on the list of selected drugs published under section 1192(a) of the Social Security Act and, therefore, was not a designated drug as defined in section 5000D(e)(1). Under paragraph (b)(3)(iii) of this section, Manufacturer B would nevertheless be considered the manufacturer, producer, or importer with respect to the sale to Wholesaler V. No tax liability under section 5000D(a) and §47.5000D-3(a) would arise with respect to Manufacturer B's sale because that sale did not occur (and could not have occurred) during a day described in section 5000D(b). Moreover, no tax liability under section 5000D would arise with respect to Wholesaler V's sale of the 1,000,000 units of Designated Drug J, even though such sale occurred during a day described in section 5000D(b), because, as a function of the rule provided in paragraph (b)(3)(iii) of this section, Wholesaler V did not make the first sale of such units. Wholesaler V is not, therefore, the manufacturer, producer, or importer under paragraph (b)(3)(i) of this section with respect to such units of Designated Drug J, and is not subject to tax under section 5000D and §47.5000D-3(a).

(4) *Example 4: Subsequent sale to relabeler*—(*i*) *Facts*. The facts are the same as those described in paragraph (c)(1)(i) of this section (*Example 1*), except that during the fourth quarter of 2024, Wholesaler E sells the same 1,000,000 units to Relabeler F, a drug relabeler. Relabeler F then relabels the 1,000,000 units of Designated Drug Y and, before the end of the fourth quarter of 2024, sells all 1,000,000 units to pharmacies.

(ii) *Analysis*. Manufacturer D incurs liability under section 5000D(a) and §47.5000D-3(a) for its sale of the 1,000,000 units of Designated Drug Y to Wholesaler E. No other person incurs liability under section 5000D(a) and §47.5000D-3(a) with respect to those units. Relabeler F's relabeling of the 1,000,000 units of Designated Drug Y does not affect this outcome, regardless of whether such relabeling involves affixing a new National Drug Code or Codes to the units of Designated Drug Y prior to those units of Designated Drug Y being furnished to a maximum fair price-eligible individual. Relabeler F's sales of the 1,000,000 units of Designated Drug Y to pharmacies are the third sales of such units, not the first. As a result, Manufacturer D is the manufacturer, producer, or importer with respect to such units under paragraph (b)(3)(i) of this section, not Relabeler F. Thus, Relabeler F's sale of such units is not subject to taxation under section 5000D(a) and §47.5000D-3(a), but Manufacturer D's sale of such units to Wholesaler E is subject to the tax.

(5) *Example 5: Importation*—(i) *Facts*. With respect to Designated Drug Y, every day of the fourth quarter of 2024 is a day described in section 5000D(b). Manufacturer R is a manufacturer of Drug Y. During the fourth quarter of 2024, Manufacturer R sells 1,000,000 units of Drug Y to Wholesaler Q, a drug wholesaler, before such units are entered into the United States for consumption, use, or warehousing. Before the end of the fourth quarter of 2024, Wholesaler Q enters the 1,000,000 units of Drug Y into the United States for consumption, use or warehousing, rendering them units of a designated drug (Designated Drug Y), as defined in section 5000D(e)(1), and sells all 1,000,000 units to pharmacies.

(ii) *Analysis*. Wholesaler Q incurs liability under section 5000D(a) and §47.5000D-3(a) for its sale of the 1,000,000 units of Designated Drug Y to the pharmacies. No other person incurs liability under section 5000D(a) and §47.5000D-3(a) with respect to those units. Under paragraph (b)(3)(i) of this section, Manufacturer R is not the manufacturer, producer, or importer with respect to the 1,000,000 units of Drug Y that Manufacturer R sold to Wholesaler Q during the fourth quarter of 2024 because Manufacturer R's sale occurred before such units were entered into the United States for consumption, use, or warehousing. As a result, Manufacturer R's sale to Wholesaler Q is not subject to taxation under section 5000D(a) and §47.5000D-3(a). Wholesaler Q's sales of the same 1,000,000 units of Designated Drug Y to pharmacies in the fourth quarter of 2024, however, are subject to taxation under section 5000D(a) and §47.5000D-3(a). Wholesaler Q's sales to such pharmacies are the first sales of those units after they were entered into the United States for consumption, use, or warehousing. As a result, Wholesaler Q is the manufacturer, producer, or importer under paragraph (b)(3)(i) of this section with respect to such units of Designated Drug Y, and its sales thereof are subject to taxation under section 5000D(a) and §47.5000D-3(a).

(6) *Example 6: Chargeback reimbursement and allocation*—(i) *Facts*—(A) *Manufacturer sale*. Manufacturer P is the manufacturer, producer, or importer of 100,000 units of Designated Drug Q. During a day described in section 5000D(b), and no more than 90 days since the first such day, Manufacturer P sells 100,000 units of Designated Drug Q to Wholesaler V at $1.00 per unit ($100,000). Manufacturer P reasonably determines that 40 percent of the sale is the applicable sale. *See* paragraph (b)(2) of this section and §47.5000D-3(a)(4). Manufacturer P does not separately invoice any section 5000D tax to Wholesaler V. *See* §47.5000D-3(b)(2)(i). Manufacturer P's sale to Wholesaler V would, therefore, have resulted in a section 5000D tax liability of $26,000 ($26,000 ÷ $40,000 = 65 percent).

(B) *Wholesaler sale and chargeback*. Pharmacy G purchases the 100,000 units of Designated Drug Q from Wholesaler V at a discount. Wholesaler V issues a $30,000 chargeback invoice to Manufacturer P related to the amount of the discount. Manufacturer P pays Wholesaler V the full amount of the chargeback.

(ii) *Analysis*—(A) *Bona fide discount, rebate, or allowance*. Manufacturer P's reimbursement for Wholesaler V's chargeback is a bona fide discount, rebate, or allowance against the price of the applicable sale because it is for the sale of the 100,000 units (and no other sale, goods, or services). Of the 100,000 units sold, 40 percent, or 40,000, constitute the applicable sale and are therefore subject to the section 5000D tax. Manufacturer P's reimbursement to Wholesaler V reduces the amount charged in that applicable sale, such that the amount charged per unit is $0.70 and the total amount charged in the applicable sale is $28,000 ($0.70 per unit × 40,000 units). The reimbursement proportionally attributable to the applicable sale is, therefore, $12,000 ($0.30 per unit × 40,000 units).

(B) *Allocation of chargeback reimbursement between tax and price*. (*1*) The amount by which the chargeback reimbursement reduces the price and tax, for purposes of section 5000D, is determined by allocating the reimbursement according to the same price-tax ratio that initially applied to the applicable sale:

Equation 1 to Paragraph (c)(6)(ii)(B)(*1*)

$$\frac{\textit{Tax Inclusive Price Adjustment}}{\textit{Tax Inclusive Sale Price}} \times \textit{Tax Exclusive Sale Price} = \textit{Price Adjustment}$$

(*2*) The quotient of the tax-inclusive price adjustment ($12,000) and the tax-inclusive sale price (the $40,000 amount charged) multiplied by the initial tax-exclusive sale price of the applicable sale (($1.00 - $0.65) x $40,000, or $14,000) results in a price adjustment of $4,200, meaning that, of the $12,000 reimbursement, $7,800 is allocated to tax and $4,200 is allocated to price. Thus, Manufacturer P's liability under section 5000D for the applicable sale is $18,200 (the $26,000 tax liability arising from the sale as originally made less the $7,800 of the reimbursement allocated to the tax). In other words, Manufacturer P's liability under section 5000D after the price adjustment is identical to the liability that Manufacturer P would have incurred under section 5000D had Manufacturer P originally sold the 100,000 units of Designated Drug Q to Wholesaler V at the adjusted amount ($18,200 ÷ $28,000 = 65 percent).

(d) *Severability*. The provisions of this section are separate and severable from one another and any other section in this part. If any provision of this section is stayed or determined to be invalid, it is the intention of the Department of the Treasury and the Internal Revenue Service that the remaining provisions and sections of this part shall continue in effect.

(e) *Applicability date*. This section applies to sales of designated drugs on or after [date of publication of final regulations in the ***Federal Register***].

§47.5000D-3 Imposition of section 5000D tax.

(a) *Imposition of tax*—(1) *In general.* Section 5000D(a) of the Internal Revenue Code (Code) imposes a tax (section 5000D tax) on applicable sales made by a manufacturer, producer, or importer during a day described in section 5000D(b).

(2) *Attachment of tax*. The section 5000D tax attaches when a manufacturer, producer, or importer of units of a designated drug makes an applicable sale of such units during a day described in section 5000D(b).

(3) *Person liable for tax*. A manufacturer, producer, or importer of units of a designated drug that makes an applicable sale of such units during a day described in section 5000D(b) is liable for the section 5000D tax imposed on such sale.

(4) *Identification of applicable sales*—(i) *In general*. A manufacturer, producer, or importer of units of a designated drug must employ a reasonable method to identify the applicable sales of such units, if any, that it makes during a day described in section 5000D(b). A manufacturer, producer, or importer's method of identifying such applicable sales must be based on its books, records, or other information. For example, a subsidiary may rely on historical sales data collected and analyzed by its parent, provided that such data and analysis meet the requirements of paragraph (a)(4)(ii) of this section and are otherwise reasonable.

(ii) *Books, records, and other information*. Books, records, and other information used to identify applicable sales must reflect transactions pertaining to the drug or biological product selected for inclusion on the list of selected drugs published under section 1192(a) of the Social Security Act that predate the first day of the calendar quarter in which the applicable sales occurred by no more than 24 months.

(iii) *Disregard of Medicare part B sales permissible prior to March 1, 2026*. For periods described in section 5000D(b) that begin prior to March 1, 2026, a manufacturer, producer, or importer's method may disregard sales of drugs or biological products furnished or administered by a hospital, physician, or other provider of services or supplier, the recipient of which is an individual enrolled under Medicare part B of title XVIII of the Social Security Act, including an individual enrolled in a Medicare Advantage plan under part C of such title, if payment may be made under part B for such units. *See* section 1192(b)(2) of the Social Security Act.

(iv) *Safe harbor*—(A) *In general*. A manufacturer, producer, or importer may satisfy the requirements of this paragraph (a)(4) by using the safe harbor percentage provided in guidance published in the Internal Revenue Bulletin (see §601.601 of this chapter), as applicable to the relevant calendar quarter, to identify its applicable sales. Such safe harbor percentage is a rounded average of the percentage of all sales that are applicable sales of a sample of qualifying single-source drugs (as defined in section 1192(e) of the Social Security Act) that is large enough to yield meaningful results, as determined by the analysis of certain manufacturer- and patient-level data conducted by the Centers for Medicare and Medicaid Services (CMS).

(B) *No election required*. No election is required for a manufacturer, producer, or importer to use the safe harbor described in paragraph (a)(4)(iv)(A) of this section.

(C) *Must use safe harbor for four consecutive calendar quarters*. Except as provided in paragraph (a)(4)(iv)(E) of this section, a manufacturer, producer, or importer that uses the safe harbor described in paragraph (a)(4)(iv)(A) of this section must continue to use the safe harbor for a period of four consecutive calendar quarters, including the calendar quarter in which the safe harbor is first used.

(D) *Uniform application required*. A manufacturer, producer, or importer that uses the safe harbor described in paragraph (a)(4)(iv)(A) of this section for sales made during any day described in section 5000D(b) falling within a calendar quarter must apply the safe harbor to all sales by such manufacturer, producer, or importer during all days described in section 5000D(b) falling within that calendar quarter. Thus, if a manufacturer, producer, or importer uses the safe harbor described in paragraph (a)(4)(iii)(A) of this section with respect to one sale of a designated drug during a day described in section 5000D(b), it must use the safe harbor for all sales of that designated drug and all sales of any other designated drug that occur in that calendar quarter during a day described in section 5000D(b).

(E) *Updates to safe harbor percentage*. Any update to the safe harbor percentage described in paragraph (a)(4)(iv)(A) of this section will use a calculation methodology similar to that described in paragraph (a)(4)(iv)(A) of this section, use the most recent analysis that the Internal Revenue Service (IRS) has received from CMS of data available to CMS, and relieve a manufacturer, producer, or importer from an existing obligation under paragraph (a)(4)(iv)(C) of this section to use the safe harbor described in this paragraph (a)(4)(iv) as of the effective date of such updated safe harbor percentage. If a manufacturer, producer, or importer continues to use the safe harbor described in this paragraph (a)(4)(iv) after the safe harbor percentage is updated, such manufacturer, producer, or importer must use the updated safe harbor percentage on and after the effective date of such updated safe harbor percentage and for the remainder of any period required by paragraph (a)(4)(iv)(C) of this section.

(v) *Recalculation of liability not permitted*. Once a section 5000D tax liability is reported to the IRS for a particular calendar quarter, the manufacturer, producer, or importer liable for the section 5000D tax may not later recalculate its section 5000D tax liability for that quarter using a different method to identify its applicable sales. The correction of a mathematical or clerical error, or the use of corrected data from the same historical period used to originally identify the applicable sales, does not alone constitute the recalculation of a section 5000D tax liability using a different method.

(b) *Calculation of tax*—(1) *In general*. (i) For any applicable sale of units of a designated drug during a day described in section 5000D(b), the amount of the section 5000D tax is the amount such that the applicable percentage is equal to the ratio of such tax divided by the sum of such tax and the price of such applicable sale expressed as a percentage. This ratio may be expressed as follows:

Equation 1 to Paragraph (b)(1)(i)

$$\textit{Applicable Percentage} = \textit{Tax}/(\textit{Tax} + \textit{Price})$$

(ii) See paragraph (b)(2) of this section for rules relating to the effect of certain invoicing methods on the determination of price.

(2) *Charging tax as line item; effect on price*—(i) *Presumption if no separate charge for tax is made*. If no separate charge is made for the section 5000D tax on the invoice or similar document pertaining to an applicable sale, the amount charged for units of the designated drug is presumed to include both the proper amount of section 5000D tax and the price. In such cases, the price excludes the portion of the amount charged allocable to the section 5000D tax so charged, and no section 5000D tax is due on the amount of section 5000D tax so charged.

(ii) *Separately charged tax not part of price*. If the section 5000D tax is separately charged on the invoice or similar document pertaining to an applicable sale, the section 5000D tax so charged is not included in the price. Thus, if a manufacturer, producer, or importer calculates the section 5000D tax and charges it as a separate item on the invoice or similar document pertaining to an applicable sale, the amount of section 5000D tax so charged is not included in the price for purposes of calculating the section 5000D tax under paragraph (b)(1) of this section, and no section 5000D tax is due on the amount of section 5000D tax so charged.

(3) *Example*—(i) *Facts*. Manufacturer X is the manufacturer, producer, or importer of 409,000 units of Designated Drug H (that is, it makes the first sale of those units). During a day described in section 5000D(b), and no more than 90 days since the first such day, Manufacturer X sells 100,000 units of Designated Drug H to Wholesaler A at $1.00 per unit, 300,000 units of Designated Drug H to Wholesaler B at $0.90 per unit, and 9,000 units of Designated Drug H to Wholesaler C at $1.12 per unit. Manufacturer X has reasonably determined that the applicable sale consists of 35 percent of the units of Designated Drug H in each such sale. Manufacturer X has not separately invoiced any section 5000D tax to Wholesalers A, B, or C.

(ii) *Analysis*—(A) *In general*. To calculate its section 5000D tax liability with respect to its sales of Designated Drug H to Wholesalers A, B, and C, Manufacturer X must aggregate its section 5000D tax liability for the applicable sales by applying the presumption described in paragraph (b)(2)(i) of this section.

(B) *Step 1*. Manufacturer X begins by determining the applicable sales within each of the sales described in paragraph (b)(3)(i) of this section. The applicable sale within the sale to Wholesaler A is 35,000 units (100,000 units × 0.35). The applicable sale within the sale to Wholesaler B is 105,000 units (300,000 units × 0.35). And the applicable sale within the sale to Wholesaler C is 3,150 units (9,000 units × 0.35).

(C) *Step 2*. Next, Manufacturer X determines the amount charged for the applicable sales. The amount charged for the applicable sale to Wholesaler A is $35,000.00 (35,000 units × $1.00 per unit). The amount charged for the applicable sale to Wholesaler B is $94,500.00 (105,000 units × $0.90 per unit). And the amount charged for the applicable sale to Wholesaler C is $3,528.00 (3,150 units × $1.12 per unit).

(D) *Step 3*. Manufacturer X then determines the correct tax and price with respect to each amount charged for the applicable sales under the presumption provided in paragraph (b)(3)(i) of this section. Of the $35,000.00 Manufacturer X charged for the applicable sale to Wholesaler A (35,000 of 100,000 units), Manufacturer X allocates $22,750.00 to the section 5000D tax and $12,250.00 to the price ($22,750.00 / ($22,750.00 + $12,250.00) = 0.65). Of the $94,500.00 Manufacturer X charged for the applicable sale to Wholesaler B (105,000 of 300,000 units), Manufacturer X allocates $61,425.00 to the section 5000D tax and $33,075.00 to the price ($61,425.00 / ($61,425.00 + $33,075.00) = 0.65). And of the $3,528.00 Manufacturer X charged for the applicable sale to Wholesaler C (3,150 of 9,000 units), Manufacturer X allocates $2,293.20 to the section 5000D tax and $1,234.80 to the price ($2,293.20 / ($2,293.20 + $1,234.80) = 0.65).

(E) *Step 4*. Manufacturer X's section 5000D tax liability for the applicable sales is $86,468.20 ($22,750.00 + $61,425.00 + $2,293.20 = $86,468.20). This amount, when divided by the sum of the tax and the price of the applicable sales, equals 65 percent ($86,468.20 / ($86,468.20 + $46,559.80) = 0.65).

(c) *Anti-abuse rule*. If a manufacturer, producer, or importer engages in any transaction (or series of transactions) with a principal purpose of avoiding the section 5000D tax or substantially reducing the purported price at which a sale is made, including transactions made other than at arm's length, such transaction (or series of transactions) may be adjusted, recharacterized, or otherwise recast by the Secretary for purposes of determining the correct section 5000D tax liability. Whether a transaction (or series of transactions) has a principal purpose of avoiding the section 5000D tax or substantially reducing the purported price of an applicable sale is determined based on all of the facts and circumstances, including, but not limited to, a comparison of the purported business purpose for, and the section 5000D tax consequences of, the transaction (or series of transactions).

(d) *Severability*. The provisions of this section are separate and severable from one another and any other section of this part. If any provision of this section is stayed or determined to be invalid, it is the intention of the Department of the Treasury and Internal Revenue Service that the remaining provisions and sections of this part shall continue in effect.

(e) *Applicability date*. This section applies to sales of designated drugs on or after [date of publication of final regulations in the ***Federal Register***].

Douglas W. O'Donnell,
Deputy Commissioner.

(Filed by the Office of the Federal Register December 31, 2024, 8:45 a.m., and published in the issue of the Federal Register for January 2, 2025, 90 FR 31)

Notice of Proposed Rulemaking

Section 45W Credit for Qualified Commercial Clean Vehicles

REG-123525-23

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would provide guidance on the qualified commercial clean vehicle credit enacted by the Inflation Reduction Act of 2022. These proposed regulations would affect eligible taxpayers that place a qualified commercial clean vehicle in service during a taxable year. These proposed regulations would also affect manufacturers of qualified commercial clean vehicles.

DATES: Written or electronic comments must be received by March 17, 2025.

The public hearing on these proposed regulations is scheduled for April 28, 2025, at 10 a.m. eastern standard time (EST). Requests to speak and outlines of topics to be discussed at the public hearing must be received by March 17, 2025. If no outlines are received by March 17, 2025, the public hearing will be cancelled.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG-123525-23) by following the online instructions for submitting comments. 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-123525-23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David Villagrana or Rika Valdman at (202) 317-6853 (not a toll-free number); concerning submissions of comments or the public hearing, Publications and Regulations Section at (202) 317-6901 (not a toll-free number) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) regarding sections 25E, 30D, 45W, and 6417 of the Internal Revenue Code (Code) as they relate to the credit for qualified commercial clean vehicles (proposed regulations). The proposed regulations are issued by the Secretary of the Treasury or her delegate (Secretary) under the authority granted by sections 25E(e), 30D(d)(3) and (f)(5), 45W(c)(1), (d)(1), and (f), 6417(h), and 7805(a) of the Code.

Section 45W(f) provides an express delegation authorizing the Secretary to issue "such regulations or other guidance as the Secretary determines necessary to carry out the purposes of this section, including regulations or other guidance relating to determination of the incremental cost of any qualified commercial clean vehicle."

Section 45W(c)(1), in part, incorporates in the definition of the term "qualified commercial clean vehicle" that the vehicle "meets the requirements of section 30D(d)(1)(C)." Section 30D(d)(1)(C) requires that such vehicle be made by a "qualified manufacturer," as defined in section 30D(d)(3). Section 30D(d)(3) provides that a qualified manufacturer must enter "into a written agreement with the Secretary under which such manufacturer agrees to make periodic written reports to the Secretary (at such times and in such manner as the Secretary may provide) providing vehicle identification numbers and such other information related to each vehicle manufactured by such manufacturer as the Secretary may require."

Section 45W(d)(1), which provides that rules similar to the rules under section 30D(f) (without regard to section 30D(f)(10) or (11)) apply for purposes of section 45W, incorporates section 30D(f)(5), which provides an express delegation of authority stating, "[t]he Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit."

Section 6417(h) authorizes the Secretary to issue such regulations or other guidance as may be necessary to carry out the purposes of section 6417.

Finally, section 7805(a) authorizes the Secretary "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

I. ***Overview***

Section 13403(a) of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), added section 45W to the Code. Section 13403(b)(1) of the IRA added section 45W to the list of general business credits in section 38 of the Code. Section 45W provides a credit against the tax imposed by chapter 1 of the Code (chapter 1) with respect to each qualified commercial clean vehicle placed in service by the taxpayer during the taxable year (section 45W credit). The section 45W credit is effective for vehicles placed in service after December 31, 2022. The section 45W credit is one of three related clean vehicle credits enacted under or revised by the IRA. Section 25E provides a credit for previously-owned clean vehicles. Section 30D provides a credit for new clean vehicles.

II. ***Section 45W***

Section 45W(a) provides that, for purposes of section 38, the qualified commercial clean vehicle credit for any taxable year is an amount equal to the sum of the credit amounts determined under section 45W(b) with respect to each qualified commercial clean vehicle placed in service by the taxpayer during the taxable year. The amount of the section 45W credit is treated as a general business credit. Section 38(b)(37) lists as a current year business credit the qualified commercial clean vehicle credit determined under section 45W.

Section 45W(b)(1) provides that, subject to the limitation in section 45W(b)(4), the amount of the section 45W credit is the lesser of: (A) 15 percent of the taxpayer's basis in the vehicle (30 percent in the case of a vehicle not powered by a gasoline or diesel internal combustion engine (ICE)), or (B) the incremental cost of the vehicle.

Section 45W(b)(2) provides that the incremental cost of any qualified commercial clean vehicle is an amount equal to the excess of the purchase price for such vehicle over the purchase price of a comparable vehicle. Section 45W(b)(3) defines "comparable vehicle" to mean, with respect to any qualified commercial clean vehicle, any vehicle that is powered solely by a gasoline or diesel ICE and is comparable in size and use to such vehicle.

Section 45W(b)(4) provides that the section 45W credit amount determined under section 45W(b) with respect to any qualified commercial clean vehicle cannot exceed: (A) in the case of a vehicle that has a gross vehicle weight rating of less than 14,000 pounds, $7,500; and (B) in the case of a vehicle not described in section 45W(b)(4)(A), $40,000.

Section 45W(c) defines "qualified commercial clean vehicle" for purposes of the section 45W credit as any vehicle which: (1) meets the requirements of section 30D(d)(1)(C) of the Code, and is acquired for use or lease by the taxpayer and not for resale; (2) either meets the requirements of section 30D(d)(1)(D), and is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails), or is mobile machinery, as defined in section 4053(8) of the Code (including vehicles that are not designed to perform a function of transporting a load over the public highways); (3) either is propelled to a significant extent by an electric motor which draws electricity from a battery that has a capacity of not less than 15 kilowatt hours (or, in the case of a vehicle that has a gross vehicle weight rating of less than 14,000 pounds, 7 kilowatt hours) and is capable of being recharged from an external source of electricity, or is a motor vehicle that satisfies the requirements under section 30B(b)(3)(A) and (B) of the Code; and (4) is of a character subject to the allowance for depreciation.

Section 45W(d) establishes special rules for purposes of the section 45W credit. Section 45W(d)(1) provides that rules similar to the rules of section 30D(f)(1) through (9) apply to section 45W. Section 45W(d)(2) provides that section 45W(c)(4) does not apply to any vehicle that is not subject to a lease and which is placed in service by a tax-exempt entity described in section 168(h)(2)(A)(i), (ii), or (iv) of the Code. Section 45W(d)(3) provides that no section 45W credit is allowed with respect to any vehicle for which a credit was allowed under section 30D.

Section 45W(e) provides that no section 45W credit is allowed with respect to any vehicle unless the taxpayer includes the vehicle identification number of such vehicle on the return of tax for the taxable year.

Section 45W(f) grants the Secretary authority to issue regulations or other guidance to carry out the purposes of section 45W, including regulations or other guidance relating to the determination of the incremental cost of any qualified commercial clean vehicle.

Section 45W(g) provides that no section 45W credit is allowed with respect to a vehicle acquired after December 31, 2032.

III. *Section 25E*

Section 13402 of the IRA added section 25E to the Code. The credit under section 25E (section 25E credit) is a personal credit allowable under subpart A of the Code that relates to previously-owned clean vehicles.

IV. *Section 30D*

Section 30D was originally enacted by section 205(a) of the Energy Improvement and Extension Act of 2008, Division B of Pub. L. 110-343, 122 Stat. 3765, 3835 (October 3, 2008), to provide a credit for the purchase and placing in service of new qualified plug-in electric drive motor vehicles (section 30D credit). Section 30D was amended several times since its enactment, most recently by section 13401 of the IRA. Section 30D, as amended by the IRA, relates to new clean vehicles.

The section 30D credit may be treated as either a personal credit or a general business credit, depending on whether the vehicle is used for personal use or is of a character subject to the allowance for depreciation.

Section 30D(d)(1) defines “new clean vehicle” as a motor vehicle that satisfies eight requirements set forth in section 30D(d)(1)(A) through (H). As relevant to section 45W and these proposed regulations, section 30D(d)(1)(C) provides that the vehicle must be made by a qualified manufacturer, and section 30D(d)(1)(D) provides that the vehicle must be treated as a motor vehicle for purposes of title II of the Clean Air Act (CAA).

Section 30D(d)(3) defines “qualified manufacturer” as any manufacturer (within the meaning of the regulations prescribed by the Administrator of the Environmental Protection Agency (EPA) for purposes of the administration of title II of the CAA (42 U.S.C. 7521–7590)) that enters into a written agreement with the Secretary under which such manufacturer agrees to make periodic written reports to the Secretary (at such times and in such manner as the Secretary may provide) providing vehicle identification numbers and such other information related to each vehicle manufactured by such manufacturer as the Secretary may require.

Section 30D(f)(1)-(9) provides special rules for purposes of section 30D that are relevant to section 45W by virtue of the cross-reference in section 45W(d)(1). Section 30D(f)(1) provides that the basis of any property for which a credit is allowable under section 30D(a) is reduced by the amount of such credit so allowed (determined without regard to section 30D(c)).

Section 30D(f)(2) provides that the amount of any deduction or other credit allowable under chapter 1 for a vehicle for which a credit is allowable under section 30D(a) is reduced by the amount of credit allowed under section 30D(a) for such vehicle (determined without regard to section 30D(c)).

Section 30D(f)(3) provides that in the case of a vehicle the use of which is described in section 50(b)(3) or (4) of the Code (generally, use by tax-exempt organizations, the United States, a government entity, or foreign person or entities) and that is not subject to a lease, the person who sold such vehicle to the person or entity using such vehicle is treated as the taxpayer that placed such vehicle in service, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under section 30D(a) with respect to such vehicle (determined without regard to section 30D(c)). Section 30D(f)(3) was repealed for vehicles placed in service after December 31, 2023.

Section 30D(f)(4) provides that no section 30D credit is allowable with respect to any property referred to in section 50(b)(1) (generally, property used predominantly outside of the United States).

Section 30D(f)(5) authorizes the Secretary to promulgate regulations providing for the recapture of the benefit of any section 30D credit allowable with respect to any property which ceases to be property eligible for such credit.

Section 30D(f)(6) provides that no section 30D credit is allowed for any vehicle if the taxpayer elects to not have section 30D apply to such vehicle.

Section 30D(f)(7) provides that a vehicle is not considered eligible for a section 30D credit unless such vehicle is in compliance with: (A) the applicable provisions of the CAA for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provisions under a waiver under section 209(b) of the CAA), and (B) the motor vehicle safety provisions of 49 U.S.C. 30101 through 30169.

Section 30D(f)(8) provides that in the case of any vehicle, the credit described in section 30D(a) is only allowed once with respect to such vehicle, as determined based upon the vehicle identification number of such vehicle, including any vehicle with respect to which the taxpayer elects the application of section 30D(g).

Section 30D(f)(9) provides that no section 30D credit is allowed with respect to any vehicle unless the taxpayer includes the vehicle identification number of such vehicle on the return of tax for the taxable year.

V. *Section 6417*

Section 6417 of the Code allows an applicable entity (as defined in section 6417(d)(1)(A)) to make an election with respect to an applicable credit (as defined in section 6417(b)) to be treated as making a payment against the tax imposed by subtitle A of the Code (related to income taxes) for the taxable year equal to the amount of such credit. Under section 6417(b)(6), in the case of a tax-exempt entity described in section 168(h)(2)(A)(i), (ii), or (iv), the term "applicable credit" includes the section 45W credit determined under section 45W by reason of section 45W(d)(2).[1]

VI. *Prior Guidance*

A. *Notice 2022-56*

On November 3, 2022, the Treasury Department and the IRS published Notice 2022-56, 2022-47 I.R.B. 480, seeking comments regarding sections 45W and 30C of the Code. The notice requested general comments on issues arising under section 45W, as well as specific comments concerning: (1) factors to determine "comparable in size and use" for purposes of the comparable vehicle definition in section 45W(b)(3) used to determine incremental cost; (2) the definition of mobile machinery; (3) the application of "rules similar to the rules under section 30D(f)" to section 45W; (4) the "no double benefit" rule in section 45W(d)(3); (5) compliance considerations for qualified manufacturers; (6) the definition of "significant extent" for purposes of section 45W(c)(3)(A); (7) the term "property of a character subject to an allowance for depreciation" for purposes of section 45W(c)(4); and (8) other terms in section 45W that require definition or additional guidance.

The Treasury Department and the IRS received over 130 comments on Notice 2022-56. These comments were carefully considered in the preparation of these proposed regulations.

B. *Revenue Procedures*

On December 27, 2022, the Treasury Department and the IRS published Revenue Procedure 2022-42, 2022-52 I.R.B. 565. Among other things, Rev. Proc. 2022-42 provided guidance for qualified manufacturers to enter into written agreements with the IRS, as required in sections 30D, 25E, and 45W, and to report certain information regarding vehicles produced by such manufacturers that may be eligible for credits under these sections.

On October 23, 2023, the Treasury Department and the IRS published Revenue Procedure 2023-33, 2023-43 I.R.B. 1135. Among other things, Rev. Proc. 2023-33 superseded certain provisions of Rev. Proc. 2022-42, and provided updated information on the submission of written agreements by manufacturers to the IRS in order to be considered qualified manufacturers, as well as updated information on the method of submission of monthly reports by qualified manufacturers.

On December 18, 2023, the Treasury Department and the IRS published Revenue Procedure 2023-38, 2023-51 I.R.B. 1544. Among other things, Rev. Proc. 2023-38 updated and consolidated the procedural rules for qualified manufacturers with respect to the section 25E credit, the section 30D credit, and the section 45W credit, and superseded certain provisions of Rev. Proc. 2022-42 and Rev. Proc. 2023-33.

C. *Safe Harbor Notices*

On January 17, 2023, the Treasury Department and the IRS published Notice 2023-9, 2023-3 I.R.B. 402, which provides a safe harbor for purposes of the section 45W credit regarding the incremental cost of certain qualified commercial clean vehicles placed in service in calendar year 2023, based on a December 2022 incremental cost analysis by the U.S. Department of Energy (DOE) across classes of street vehicles (DOE analysis).

On January 8, 2024, the Treasury Department and the IRS published Notice 2024-5, 2024-2 I.R.B. 347, which provides a safe harbor for the purposes of the section 45W credit regarding the incremental cost of certain qualified commercial clean vehicles placed in service in calendar year 2024. The safe harbor for 2024 is based on the DOE analysis, as amended by the DOE in December 2023 to incorporate minor modifications that did not alter the incremental cost results. Notice 2024-5 also requested comments regarding additional types or classes of vehicles that should be included in the safe harbor in the future. The Treasury Department and the IRS received comments in response to the Notice. These comments were carefully considered in the preparation of these proposed regulations.

D. *Final Regulations Under Sections 25E, 30D, and 6213*

On May 6, 2024, the Treasury Department and the IRS published final regulations (TD 9995) in the ***Federal Register*** (89 FR 37706) providing rules and definitions for the section 25E credit and the section 30D credit. In addition, the final regulations provide guidance under section 6213(g)(2)(T) through (V) of the Code on the meaning of "mathematical or clerical error" with regard to certain assessments of tax without a notice of deficiency in connection with the section 25E credit, the section 30D credit, and the section 45W credit.

Explanation of Provisions

I. *Overview*

Proposed §1.45W-1 would provide definitions applicable to section 45W and

[1] *The reference in section 6417(b)(6) to section 45W(d)(3) was intended to be a reference to section 45W(d)(2). See General Explanation of Tax Legislation Enacted in the 117th Congress, JCS-1-23 (December 21, 2023) at 282. Thus, the proposed regulations refer to section 45W(d)(2). See also TD 9988, 89 FR 17546, at 17546 n.1.*

the section 45W regulations. Proposed §1.45W-2 would provide rules for determining the amount of the section 45W credit, including the determination of incremental cost for qualified commercial clean vehicles. Proposed §1.45W-3 would provide rules related to a vehicle's qualification as a qualified commercial clean vehicle. Proposed §1.45W-4 would provide special rules relating to the credit eligibility of a vehicle involved in certain transactions and uses, the interaction of the section 45W credit with other credits, and recapture of the section 45W credit. Proposed §1.45W-5 would provide reporting requirements for purposes of the section 45W credit.

II. *Credit for Qualified Commercial Clean Vehicles; Definitions*

Proposed §1.45W-1 would provide definitions applicable to section 45W and the section 45W regulations.

A. *Battery*

Proposed §1.45W-1(b)(1) would define the term "battery" to mean a collection of one or more battery modules, each of which has two or more battery cells, electrically configured in series or parallel, to create voltage or current. The term "battery" does not include items such as thermal management systems or other parts of a battery cell or module that do not directly contribute to the electrochemical storage of energy within the battery, such as battery cell cases, cans, or pouches. This definition is consistent with section 45W(c)(3)(A) because battery modules and cells are the sources from which an electric motor draws electricity. The definition is also consistent with the definition of battery in §1.30D-2(b)(5).

B. *Battery Electric Vehicle*

Proposed §1.45W-1(b)(2) would define the term "battery electric vehicle" (BEV) as a vehicle propelled solely by an electric motor that draws electricity from batteries capable of being recharged from an external source of electricity. This definition is consistent with section 45W(c)(3)(A), which requires, in part, that a qualified commercial clean vehicle be propelled to a significant extent by an electric motor that draws electricity from a battery.

C. *Fuel Cell Electric Vehicle*

Proposed §1.45W-1(b)(3) would define "fuel cell electric vehicle" (FCEV) as a vehicle (i) that is propelled by power derived from one or more cells that convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use, and (ii) that, in the case of a light duty vehicle (that is, a passenger automobile or light truck), has received on or after August 8, 2005 (the date of the enactment of section 30B), a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency (EPA) under section 202(i) of the CAA for that make and model year vehicle. This definition repeats the substance of section 30B(b)(3)(A) and (B) and adds the enactment date of section 30B (August 8, 2005) to implement section 45W(c)(3)(B), which incorporates the requirements of section 30B(b)(3)(A) and (B).

D. *Gross Vehicle Weight Rating*

Proposed §1.45W-1(b)(4) would define "gross vehicle weight rating" (GVWR) as having the meaning provided in 49 CFR 571.3(b) and 40 CFR 86.082-2. The Department of Transportation (DOT) definition of GVWR in 49 CFR 571.3(b) (providing definitions related to Federal Motor Vehicle Safety Standards) is substantially identical to the EPA definition of GVWR in 40 CFR 86.082-2 (related to the control of emissions from highway vehicles and engines). Because "gross vehicle weight rating" is a term of art embedded in the regulatory regimes of two other Federal agencies, proposed §1.45W-1(b)(4) would provide a definition consistent with existing DOT and EPA regulations.

E. *Manufacturer*

Proposed §1.45W-1(b)(5)(i) would define "manufacturer" as any manufacturer within the meaning of the regulations prescribed by the Administrator of the EPA for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*) and as defined in 42 U.S.C. 7550(1). This definition would repeat the substance of the definition of "manufacturer" within section 30D(d)(3)'s definition of "qualified manufacturer," which is incorporated by section 45W(c)(1). Consistent with the definition of "manufacturer" provided in §1.30D-2(b)(28), proposed §1.45W-1(b)(5)(i) would provide that, if multiple manufacturers are involved in the production of a vehicle, the requirements of section 30D(d)(3) must be met by the manufacturer that satisfies the reporting requirements of the greenhouse gas emissions standards set by the EPA under the Clean Air Act (42 U.S.C. 7521 *et seq.*) for the subject vehicle.

In addition, the proposed rules would move the existing rule regarding the modification of a new motor vehicle that has not yet been placed in service from §1.30D-2(b)(28)(ii)(B) to §1.45W-1(b)(5)(ii) so that all rules related to the section 45W credit would be included in the section 45W regulations. This rule allows a manufacturer that modifies a new motor vehicle (as defined in 42 U.S.C. 7550(3)) that does not satisfy the requirements of section 45W(c)(3) so that the vehicle, after modification, does satisfy such requirements to enter into an agreement under section 30D(d)(3) if such modification occurs prior to the new motor vehicle being placed in service.

F. *Placed in Service*

Under proposed §1.45W-1(b)(6), a qualified commercial clean vehicle would be considered "placed in service" on the date the taxpayer takes possession of the vehicle. This proposed definition is consistent with the definition provided in §1.30D-2(b)(36) and §1.25E-1(b)(10), which gives effect, in the specific context of vehicles, to the general concept of "placed in service" from other Code provisions addressing credits and depreciation. *See* §1.46-3(d)(1)(ii) and (d)(4)(i) (for qualified investments, property is considered placed in service in the earlier of the period for depreciation with respect to such property begins or when placed in a condition or state of readiness and availability for a specifically assigned function); §1.167(a)-11(e)(1)(i) (for purposes of depreciation, property is first placed in service when first placed in a condition or state of readiness and availability for a specifically assigned function); and §1.179-4(e) (property is considered placed in service when placed in a condition or state of readiness and availability for a specifically assigned function); *see also Consumers Power Co. v. Comm'r*, 89 T.C. 710 (1987) (citing §§1.46-3(d)(1)(ii) and 1.167(a)-11(e)(1)(i), hydroelectric plant placed in service for purposes of depreciation and investment credit when all phases of preoperational testing were completed, thereby demonstrating that the plant was available for service on a regular basis); *Noell v. Comm'r*, 66 T.C. 718, 728–729 (1976) (citing §1.46-3(d)(1)(ii), landing strip placed in service for purposes of investment credit when strip was paved and therefore available for full service). The proposed definition is also consistent with regulations issued under Code sections addressing the excise tax on heavy trucks and trailers, 26 CFR 145.4051-1(c)(2) of the Temporary Excise Tax Regulations under the Highway Revenue Act of 1982 (Pub. L. 97-424) ("a vehicle shall be considered placed in service on the date on which the owner of the vehicle took actual possession of the vehicle").

G. *Plug-in Hybrid Electric Vehicle*

Proposed §1.45W-1(b)(7) would define "plug-in hybrid electric vehicle" (PHEV) as a vehicle that uses batteries that can be recharged from an external source of electricity to power an electric motor that propels the vehicle to a significant extent, and another fuel, such as gasoline or diesel, to power an ICE or other propulsion source. This definition is consistent with section 45W(c)(3)(A), which requires, in part, a vehicle propelled by an electric motor that draws electricity from a battery, and with section 45W(b)(1)(A), which contemplates differing basis percentages for purposes of calculating the amount of the section 45W credit depending on whether a vehicle is powered in part by a gasoline or diesel ICE.

H. *Plug-in Hybrid Fuel Cell Electric Vehicle*

Proposed §1.45W-1(b)(8) would define "plug-in hybrid fuel cell electric vehicle" (PHFCEV) as a vehicle that uses batteries that can be recharged from an external source of electricity to power an electric motor that propels the vehicle to a significant extent and a hydrogen fuel source that powers an electric motor through the fuel cell system. This definition is consistent with section 45W(c)(3)(A), which requires, in part, a vehicle propelled by an electric motor that draws electricity from a battery.

I. *Qualified Commercial Clean Vehicle*

Proposed §1.45W-1(b)(9) would define "qualified commercial clean vehicle" to mean a vehicle that meets the requirements of section 45W(c) and §1.45W-3(b) through (d). Because section 30D(d)(1)(C), incorporated by section 45W(c)(1), requires a qualified commercial clean vehicle to be made by a qualified manufacturer, proposed §1.45W-1(b)(9)(i), (ii), and (iii) would add that a vehicle does not meet the requirements of section 45W(c) if the qualified manufacturer fails to provide a periodic written report for such vehicle prior to the vehicle being placed in service by the taxpayer claiming the credit reporting the vehicle identification number of such vehicle, and certifying compliance with the requirements of section 45W(c); if the qualified manufacturer provides incorrect information with respect to the vehicle on such report; or if the qualified manufacturer fails to update its report in the event of a material change with respect to the vehicle. These proposed rules are consistent with those that apply to qualified manufacturers in the context of other clean vehicle credits. *See* §1.30D-2(b)(32).

J. *Qualified Manufacturer*

Proposed §1.45W-1(b)(10) would define "qualified manufacturer," consistent with §1.30D-2(b)(42), to mean a manufacturer that meets the requirements described in section 30D(d)(3) at the time the manufacturer submits a periodic written report to the IRS under a written agreement described in section 30D(d)(3). The term "qualified manufacturer" would not, under the proposed rule, include any manufacturer whose qualified manufacturer status has been terminated by the IRS. Proposed §1.45W-1(b)(10) would further provide that the IRS may terminate qualified manufacturer status for fraud, intentional disregard, or gross negligence with respect to any requirements of sections 25E, 30D, 45W, regulations or any guidance thereunder, including with respect to the periodic written reports described in section 30D(d)(3). *See* §601.601 of the Statement of Procedural Rules (26 CFR part 1).

K. *Secretary*

Proposed §1.45W-1(b)(11) would provide that the term "Secretary" has the meaning provided in section 7701(a)(11)(B) of the Code.

L. *Section 45W Regulations*

Proposed §1.45W-1(b)(12) would define the term "section 45W regulations" to mean §§1.45W-1 through 1.45W-5.

III. *Amount of Section 45W Credit; Incremental Cost*

Proposed §1.45W-2 would provide rules for determining the amount of the section 45W credit, including the determination of incremental cost for qualified commercial clean vehicles.

A. *Per-Vehicle Credit Amount*

Section 45W(b)(1) provides that, subject to section 45W(b)(4), the amount of the section 45W credit for a qualified commercial clean vehicle placed in service during the taxable year is equal to the lesser of: (1) 15 percent of the basis in such vehicle, or 30 percent in the case of a vehicle not powered by a gasoline or diesel ICE; or (2) the incremental cost of such vehicle (as that phrase is defined in section 45W(b)(2)). Section 45W(b)(4) limits the amount of the section 45W credit with respect to any qualified commercial clean vehicle to $7,500 in the case of a vehicle that has a GVWR of less than

14,000 pounds, and $40,000 in the case of any other vehicle.

Proposed §1.45W-2(a) would therefore provide that, subject to the limitation in section 45W(b)(4), the per-vehicle credit amount under section 45W(b)(1) with respect to any qualified commercial clean vehicle is the lesser of 15 percent of the basis of such vehicle (or 30 percent in the case of a vehicle not powered by a gasoline or diesel ICE), or the incremental cost of such vehicle.

B. *Incremental Cost of a Qualified Commercial Clean Vehicle*

Section 45W(b)(2) provides that the incremental cost of any qualified commercial clean vehicle is an amount equal to the excess of the purchase price for such vehicle over such price of a comparable vehicle. Section 45W(b)(3) defines a comparable vehicle, with respect to any qualified commercial clean vehicle, as a vehicle powered solely by a gasoline or diesel ICE that is comparable in size and use to such vehicle.

Section 45W incentivizes taxpayers to purchase vehicles with certain clean propulsion technologies instead of vehicles powered solely by a gasoline or diesel ICE. Any cost comparison between such vehicles and their ICE alternatives, no matter how precisely defined, would inevitably reflect cost differences beyond those associated with the propulsion technologies (for example, a custom body would likely create a cost difference between two otherwise similar vehicles). If such cost differences were reflected in the amount of the credit, the credit could incentivize adoption of vehicle features unrelated to the purposes of section 45W.

Proposed §1.45W-2(b) would therefore provide that incremental cost is determined by multiplying the manufacturer's cost of the components necessary for the powertrain of the qualified commercial clean vehicle by the retail price equivalent (RPE) of that vehicle, and then subtracting from that amount the product of the manufacturer's cost of the powertrain of the comparable vehicle and the RPE of that vehicle. Expressed formulaically, the rule is as follows:

Incremental cost = (cost of qualified commercial clean vehicle powertrain × RPE of qualified commercial clean vehicle) – (cost of comparable vehicle powertrain × RPE of comparable vehicle)

This approach attempts to eliminate, to the extent possible, any cost differences unrelated to the propulsion technologies of the vehicles (*see* also the discussion of "comparable vehicle" in section III.D of this Explanation of Provisions). Application of an RPE (*see* section III.C of this Explanation of Provisions) adjusts the manufacturer's cost of a powertrain to reflect the taxpayer's cost with respect to that powertrain. *See* section III of this Explanation of Provisions for a discussion of the ways in which a taxpayer might ascertain manufacturer's costs.

The Treasury Department and the IRS, in consultation with the DOE, are proposing an incremental cost equation based on the incremental cost of the powertrain because the powertrain is a large fraction of the incremental cost between a clean vehicle and a comparable vehicle and because there is robust data available to verify the difference in costs between vehicles. This incremental cost equation is consistent with current modeling done by the DOE regarding the costs of clean vehicles compared to ICE vehicles. As modeling techniques, data capabilities, and vehicle design evolve, the Treasury Department and the IRS will continue to study this approach.

To implement this approach in the context of the range of propulsion technologies and configurations contemplated by the statute (that is, BEVs, FCEVs, PHEVs, and PHFCEVs), the Treasury Department and the IRS, in consultation with the DOE, developed specific equations and associated definitions for BEVs, FCEVs, PHEVs, and PHFCEVs that would be provided in proposed §1.45W-2(c)(2) through (5) and (d). These equations would be powertrain-specific versions of the general equation described in proposed §1.45W-2(b) and would specify the cost of the components that, with respect to each type of powertrain, comprise the powertrain cost. For example, the cost of a BEV powertrain would, under the rule provided in §1.45W-2(c)(2), be equal to the sum of the costs of the electric traction drive system, the battery, and the electrical accessories, each a term defined in §1.45W-2(d)(1) through (3). These equations and rules provided in proposed §1.45W-2(c)(2) through (5), which address the cost of BEV, PHEV, FCEV, and PHFCEV powertrains and the cost of ICE powertrains of comparable vehicles, are consistent with the incremental cost provisions of section 45W(b)(2) and (3). The Treasury Department and the IRS welcome comments on these proposed incremental cost equations and rules. In particular, comments are requested on whether other vehicle equipment or aspects of a vehicle's design should be included in the incremental cost equations. Any recommended additions, however, must be supportable by robust, verifiable quantitative data.

C. *Retail Price Equivalent and Safe Harbor*

Because section 45W(b)(2) defines incremental cost in terms of purchase price rather than manufacturer's cost, an RPE is necessary to adjust a manufacturer's cost of a qualified commercial clean vehicle powertrain and an ICE powertrain to reflect a taxpayer's purchase price of such powertrains. RPEs vary from vehicle to vehicle, manufacturer to manufacturer, and across different segments of the market (that is, a reasonable RPE for a lightweight vehicle may differ from a reasonable RPE for medium or a heavy-duty vehicle). Consistent with this understanding, proposed §1.45W-2(b)(1) would allow taxpayers to calculate the incremental cost of a qualified commercial clean vehicle using the RPE applicable to such vehicle.

Proposed §1.45W-2(b)(3)(i) would provide that a qualified commercial clean vehicle's RPE is determined by calculating the ratio of the manufacturer's suggested retail price (MSRP) of such vehicle to the manufacturer's cost to manufacture such vehicle. Proposed §1.45W-2(b)(3)(i) through (iii) would further provide that the MSRP represents the sum of the retail price and the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment which is not included within the retail price as reported on the label that is affixed to the windshield or side window of the vehicle, as described in 15 U.S.C. 1232. Because RPE represents the ratio of the MSRP of the vehicle to the manufacturer's cost, it is understood, for purposes of the incremental cost determination required by section 45W and proposed §1.45W-2(b)(3), to represent that ratio with respect to every component of the vehicle, including those that comprise the vehicle's powertrain.

The Treasury Department and the IRS understand that providing the precise RPE for a vehicle may involve the effective disclosure of proprietary information. For this reason, the Treasury Department and the IRS, in consultation with the DOE, intend to provide RPE safe harbors for different segments of the vehicle market in the near term. Taxpayers are advised to check *www.irs.gov* for updates. *See* section VI.C of the Background section of this preamble.

D. *Comparable Vehicle*

Section 45W(b)(3) provides that, for purposes of determining incremental cost, the term "comparable vehicle" means, with respect to any qualified commercial clean vehicle, any vehicle that is powered solely by a gasoline or diesel ICE and that is comparable in size and use to such vehicle. To clarify the meaning of "size and use," proposed §1.45W-2(b)(4) would provide that a vehicle powered solely by a gasoline or diesel ICE is comparable in size and use to a qualified commercial clean vehicle if the vehicles have substantially similar GVWRs, number of doors, towing capacity, passenger capacity, cargo capacity, mounted equipment, drivetrain type, overall width, height and ground clearance, trim level, and so on. The Treasury Department and the IRS intend this list to be representative of the types of criteria under which the comparability of two vehicles would be assessed. This list also distinguishes such criteria from the mere performance characteristics of powertrains (which, if used as a sole basis for comparison, could result in a negative incremental cost and therefore a section 45W credit of $0). In other words, a solely gasoline- or diesel-powered ICE vehicle is not necessarily comparable to a qualified commercial clean vehicle simply because the performance characteristics of the powertrains are identical. Rather, a comparable vehicle must be in the same class and share other characteristics, as appropriate to the vehicle, such as number of doors, cargo capacity, drivetrain type, and trim level. *See* the example provided in §1.45W-2(b)(4)(iv).

Proposed §1.45W-2(b)(4)(ii) would provide that, in the specific circumstance where the qualified manufacturer of a qualified commercial clean vehicle manufactures a solely gasoline- or diesel-powered ICE version (excluding prototype or other non-production versions) of such qualified commercial clean vehicle, meaning a vehicle of the same model and model year, and with features substantially similar to those of the qualified commercial clean vehicle (such as those noted in the prior paragraph), such vehicle is the only comparable vehicle for purposes of the incremental cost determination under section 45W(b)(1)(B) and (2). In circumstances in which a qualified manufacturer of a qualified commercial clean vehicle does not manufacture a solely gasoline- or diesel-powered ICE version of such qualified commercial clean vehicle that is of the same model and model year, and with features substantially similar to those of the qualified commercial clean vehicle, the comparable vehicle for purposes of the incremental cost determination under section 45W(b)(1)(B) and (2) would be determined by the taxpayer (or manufacturer) based on the criteria identified in the prior paragraph.

E. *Negative Incremental Cost Treated as Zero.*

Proposed §1.45W-2(c)(8) would treat an incremental cost calculation that results in a negative figure (meaning the qualified manufacturer's cost of the qualified commercial clean vehicle's powertrain is less than the manufacturer's cost of the ICE powertrain of a comparable vehicle) as zero. Because zero would in every case be the lesser of the allowable basis percentage, as provided in section 45W(b)(1), no credit would be allowed with respect to such vehicle. This rule is consistent with the "lesser of" comparison required by section 45W(b)(1) and the general purpose of section 45W to incentivize the purchase of vehicles with certain clean propulsion technologies instead of ICE alternatives. The fact that a taxpayer's calculation of incremental cost under the general rule is zero for a particular qualified commercial clean vehicle would not preclude that taxpayer from using a safe harbor described in proposed §1.45W-2(c)(11) to determine incremental cost in order to claim the section 45W credit with respect to that vehicle.

F. *Incremental Cost if No Comparable Vehicle Exists.*

If the particular characteristics of a qualified commercial clean vehicle lead a taxpayer to conclude that no comparable vehicle exists and, as a result, no incremental cost is calculable for that vehicle, proposed §1.45W-2(c)(9) would provide that the incremental cost of such vehicle is zero. However, consistent with the proposed rule described in the preceding paragraph, the fact that the incremental cost under the general rule is zero for a particular qualified commercial clean vehicle does not preclude that taxpayer from using a safe harbor described in proposed §1.45W-2(c)(11) to determine incremental cost in order to claim the section 45W credit with respect to that vehicle. This proposed rule would apply only to situations in which no ICE vehicle alternative is produced by any manufacturer, for example, because the intended operating environment precludes the use of ICE vehicles. At this time, the Treasury Department and the IRS, in consultation with the DOE, have not identified any qualified commercial clean vehicles for which no comparable vehicle exists. For these reasons, proposed §1.45W-2(c)(9) is expected to be relevant only in rare instances. The Treasury Department and the IRS note that proposed §1.45W-2(c)(9) aligns with one purpose of section 45W—to incentivize the adoption of electric, hybrid, and fuel cell vehicles instead of ICE alternatives.

G. *Power Takeoffs*

Some vehicles eligible for the section 45W credit may use power takeoffs to transmit power to drive machinery or equipment other than the vehicle itself.

In the case of a BEV or hybrid vehicle, the use of power takeoffs might necessitate additional batteries; in the case of an FCEV, the use of power takeoffs might necessitate additional fuel cells or additional hydrogen storage. This situation, however, appears indistinguishable from a situation in which a BEV or hybrid vehicle might be equipped with additional batteries for other reasons (for example, extended range), or a situation in which an FCEV might be equipped with additional fuel cells for other reasons. Even if this were not the case, determining, at the time the taxpayer claims the credit, the relative extent to which the batteries in any given qualified commercial clean vehicle might be employed to power the vehicle and the ancillary machinery would present significant challenges. As a result, proposed §1.45W-2(c)(7) would provide that the incremental cost calculation for a qualified commercial clean vehicle with a power takeoff would be carried out in the same manner as the incremental cost calculation for a qualified commercial clean vehicle without a power takeoff. Specifically, an appropriate comparable vehicle would be selected (likely a vehicle with the same type of takeoff-powered machinery or equipment or machinery) and the manufacturer's cost of the ICE powertrain would be subtracted from the qualified manufacturer's cost of the BEV, FCEV, PHEV, or PHFCEV powertrain (inclusive of any additional batteries, fuel cells, or hydrogen storage).

H. *Auxiliary Power Units*

Some vehicles eligible for the section 45W credit may use auxiliary power units (APUs) to drive machinery or equipment that is mounted or installed on the vehicle; such APUs are not necessarily electric, hybrid, or fuel cell based. Proposed §1.45W-2(c)(6) would clarify that the incremental cost of qualified commercial clean vehicles outfitted with APUs is calculated exclusive of the installed APUs. For example, the comparable vehicle for a BEV outfitted with an APU to drive an aerial lift may be an ICE truck outfitted with an APU to drive an aerial lift (*see* discussion of comparable vehicles in section III.D of this Explanation of Provisions), but the manufacturer's cost of the APU is disregarded in the incremental cost equation for both the BEV and the ICE vehicles. Similarly, to calculate the incremental cost of a FCEV with an installed APU that powers the refrigeration unit, the appropriate comparable vehicle may be an ICE refrigerator truck, but the manufacturer's cost of the APU is disregarded for both vehicles.

I. *Reliance on Qualified Manufacturer's Incremental Cost Calculation and Safe Harbor*

Information regarding a qualified manufacturer's cost for the components of a qualified commercial clean vehicle powertrain may not be readily available to taxpayers. If a qualified manufacturer discloses this information to a taxpayer to facilitate the taxpayer's calculation of incremental cost, or if the qualified manufacturer discloses its incremental cost calculation for a qualified commercial clean vehicle it manufactures as provided in section 45W and these regulations, proposed §1.45W-2(c)(10) would permit taxpayers to rely on such disclosure. Taxpayers would, however, be required to retain the disclosure documentation in their records as long as the period of limitations for the taxable period in which the credit was claimed remains open. A qualified manufacturer that discloses its incremental cost calculation for a qualified commercial clean vehicle it manufactures must base such incremental cost calculation on actual cost data for both the qualified commercial clean vehicle and the comparable vehicle. Similarly, a taxpayer that calculates incremental cost by using cost data for the qualified commercial clean vehicle provided by the qualified manufacturer must use actual cost data for the comparable vehicle for such calculation. *See* the definition of "qualified manufacturer" provided in proposed §1.45W-1(b)(10) and discussed in section II.J of this Explanation of Provisions for the potential consequences of qualified manufacturer fraud, intentional disregard, and gross negligence with respect to the requirements of section 45W, the section 45W regulations, and any guidance issued under section 45W.

Alternatively, taxpayers may rely on the incremental cost safe harbors published in Notice 2023-9 and Notice 2024-5, and any succeeding guidance published in the Internal Revenue Bulletin, as applicable, for the taxable year in which a credit is claimed. These incremental cost safe harbors are based on the incremental cost analysis conducted by the DOE, as described in periodic reports published by the DOE.

J. *Powertrain Subcomponents*

The Treasury Department and the IRS, in consultation with the DOE, developed proposed §1.45W-2(d)(1) through (9) to provide definitions and clarify the typical subcomponents of a BEV, FCEV, PHEV, PHFCEV, and ICE powertrain for purposes of determining a qualified commercial clean vehicle's incremental cost under section 45W(b)(2) and (3) and §1.45W-2(c). Recognizing that different vehicles may implement different technologies, system configurations, and design decisions, the subcomponents listed in the definitions in §1.45W-2(d)(1) through (9) are not intended to prescribe required subcomponents or to be an exhaustive list of those that may be appropriate to consider for purposes of determining the incremental cost of a given vehicle. For example, the qualified manufacturer's cost of a BEV powertrain must reflect the qualified manufacturer's cost of the electric traction drive system, battery, transmission, and electrical accessories, but each of those components are comprised of subcomponents that may vary among vehicles.

K. *Incremental Cost of Qualified Commercial Clean Vehicle Previously Placed in Service by Another Person*

Proposed §1.45W-2(f)(1) would provide that the incremental cost of a qualified commercial clean vehicle previously placed in service by another person is calculated by multiplying the incremental cost of such vehicle when new by a residual value factor determined by the age of the vehicle. Proposed §1.45W-2(f)(2) would provide that the age of such a vehicle is determined by subtracting the model year of the vehicle from the calendar year in which the taxpayer places the vehicle in service as a qualified commercial clean vehicle. Because model years are, in some cases, released ahead of calendar years, and because it is possible for a single vehicle to be sold more than once within a twelve-month period, an age of zero (or a negative number in the case of a vehicle placed in service twice before the calendar year corresponding to its model year) does not result in an incremental cost of a used qualified commercial clean vehicle equal to that of the vehicle when new.

The residual value factor table in proposed §1.45W-2(f)(3) reflects an analysis conducted by the DOE with respect to the decline in the value of vehicles with ICE powertrains over time. The analysis for light-duty vehicles (Class 1-3 Passenger Car and Light Truck) utilized MSRP and "True Market Value" estimates from Edmunds to calculate residual values across specific makes and models, powertrains, vehicle age, and size classes for vehicles with model years from 2010 to 2021. For medium to heavy duty vehicles (Class 4-8), residual values were calculated from used vehicle listing data from Commercial Truck Trader and TruckPaper.com, validated against data from Price Digests for vehicles with model years from 2000 to 2020. As a mature propulsion technology, ICE vehicles exhibit a relatively stable pattern of declining value compared to their clean vehicle counterparts, meaning, in part, that ICE vehicles tend to retain more value over time than clean vehicles. Analysis of the declining value patterns of ICE vehicles compared to their clean counterparts, however, suggests that the residual values of clean vehicles are coming into alignment with those of ICE vehicles. As a result, the ICE vehicle depreciation pattern represents a good approximation of the likely depreciation pattern for clean vehicles as clean vehicle technologies continue to mature. The residual value factor is applied to the incremental cost of the qualified commercial clean vehicle when new, regardless of whether that incremental cost is determined by the taxpayer, supplied to the taxpayer by the qualified manufacturer, or provided by safe harbor guidance published in the Internal Revenue Bulletin for the tax year in which such vehicle is originally placed in service.

IV. *Qualified Commercial Clean Vehicle*

Proposed §1.45W-3 would provide rules related to a vehicle's qualification as a qualified commercial clean vehicle.

A. *Vehicles Acquired for Use or Lease and Not for Resale*

Section 45W(c)(1) provides, in part, that a qualified commercial clean vehicle must be acquired for use or lease by the taxpayer and not for resale. Proposed §1.45W-3(b)(1), would provide that, except in cases involving tax-exempt entities identified in section 45W(d)(2), a taxpayer acquires a vehicle for use or lease if the taxpayer acquires it for use or lease in a trade or business of the taxpayer. Thus, for example, if a taxpayer that is engaged in the business of leasing vehicles to customers acquires a commercial clean vehicle for the purpose of leasing the vehicle to customers as part of that business, this requirement would be satisfied.[2] For further consideration of vehicles purchased by a vehicle leasing business qualifying for a section 45W credit, see the recapture rules explained in V.E of this Explanation of Provisions.

Proposed §1.45W-3(b)(1) is consistent with the requirement under section 45W(c)(4) that the vehicle be of a character subject to the allowance for depreciation, which, under section 167(a), extends only to property used in a trade or business or held for the production of income. The proposed rule is also consistent with the trade or business purposes expressed in section 45W(c)(1), the statutory identification of the section 45W credit as being for "commercial" clean vehicles, and the allowance of the credit as a section 38 general business credit.

If the lease of a qualified commercial clean vehicle would not be respected as a lease for Federal income tax purposes, proposed §1.45W-3(b)(2) would treat the lessor as having acquired the vehicle for resale and disallow the credit to such lessor with respect to the purportedly leased vehicle. Whether the lessee may claim the section 45W credit with respect to the vehicle would depend on whether the requirements of section 45W and the section 45W regulations are met with respect to the vehicle. This rule, which recognizes that a sale may, in some cases, be mischaracterized as a lease for Federal income tax purposes, aligns with section 45W(c)(1) to limit "use and lease" to the scenarios in which the section 45W credit is allowable to a taxpayer.

B. *On-Road Vehicles*

Section 45W(c)(2)(A) provides that a qualified commercial clean vehicle may be a vehicle "that meets the requirements of subparagraph (D) of section 30D(d)(1) and is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails)." Regarding the former requirement, section 30D(d)(1)(D) states that the vehicle must be "treated as a motor vehicle for purposes of title II of the [CAA]," a determination that implicitly incorporates the EPA's application of the relevant CAA provisions, as well as any applicable regulations or guidance thereunder. The latter requirement, "manufactured primarily for use on public streets, roads, and highways," occurs with sufficient frequency in the Internal Revenue Code, the U.S. Code more broadly, and various regulations and guidance issued thereunder to warrant deference to existing understandings of the phrase across Federal statutes.

Section 45W(c)(2)(B) provides, in the alternative, that a qualified commercial clean vehicle may be a vehicle "that is mobile machinery, as defined in section 4053(8) (including vehicles that are not designed to perform a function of transporting a load over the public highways)." The definition of mobile machinery provided in section 4053(8) presents significant challenges for taxpayers and the IRS in the context of section 45W. For a discussion of the complexities of section 4053(8) in the context of section 45W generally, and the implications of those complexities for the credit-eligibility of off-road vehicles in particular, see section VII of this Explanation of Provisions.

Section 4053(8) is an exemption to certain Federal excise taxes imposed on highway vehicles (*see* sections 4051(a), 4071(a), and 4481(a)), a concept defined in §48.4061(a)-1(d) of the Manufacturers and Retailers Excise Tax Regulations as "any self-propelled vehicle, or any trailer

[2] *Whether an activity is treated as a trade or business depends on the facts and circumstances of the activity. Courts have considered factors such as the profit motive of the taxpayer and the regularity and continuity of the activity. Commissioner v. Groetzinger, 480 U.S. 23 (1987).*

or semitrailer, designed to perform a function of transporting a load over public highways, whether or not also designed to perform other functions." In other words, mobile machinery as defined in 4053(8), in the context of existing Federal excise taxes, is meaningful only as a subset of highway vehicles. As a result, most, if not all, vehicles traditionally considered "mobile machinery" (including those exempt from the aforementioned Federal excise taxes) would be eligible for the section 45W credit under section 45W(c)(2)(A).

A vehicle may satisfy the requirements of both section 45W(c)(2)(A) and (B). For example, a digger derrick truck exempt from the tax imposed by section 4051 by reason of section 4053(8) would qualify for the credit under section 45W(c)(2)(B). Furthermore, because it is a "highway vehicle" under §48.4061(a)-1(d), the digger derrick would almost certainly also qualify under section 45W(c)(2)(A), meaning that it would be treated as a motor vehicle for purposes of title II of the CAA and be considered manufactured primarily for use on the public streets, roads, and highways. In such instances, the taxpayer may choose the prong of section 45W(c)(2) under which the vehicle will qualify, which may be relevant for recordkeeping and other purposes.

C. *Electric Motor and Battery Requirements*

Section 45W(c)(3)(A) provides requirements with respect to the electric motor and battery of certain qualified commercial clean vehicles. In part, section 45W(c)(3)(A) requires that a qualified commercial clean vehicle be propelled to a significant extent by an electric motor that draws electricity from a battery that meets certain specifications depending on the GVWR of the vehicle. Proposed §1.45W-3(d)(1) would repeat the substance of section 45W(c)(3)(A). Proposed §1.45W-3(d)(2) would clarify that a battery is capable of being recharged from an external source of electricity if such source of electricity is not an integral part of the vehicle. Proposed §1.45W-3(d)(2) would also provide the example of a regenerative braking system as an integral part of the vehicle and, thus, not an external source of electricity. This rule would render certain hybrid vehicles ineligible for the section 45W credit, a result consistent with the requirement that the vehicle be propelled to a significant extent by an electric motor which draws electricity from a battery and the requirement for an external source of electricity.

V. *Special Rules*

Section 45W(d) provides three special rules. First, section 45W(d)(1) provides, by cross reference to section 30D(f), that rules similar to the rules under section 30D(f)(1) through (9) apply for purposes of the section 45W credit. Second, section 45W(d)(2) provides that a qualified commercial clean vehicle placed in service by a tax-exempt entity described in section 168(h)(2)(A)(i), (ii), or (iv) is not required to be of a character subject to the allowance for depreciation if it is not subject to a lease. Third, section 45W(d)(3) provides that any vehicle for which a credit was allowed under section 30D is not allowed a section 45W credit.

Proposed §1.45W-4 would provide special rules relating to the credit eligibility of a vehicle resulting from certain transactions and uses, the interaction of the section 45W credit with other credits, and recapture of the section 45W credit. These rules are described in Part V.A. through E. of this Explanation of Provisions.

A. *No Double Benefit Rule*

Section 30D(f)(8), as incorporated by section 45W(d)(1), provides that a section 45W credit is allowed only once with respect to a vehicle, as determined based upon the vehicle identification number of such vehicle. Section 45W(d)(3) provides that no credit is allowed under section 45W with respect to any vehicle for which a credit was allowed under section 30D. To consolidate these two rules, proposed §1.45W-4(a)(1) would provide that no credit will be allowed under section 45W(a) with respect to any vehicle for which a section 45W credit or a section 30D credit was previously allowed for such vehicle.

Section 45W(d)(1), which incorporates section 30D(f)(2), provides a general no double benefit rule with respect to any deduction or other credit allowable under chapter 1 for a vehicle for which a credit was allowed under section 45W. Proposed §1.45W-4(a)(2) would repeat the substance of section 30D(f)(2). This proposed rule is consistent with the no double benefit rule provided in §1.25E-2(b)(1).

B. *Vehicles Previously Placed in Service*

Section 45W does not explicitly prohibit vehicles previously placed in service from being eligible for a section 45W credit.[3] Vehicles previously placed in service present challenges with regard to the statutory no double benefit rules in that taxpayers seeking to claim the section 45W credit for such vehicles may not have access to information about whether a deduction or credit was previously allowed, or to what extent, and the IRS would be prohibited from providing such information because disclosure of information related to another taxpayer's claim for a tax credit for a particular vehicle is confidential return information and is protected from disclosure under section 6103 of the Code. Nonetheless, the normal rules requiring taxpayers to establish their entitlement to a credit or other tax benefit apply. Accordingly, a taxpayer claiming a 45W credit for a vehicle previously placed in service must maintain evidence in their books and records sufficient to establish that no credit under section 30D or section 45W has been allowed previously with respect to the vehicle, and in the case of any prior credit allowed under section 25E, the amount of such prior credit, and must provide such information to the IRS upon request. *See* §1.6001-1; *Roberts v.*

[3] *In the Description of Energy Tax Changes Made by Public Law 117-169, the Joint Committee on Taxation describes section 45W as "creat[ing] a credit for qualified commercial clean vehicles originally placed in service by a taxpayer," and in footnote 111 adds: "A technical correction may be necessary to reflect this intent." JCT, Description of Energy Tax Changes Made by Public Law 117-169, p. 58 (Apr. 19, 2023).*

Comm'r, 62 T.C. 834, 836 (T.C. 1974); *Isaacs v. Comm'r*, 109 T.C.M. (CCH) 1624 (T.C. 2015). Such evidence may include signed attestations from all previous owners that a credit was not claimed with respect to such vehicle.

The proposed regulations would also amend §1.25E-2 by adding a new paragraph (b)(3), which would clarify that a vehicle for which a credit was allowed under section 45W may qualify for a section 25E credit in a subsequent year with no reduction in the amount of allowable section 25E credit. This rule would be consistent with §1.25E-2(b)(2), which provides a similar rule regarding the interaction between the section 25E credit and the section 30D credit.

C. *Credit Ineligibility Resulting From Certain Transactions and Uses*

Proposed §1.45W-4(b)(2) would provide that if a sale of a qualified commercial clean vehicle is cancelled before the taxpayer places the vehicle in service, then (i) the taxpayer may not claim the section 45W credit with respect to such vehicle; (ii) the vehicle may still be eligible for the section 45W credit; and (iii) a subsequent buyer will not be required to apply the residual value rules of §1.45W-2(f)(3) to determine the incremental cost of the vehicle.

Proposed §1.45W-4(b)(3) would provide that if a taxpayer returns a qualified commercial clean vehicle to the seller within 30 days of placing such vehicle in service, then (i) the taxpayer may not claim the section 45W credit with respect to such vehicle; (ii) the vehicle may still be eligible for the section 45W credit; and (iii) a subsequent buyer must apply the residual value rules of §1.45W-2(f)(3) to determine the incremental cost of the vehicle.

In the case of a resale of a qualified commercial clean vehicle, proposed §1.45W-4(b)(4) would provide that if a taxpayer resells such vehicle within 30 days of placing the vehicle in service, then (i) the taxpayer is treated as having acquired such vehicle with the intent to resell; (ii) the taxpayer may not claim the section 45W credit with respect to the vehicle; (iii) the vehicle may still be eligible for the section 45W credit; and (iv) a subsequent buyer must apply the residual value rules of §1.45W-2(f)(3) to determine the incremental cost of the vehicle.

D. *Business Use of Qualified Commercial Clean Vehicle Required*

Section 45W(c)(4) requires a qualified commercial clean vehicle to be of a character subject to the allowance for depreciation. Nothing in section 45W indicates that a partial section 45W credit is allowable with respect to a vehicle that is used only partially for business use and is therefore only partially depreciable. Section 30D, a related clean vehicle credit that was amended by the IRA, explicitly includes an allocation rule to treat such credit as either a business or personal credit based upon business or personal use. *See* section 30D(c)(1). Section 30C, also enacted as part of the IRA, has a similar allocation rule. *See* section 30C(d)(1). The absence of such an allocation rule in section 45W, which was enacted as part of the same legislation, suggests that Congress did not intend for the section 45W credit to reflect less than 100 percent business use.

Proposed §1.45W-4(b)(5) would provide that if a taxpayer's trade or business use of a qualified commercial clean vehicle is less than 100 percent of the taxpayer's total use of that vehicle (with the exception of incidental personal use, such as a stop for lunch on the way between two job sites) for the taxable year such vehicle is placed in service, including because the vehicle is sold or otherwise disposed of, then the vehicle is ineligible for the section 45W credit. This rule would also apply to a qualified commercial clean vehicle placed in service by a tax-exempt entity, except that 100 percent trade or business use means the tax-exempt entity's use that is related to an exempt purpose or an unrelated trade or business purpose.

E. *Recapture*

Section 30D(f)(5), which is incorporated in section 45W(d)(1), authorizes the Secretary to provide for recapturing the benefit of any section 45W credit allowable with respect to any property which ceases to be property eligible for such credit. Proposed §1.45W-4(c)(2)(i) would provide that if a taxpayer ceases to use the vehicle for 100 percent trade or business use during the 18-month period beginning on the date the vehicle is placed in service, including because the vehicle is sold or otherwise disposed of, then (i) the taxpayer may not claim the section 45W credit with respect to the vehicle, and if the taxpayer has already claimed the credit, the credit is recaptured; (ii) the vehicle may still be eligible for the section 45W credit; and (iii) a subsequent buyer must apply the residual value rules of §1.45W-2(f)(3) to determine the incremental cost of the vehicle. In determining the 18-month period as the appropriate length of time for which the vehicle must be used in a trade or business for purposes of recapturing the benefit of any section 45W credit allowable, the Treasury Department and the IRS took into consideration commercial vehicle leasing practices and sought to accommodate such practices.

Proposed §1.45W-4(c)(2)(ii) would provide that, for a vehicle placed in service by a tax-exempt entity, the 100 percent trade or business use rule (excepting incidental personal use) in §1.45W-4(b)(5) applies, which means use for an exempt purpose or unrelated trade or business purpose.

F. *Elective Payment Election*

1. Section 6417

Section 6417, enacted by the IRA, provides a benefit to applicable entities (defined in section 6417(d)(1)(A) and §1.6417-1(c)), which include certain tax-exempt and government entities that are described in section 50(b)(3) or (4). Section 6417 allows an applicable entity to make an election to be treated as making a payment of tax in the amount of certain applicable credits, including the section 45W credit, which results in a refund equal to the amount of the applicable credits if such entity has no other tax liability. Section 6417(d)(2)(A) requires an entity making an election to determine an applicable credit without regard to section 50(b)(3) or (4)(A)(i), effectively turning those sections off for purposes of calculating an applicable credit.

These proposed regulations would make a clarification to proposed §1.6417-

6(b)(1)[4] to align with these proposed section 45W regulations. Proposed §1.6417-6(b)(1) in these proposed regulations would add a reference to section 45W(d)(1) (which incorporates the rules of section 30D(f)(1) related to basis reduction and section 30D(f)(5) and the related proposed §1.45W-4(c) pertaining to recapture) to the list of examples of provisions of the Code that apply. Accordingly, proposed §1.6417-6(b)(1) would state that if "another provision of the Code contains a rule that operates without reference to section 50 to reduce the basis of property with respect to which an applicable credit is determined and/or recapture any amount of an applicable credit (such as sections 30C, 45Q(f)(4), 45W(d)(1), and 48(a)(10)), then the rules of that provision of the Code and the regulations issued under that provision of the Code apply, except that any applicable credit continues to be determined without regard to section 50(b)(3) and (4)(A)(i) and by treating any property with respect to which such applicable credit is determined as used in a trade or business of the applicable entity, consistent with section 6417(d)(2) and §1.6417-2(c)."

2. Leases

Section 45W(d)(2) provides that the section 45W(c)(4) rule regarding depreciation does not apply to any vehicle that is not subject to a lease and that is placed in service by a tax-exempt entity described in section 168(h)(2)(A)(i), (ii), or (iv).

Proposed §1.45W-4(d)(3) would provide that for purposes of section 45W(d)(2), a vehicle is "subject to a lease" if it is leased within 30 days of being placed in service by a tax-exempt entity. For example, a school district purchases and places in service a fleet of electric school buses that otherwise qualify for the section 45W credit. The school district then leases the fleet to a school transportation contractor 31 days after the school district placed the fleet in service. The fleet of electric school buses is not subject to a lease within the meaning of section 45W(d)(2) and proposed §1.45W-4(d)(3) because the buses were leased more than 30 days after being placed in service by the school district. As a result, the fleet of electric school buses may be eligible for the section 45W credit.

This definition of "subject to a lease" aligns with the statutory language that tax-exempt entities may be eligible for the section 45W credit if the qualified commercial clean vehicle at issue meets the relevant criteria near the time of being placed in service, which is when vehicle eligibility is measured.

VI. *Reporting Requirements*

Proposed §1.45W-5 would provide reporting requirements for purposes of the section 45W credit.

A. *Requirement To File Return*

Section 45W(e) provides that no section 45W credit can be determined with respect to any vehicle unless the taxpayer includes the vehicle identification number of such vehicle on the return of tax for the taxable year. Proposed §1.45W-5(a) would provide that no section 45W credit is allowed unless the taxpayer claiming such credit files a Federal income tax return or information return, as appropriate, for the taxable year in which the qualified commercial clean vehicle is placed in service. The taxpayer must attach to such return a completed Form 8936, *Clean Vehicle Credits*, or successor form, that includes all information required by the form and instructions. The taxpayer must also attach a completed Schedule A (Form 8936), *Clean Vehicle Credit Amount*, or successor form or schedule, that includes all information required by the schedule and instructions, such as the vehicle identification number of the qualified commercial clean vehicle.

B. *Credit May Generally Be Claimed on Only One Tax Return*

Proposed §1.45W-5(b)(1) would provide a general rule, subject to the exceptions discussed later in this Explanation of Provisions, that the amount of the section 45W credit attributable to a qualified commercial clean vehicle may be claimed on only one Federal income tax return, including on a joint return in which one of the spouses or the spouse's wholly-owned business entity is listed on the title as the sole owner of the vehicle. In the event a qualified commercial clean vehicle is placed in service by multiple taxpayers that do not file a joint tax return (for example, in the case of married individuals filing separate returns), no allocation or proration of the section 45W credit will be available, and only one of the taxpayers placing the qualified commercial clean vehicle in service will be eligible for the entirety of the allowable section 45W credit.

Proposed §1.45W-5(b)(2) would provide a rule for grantor trusts. Specifically, proposed §1.45W-5(b)(2) would provide that for qualified commercial clean vehicles placed in service by a trust, to the extent the grantor or another person is treated as owning all or part of a trust under sections 671 through 679 of the Code, the section 45W credit will be allocated to such grantor or other person in accordance with §1.671-3(a)(1).

Proposed §1.45W-5(b)(3) would provide an exception for qualified commercial clean vehicles placed in service by certain passthrough entities, namely a partnership or S corporation. In such cases, the section 45W credit will be allocated among the partners of the partnership under §1.704-1(b)(4)(ii) or among the shareholders of the S corporation under sections 1366(a) and 1377(a) of the Code and claimed on the tax returns of the ultimate partners or of the S corporation shareholders.

C. *Taxpayer Reliance on Manufacturer Certifications and Periodic Written Reports to IRS*

Proposed §1.45W-5(c) would allow taxpayers to rely on certain certifications and information provided by a manufacturer. Under this proposed rule, a taxpayer that acquires a qualified commercial clean vehicle and places it in service would be able to rely on the information and certi-

[4] *Revisions to §1.6417-6(b)(1) were previously proposed in the notice of proposed rulemaking (REG-118269-23), published in the Federal Register (89 FR 76759, September 19, 2024), which sets forth rules regarding the Section 30C Alternative Fuel Vehicle Refueling Property Credit. These proposed regulations include identical proposed language to §1.6417-6(b)(1) other than the addition of a reference to section 45W(d)(1).*

fications contained in the qualified manufacturer's written reports to the IRS. The procedures for such periodic written reports are established in guidance published in the Internal Revenue Bulletin. To the extent a taxpayer relies on certifications or attestations from the qualified manufacturer, the qualified commercial clean vehicle the taxpayer acquires will be deemed to meet the requirements of sections 30D(d)(1)(C) and 45W(c)(1).

VII. *Off-Road Mobile Machinery*

Section 45W(c)(2) provides, in part, that the term "qualified commercial clean vehicle" includes "mobile machinery, as defined in section 4053(8) (including vehicles that are not designed to perform a function of transporting a load over the public highways)." Section 4053(8), in turn, defines mobile machinery as any vehicle which consists of a chassis (A) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways, (B) which has been specially designed to serve only as a mobile carriage and mount (and a power source, if applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and (C) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

Section 4053(8) is an exemption from the tax imposed by section 4051(a) and has been employed as an exemption from the taxes imposed by sections 4071(a) and 4481(a), all of which contribute to the Highway Trust Fund. *See* section 9503(b) of the Code. In that context, the section 4053(8) definition is relevant only to highway vehicles, defined in §48.4061(a)-1(d)[5] as "any self-propelled vehicle, or any trailer or semitrailer, designed to perform a function of transporting a load over public highways, whether or not also designed to perform other functions." The parenthetical in section 45W(c)(2)(B)—"including vehicles that are not designed to perform a function of transporting a load over the public highways"—contradicts that definition and, therefore, arguably expands the traditional category of "mobile machinery" to include off-road vehicles. Such an expanded category might, for purposes of section 45W, include certain agricultural vehicles, construction vehicles, forestry vehicles, utility vehicles designed for airport operations, and other types of off-road vehicles.

However, section 4053(8) and several provisions of section 45W present significant challenges with respect to the administrability of a section 45W credit that encompasses such off-road vehicles. Recognizing that, whenever possible, every word and every provision of a statute should be given effect, *Washington Market Co. v. Hoffman*, 101 U.S. 112, 115-6 (1879), the Treasury Department and the IRS continue to study, and request any relevant comments on, the considerations described in section VII.A through G of this Explanation of Provisions.

A. *Section 4053(8) as Applied to Off-Road Vehicles*

The definition of "mobile machinery" provided in section 4053(8) is vehicle specific and fact intensive. Vehicles with chassis that include a pintle hook or that have been modified to accommodate a water tank do not qualify as mobile machinery because such vehicles are not specially designed to serve only (solely) as the mobile carriage or mount for the mounted equipment or machinery. *Florida Power & Light Co. v. U.S.*, 375 F.3d 1119 (Fed. Cir. 2004). For the same reason, peanut drying trailers and boat trailers are not mobile machinery. *Rockwater, Inc. v. U.S.*, No. 4:21-CV-00125-CDL, 2023 WL 2473452 (M.D. Ga. Jan. 3, 2023), aff'd in part, reversed in part and remanded in part, 2024 WL 4799277, (11th Cir. Nov. 16, 2024); *Hostar Marine Transp. Systems, Inc. v. U.S.*, No. 06-10834-DPW, 2008 WL 4615464 (D. Mass. Oct. 16, 2008), aff'd, 592 F.3d 202 (1st Cir. 2010). In addition, highway tractors fitted with winches, compressors, or blowers are not mobile machinery because such equipment, used to load or unload cargo, is not "unrelated to transportation on or off the public highways." *Schlumberger Technology Corp. and Subsidiaries v. U.S.*, 55 Fed. Cl. 203 (2003).

When applied to off-road vehicles, a category to which section 4053(8) was not traditionally relevant, the text of section 4053(8) presents significant challenges for taxpayers and the IRS. Particular vehicles would, on a vehicle-by-vehicle basis, be rendered ineligible for the section 45W credit for reasons irrelevant to the purpose of the credit, such as the presence of a pintle hook or the fact that the vehicle can carry a load other than its mounted machinery or equipment. Consideration of these types of vehicle features, although critical to ensuring the correct taxation of highway vehicles for purposes of the Highway Trust Fund, would lead to arbitrary results in the context of a credit intended to incentivize the use of clean vehicle propulsion technologies—for example, the eligibility of one vehicle for the section 45W credit and the ineligibility of an identical vehicle, except for the addition of a pintle hook.

To mitigate these challenges, the Treasury Department and the IRS are considering an approach that would deem off-road vehicles (that is, "vehicles not designed to perform a function of carrying a load over the public highways") to satisfy the requirements of section 4053(8)(B) and (C). Such an approach would acknowledge that section 4053(8)(B) and (C) assess a vehicle's potential to cause wear and tear on the public highways. While this is critical in determining whether a vehicle qualifies for an exemption from taxes that fund the Highway Trust Fund, it has no relevance to off-road vehicles. Therefore, this approach would apply the core definition of "mobile machinery" provided in section 4053(8)(A) and, con-

[5] *The section 4061 manufacturers excise tax on certain highway vehicles was repealed and replaced with the section 4051 retail excise tax on similar vehicles. See Highway Revenue Act of 1982 (Pub. L. 97-424), effective April 1, 1983. The §48.4061(a)-1(d) definition of "highway vehicle" is incorporated into the current section 4051 regime by §145.4051-1(a)(2).*

sistent with the cross reference provided in section 45W(c)(2)(B), do so in precisely the same way as section 4053(8)(A) is applied in the context of Federal excise taxes.

While this approach would render vehicle-by-vehicle analysis unnecessary in many cases and might eliminate certain types of inconsistent results with respect to vehicle eligibility for the section 45W credit, categorical bars on eligibility for certain types of vehicles would remain. For example, off-road dump trucks would be ineligible for the credit because their permanently mounted machinery or equipment, that is, the hydraulics that lift the dump body, is not "unrelated to transportation" (the dump structure itself is a vehicle body rather than machinery or equipment; *see* Notice 2017-5, 2017-6 IRB 779). Agricultural tractors would be ineligible to the extent they lack permanently mounted machinery or equipment. Forklifts could be ineligible because their permanently mounted equipment, which can be used to load and unload goods and transport goods from one location to another, is related to transportation. And mowers would be ineligible because their permanently mounted machinery or equipment does not perform an operation similar to those enumerated in section 4053(8)(A). The Treasury Department and the IRS request comments on other approaches that might be adopted in applying section 4053(8) to off-road vehicles in a manner consistent with both the purpose and text of section 45W and the statutory requirements of section 4053(8), including established case law interpreting section 4053(8).

B. *Off-Road Vehicles Lack NHTSA-Required VINs*

1. In General

Section 45W(e) provides that no credit can be determined under section 45W(a) with respect to any vehicle unless the taxpayer includes the vehicle identification number of such vehicle on the return of tax for the taxable year. *See also* section 45W(d)(1), which requires, among other things, the application of rules similar to those provided in section 30D(f)(8) ("In the case of any vehicle, the credit described in [section 30D](a) shall only be allowed once with respect to such vehicle, as determined based upon the vehicle identification number of such vehicle [….]"); section 30D(f)(9) ("No credit shall be allowed under this section with respect to any vehicle unless the taxpayer includes the vehicle identification number of such vehicle on the return of tax for the taxable year."); and, the definition of "qualified manufacturer" provided by section 30D(d)(3), incorporated by section 45W(c)(1) by cross-reference to "the requirements of section 30D(1)(C)," which, by definition, requires a qualified manufacturer to enter into a written agreement with the Secretary under which such manufacturer agrees to make periodic written reports to the Secretary providing, among other things, vehicle identification numbers "related to each vehicle manufactured by such manufacturer as the Secretary may require."

Neither section 45W nor any other section of the Code provides a definition of "vehicle identification number" or "VIN." *See* sections 25E, 30D, 45W, 170(f)(12), and 6213(g)(2)(T) through (V). A "vehicle identification number," as a term of art and in common speech, refers specifically to the series of Arabic numbers and Roman letters (defined in 49 CFR 565.13(a)) that the manufacturer assigns to every motor vehicle in the United States, including imported vehicles, subject to the authority of the National Highway Traffic Safety Administration (NHTSA), an operating administration that is part of the DOT. *See* 49 CFR 565.10 through 565.14. For this purpose, motor vehicles are vehicles "driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways." 49 U.S.C. 30101–30102. As a result, manufacturers of off-road vehicles are not required by NHTSA to assign VINs to such vehicles.

To give effect to the parenthetical in section 45W(c)(2)(B) that includes off-road vehicles, therefore, requires a more general understanding of the term "vehicle identification number" as used in section 45W. Such an understanding might encompass other numbering systems, provided that those systems would, if integrated with the NHTSA-required VIN system, allow qualified manufacturers and the IRS to uniquely identify each credit-eligible vehicle for purposes of the qualified manufacturer requirements of section 30D(d)(3) and the one-credit-per-vehicle provision of section 30D(f)(8)—for example, product identification numbers (PINs) administered by the Society of Automotive Engineers (SAE) or the Association of Equipment Manufacturers (AEM). Compliance with section 30D(d)(3) and (f)(8)—and, thus, the eligibility of any off-road vehicle for the section 45W credit—would depend on the integration of the various "vehicle identification number" systems in question, which would determine eligibility based on either a NHTSA-required VIN or a unique identifier system for vehicles that do not have a NHTSA-required VIN. The IRS must be able to identify each section 45W credit-eligible vehicle based solely on the "vehicle identification number" assigned to the vehicle, and the "vehicle identification number" must be unique across all numbering systems accepted by the IRS for the purpose of administering section 45W. To integrate the unique identifier system with the NHTSA-required VIN, the unique identifier system should be a 17-digit alpha-numeric identifier.

2. Potential Integrated System for Vehicle Identification Numbers

The Treasury Department and the IRS are studying various potential options for an integrated system of vehicle identification numbers for purposes of section 45W. Until guidance is published detailing any such future system, vehicles without a NHTSA-required VIN are unable to satisfy the statutory VIN requirement in section 45W(e) and are therefore ineligible for the section 45W credit.

The various potential options under consideration by the Treasury Department and the IRS include the following structural elements:

i. If a qualified commercial clean vehicle has a NHTSA-required VIN, the qualified manufacturer of such vehicle would need to report the NHTSA-required VIN to the IRS for such vehicle to be eligible for the section 45W credit. The taxpayer claiming a section 45W credit for the qualified commercial clean vehicle in such a case would need to report the NHTSA-required VIN on their tax return for the taxable year in which the section 45W credit is claimed for such claim to be valid.

ii. If a qualified manufacturer assigns a PIN to a qualified commercial clean vehicle and that PIN is also a unique 17-digit identifier consisting of a three-digit World Manufacturer Code (WMC) and 14 alpha-numeric characters that follow, the qualified manufacturer would need to provide the PIN to the taxpayer no later than 15 days from the time the identity of the taxpayer purchasing the vehicle is known, or 15 days from when the taxpayer requests a PIN from the qualified manufacturer, whichever is later. The qualified manufacturer could choose to satisfy this requirement by labeling the PIN on the vehicle, including adding the PIN to the item of specified property by affixing a label to the vehicle or by etching the PIN on the vehicle. Alternatively, a qualified manufacturer could choose to affix a label containing the PIN to the vehicle's documentation or purchase records. The qualified manufacturer would need to report the PIN and the identity of the taxpayer purchasing the vehicle to the IRS no later than 15 days from the time that the identity of the taxpayer purchasing the vehicle is known for the vehicle to be considered eligible. A taxpayer claiming a section 45W credit in such a case would need to report the PIN on their tax return or information return for the taxable year in which the section 45W credit is claimed for such claim to be valid.

iii. If a qualified commercial clean vehicle does not have a VIN or a PIN issued by a qualified manufacturer, the qualified manufacturer could apply to receive a valid three-digit unique qualified manufacturer identifier (QMID). Upon the issuance of a QMID, the qualified manufacturer would assign unique 17-digit PINs to the qualified commercial clean vehicles it manufactures. Each 17-digit PIN would begin with the QMID followed by 14 alpha-numeric digits that the qualified manufacturer assigns to each vehicle. The qualified manufacturer would need to provide the PIN to the taxpayer no later than 15 days from the time the identity of the taxpayer purchasing the vehicle is known, or 15 days from when the taxpayer requests a PIN from the qualified manufacturer, whichever is later. The qualified manufacturer could choose to satisfy this requirement by labeling the PIN on the vehicles, including adding the PIN to the item of specified property by affixing a label to the vehicle or by etching the PIN on the vehicle. Alternatively, a qualified manufacturer could choose to affix a label containing the PIN to the vehicle's documentation or purchase records. The qualified manufacturer would need to report the PIN and the identity of the taxpayer purchasing the vehicle to the IRS no later than 15 days from the time that the identity of the taxpayer purchasing the vehicle is known for the vehicle to be considered eligible. A taxpayer claiming a section 45W credit in such a case would need to report the PIN on the taxpayer's tax return or information return for the taxable year in which the section 45W credit is claimed for such claim to be valid.

iv. A qualified manufacturer would not be able to set prerequisites for a taxpayer receiving a PIN that are not required to verify the purchase of the qualified commercial clean vehicle, such as requiring taxpayers to sign up for promotional emails, texts, or other communications from the qualified manufacturer, its related entities, or partners. However, qualified manufacturers could choose to provide PINs to taxpayers through the mail, online, email, or other means of electronic delivery. Qualified manufacturers could choose to provide PINs in conjunction with a formal registration for a warranty, provided that the taxpayer could easily obtain the PIN without completing the formal warranty registration.

v. For qualified commercial clean vehicles previously placed in service by another person or entity, a subsequent taxpayer could be required to contact the qualified manufacturer to obtain a PIN.

vi. Qualified manufacturers that manufacture vehicles without a NHTSA-required VIN would need to enter into new qualified manufacturer agreements.

3. Vehicles Without a NHTSA-Required VIN Are Not Currently Eligible for the Credit

Eligibility of any off-road vehicle for the section 45W credit is dependent on the issuance of final regulations establishing an integrated vehicle identification number system that accommodates off-road mobile machinery or other vehicles without a NHTSA-required VIN that is sufficient to satisfy the statutory vehicle identification number requirement. This means that off-road mobile machinery without a NHTSA-required VIN is not eligible for the section 45W credit.

4. Request for Comments

The Treasury Department and the IRS request comments on the potential integrated vehicle identification number system described in section VII.B2 of this Explanation of Provisions. Specifically, the Treasury Department and the IRS request comments on the following questions:

i. What challenges, if any, would manufacturers have in implementing and complying with the integrated vehicle identification number system described in section VII.B2 of this Explanation of Provisions? What would be the costs and timeline for manufacturers to implement and comply with the proposed system? Are there cases in which manufacturers or other stakeholders, such as retailers, would decline to employ the system because compliance would be overly burdensome? Commenters are encouraged to specifically identify types and amounts of costs that manufacturers would incur in implementing and complying with the proposed system, as well as specific aspects of the proposal that would require set amounts of time to develop and implement.

ii. Should the Treasury Department and the IRS leverage existing systems, e.g. SAE or AEM, that assign WMCs that could be used as the first three digits of the PIN? Are there perceived problems with these systems? Do these systems ensure there is no overlap with any VINs assigned under NHTSA's rules? Are there other PIN tracking systems in place that the IRS could leverage?

iii. If the Treasury Department and the IRS were to implement the integrated vehicle identification number system described in section VII.B2 of this Explanation of Provisions, what changes or exceptions, if any, should be made?

iv. What modifications, if any, could be made to the integrated vehicle identification number system described in section

VII.2 of this Explanation of Provisions to accommodate limitations while still adhering to the unique identifier requirement?

v. How would qualified manufacturers furnish PINs to taxpayers (e.g., with the vehicle, through an online website, etc.) in a manner that ensures the taxpayer has easy access to the PIN when filing their tax return or information return? How would off-road vehicle manufacturers obtain and provide information on the identity of those purchasing qualified commercial clean vehicles to assist the IRS in ensuring compliance? What labelling requirements should apply in assigning PINs?

C. *Manufacturers That Exclusively Manufacture Off-Road Clean Vehicles Are Not Qualified Manufacturers*

Section 45W(c)(1) provides, in part, that a qualified commercial clean vehicle must meet the requirements of section 30D(d)(1)(C). Section 30D(d)(1)(C), in turn, provides that a vehicle must be made by a qualified manufacturer. Section 30D(d)(3), incorporated by section 45W(c)(1)'s cross reference to section 30D(d)(1)(C), defines "qualified manufacturer," in part, as any manufacturer within the meaning of the regulations prescribed by the Administrator of the EPA for purposes of the administration of title II of the CAA (42 U.S.C. 7521–7590).

Section 216(1) of the CAA, generally referenced in regulations under title II of the CAA (*see*, for example, 40 CFR 86.082–2(b), 85.1902(f), and 1037.801), defines "manufacturer", in relevant part, as "any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale…." Section 216(2) of the CAA defines "motor vehicle" as any self-propelled vehicle designed for transporting persons or property on a street or highway. Section 216(11) of the CAA defines "nonroad vehicle" as a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition. Section 216(10) of the CAA in turn defines "nonroad engine" as an ICE (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition.

Under these definitions, "manufacturer" includes a maker of an off-road vehicle with a "conventional" ICE, a maker of an off-road vehicle with a hybrid engine (to the extent that such vehicle includes an ICE), or a maker of motor vehicles. It does not include a maker of only off-road vehicles with an exclusively electric motor or fuel cell system. Consequently, makers of such off-road vehicles that do not also make any motor vehicles or off-road vehicles with ICEs or hybrid engines cannot be "qualified manufacturers" for purposes of section 45W, and their vehicles are, consequently, ineligible for the credit. This result, which might allow a section 45W credit for an off-road vehicle equipped with a hybrid powertrain but in some cases disallow a credit for a functionally identical vehicle equipped with an electric powertrain, may disadvantage manufacturers who make only products that appear well aligned with the purposes of the credit.

D. *Some Off-Road Vehicles May Not Display Their Gross Vehicle Weight Ratings*

Section 45W(b)(4) provides a limitation for the credit based on the vehicle's GVWR, such that the amount of the section 45W credit does not exceed $7,500 in the case of a vehicle that has a GVWR of less than 14,000 pounds, and $40,000 for other vehicles. Similarly, section 45W(c)(3)(A) bases battery capacity requirements applicable to certain vehicles by reference to GVWR: a battery that has a capacity of not less than 15 kilowatt hours (or, in the case of a vehicle that has a GVWR of less than 14,000 pounds, 7 kilowatt hours).

GVWR is not defined in the Internal Revenue Code or any regulations thereunder. However, the DOT and the EPA have defined the term for purposes of regulating motor vehicle safety and emissions. DOT regulations define the term "gross vehicle weight rating" as the value specified by the manufacturer as the loaded weight of a single vehicle. *See* 49 CFR 383.5 and 571.3(b). Similarly, EPA regulations define the term "gross vehicle weight rating" as the value specified by the manufacturer as the maximum design loaded weight of a single vehicle. *See* 40 CFR 86.082-2.

Motor vehicles are required by DOT regulations to be affixed with labels including the GVWR of the vehicle (*see* 49 CFR parts 567 and 568). The only vehicles to which those standards apply are motor vehicles, which are defined in 49 U.S.C. 30102 as "vehicle[s] driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways [….]" Off-road vehicles may not have a GVWR affixed. It may, therefore, be difficult for taxpayers to determine and substantiate the appropriate credit limitation under section 45W(b)(4).

E. *Off-Road Vehicles Employing Fuel Cells May Be Ineligible*

Section 45W(c)(3)(B) provides that a qualified commercial clean vehicle includes "a motor vehicle which satisfies the requirements under subparagraphs (A) and (B) of section 30B(b)(3) if the vehicle satisfies the other requirements of section 45W(c)." Section 30B(b)(3) defines a "new qualified fuel cell motor vehicle" for purposes of section 30B as a motor vehicle, and provides among other requirements that it be a motor vehicle (A) that is propelled by power derived from 1 or more cells that convert chemical energy directly into electricity by combining oxygen with hydrogen fuel that is stored on board the vehicle in any form and may or may not require reformation prior to use, and (B) that, in the case of a passenger automobile or light truck, has received on or after the date of the enactment of this section a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the EPA under section 202(i) of the CAA for that make and model year vehicle. Section 30B(b)(3)(A) and (B) apply, in the context of section 30B, only to "motor vehicles," a term defined in section 30B(h)(1) to mean "any vehicle which is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels." If this definition of "motor vehicle" applies to section 45W(c)(3)(B)—a meaning suggested by that subparagraph's use of the term "motor vehicle" (which appears nowhere else in section 45W)—then off-road vehicles powered by otherwise eligible fuel-cell technology would be ineligible for the section 45W credit.

F. *DOT Vehicle Safety Provisions*

Section 45W(d)(1) requires, among other things, the application of a rule similar to section 30D(f)(7). Section 30D(f)(7) provides, in part, that a vehicle is not considered eligible for a credit unless such vehicle is in compliance with the motor vehicle safety provisions of 49 U.S.C. 30101 through 30169. As described in section VII.B of this Explanation of Provisions, the grant of authority under those provisions of law do not extend to off-road vehicles. *See* 49 U.S.C. 30101 through 30102. It is unlikely that any off-road vehicle might be, as a factual matter, compliant with safety provisions that, legally, do not apply to it.

However, given the broad scope of vehicles that potentially fall under the category of off-road vehicles for purposes of section 45W, and the scope of the safety provisions provided in 49 U.S.C. 30101 through 30169, identifying similar safety provisions and the criteria by which such similarity might be judged appear to present significant challenges.

G. *Math Error Authority*

Section 6213(g)(2)(V) provides that the term "mathematical or clerical error" means an omission of a correct vehicle identification number required to be included on a return under section 45W(e). As noted in section VII.B of this Explanation of Provisions, treating off-road mobile machinery (as described in the parenthetical in section 45W(c)(2)(B)) as eligible for the 45W credit would require a broad interpretation of the term "vehicle identification number" as that term is used in section 45W(e) and the provisions of section 30D that are incorporated into section 45W through section 45W(d)(1). If the Treasury Department and the IRS were to develop an integrated vehicle identification number system that could accommodate a broad, general definition of the term "vehicle identification number" to encompass off-road mobile machinery in the section 45W context, the Treasury Department and the IRS would propose a conforming amendment to §301.6213-2. Such an amendment would provide clarity to taxpayers by providing a cross-reference to this broad, general definition of the term "vehicle identification number."

H. *Other Considerations*

The proposed regulations may introduce challenges to allowing section 45W credits for off-road vehicles beyond those flowing from the statutory language, particularly in the calculation of incremental cost of off-road vehicles. Determining the residual value of off-road vehicles that have been previously placed in service by another person or entity, the appropriate considerations for identifying a comparable vehicle, and the appropriate RPE or RPEs for purposes of a safe harbor, all present considerable difficulties given the range of vehicles that may fall into the off-road vehicle category.

I. *Request for Comments*

The Treasury Department and the IRS are, in consultation with the DOE, continuing to study these and related questions. The Treasury Department and the IRS request comments on each of the considerations described in section VII.A through H of this Explanation of Provisions related to the eligibility of off-road mobile machinery for the section 45W credit.

Proposed Applicability Dates

Proposed §§1.45W-1 through 1.45W-5 are proposed to apply to taxable years ending after [date of publication of the final regulations in the **Federal Register**]. Proposed §1.25E-2(b)(3) is proposed to apply to taxable years ending after [date of publication of the final regulations in the **Federal Register**]. Proposed §1.30D-2(b)(28)(ii) is proposed to apply to taxable years ending after [date of publication of the final regulations in the **Federal Register**]. The second and third sentences of proposed §1.6417-6(b)(1) are proposed to apply to property placed in service in taxable years ending after [date of publication of the 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*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

OMB Control Number 1545–2137 covers Form 8936 and Form 8936-A regarding clean vehicle credits, including the requirement to include on the taxpayer's return for the taxable year the vehicle identification number of the vehicle for which the section 45W credit is claimed. Rev. Proc. 2022-42 and Rev. Proc. 2023-38 describe the procedural requirements for qualified manufacturers to make periodic written reports to the IRS to provide information related to each vehicle manufactured by such manufacturer that is eligible for the section 45W credit as required in section 30D(d)(3). The collections of information contained in Rev. Proc. 2022-42 and Rev. Proc. 2023-38 are described in those documents and were submitted to the Office of Management and Budget in accordance with the PRA under control number 1545-2137. The notice of proposed rulemaking is not changing or creating these already approved collection requirements.

In accordance with §1.6001-1, a taxpayer claiming a credit under section 45W must keep permanent books of account or records sufficient to establish the amount of any such credit required to be shown by such taxpayer in any return of tax or information. For PRA purposes, general tax records are already approved by OMB under 1545-0074 for individuals, 1545-0123 for business entities, and under 1545-0092 for trust and estate filers. The notice of proposed rulemaking is not changing or creating these already approved collection requirements.

The collections of information in the proposed regulations creates reporting, third-party disclosure and recordkeeping requirements that are necessary to ensure that specified property meets the requirements for the qualified commercial clean vehicle credit under section 45W. These collections of information generally would be used by the IRS for tax compliance purposes and by taxpayers to ensure the vehicle qualifies for the credit.

The reporting requirements include a provision requiring manufacturers to register with the IRS to become qualified manufacturers, as detailed in §1.45W-5(c). The third-party disclosure requirement includes the requirement that manufacturers provide taxpayers with a PIN number that identifies the specified property as qualified under section 45W. The likely respondents are businesses and other for-profit entities. The burden for these requirements is as follows:

Estimated number of respondents: 4,500.

Estimated frequency of responses: 1.

Estimated average annual burden per response: 0.25 hours.

Estimated total reporting burden: 1,125 hours.

The proposed regulations include a third-party disclosure and associated recordkeeping requirements for qualified manufacturers to provide taxpayers with the incremental cost value, which may include detailed cost information for the powertrains, and for taxpayers to keep records of these disclosures, as detailed in §1.45W-2(c)(10).

The likely respondents are businesses and other for-profit and tax-exempt entities. The burden for these requirements is as follows:

Estimated number of respondents: 500.

Estimated frequency of responses: 1.

Estimated average annual burden per response: 1.0 hours.

Estimated total reporting burden: 500 hours.

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act under OMB Control Number 1545-2137. Commenters are strongly encouraged to submit public comments electronically. Written comments and recommendations for the proposed information collection should be sent to *https://www.reginfo.gov/public/do/PRAMain,* with copies to the IRS. Find this particular information collection by selecting "Currently under Review—Open for Public Comments," and then by using the search function. Submit electronic submissions for the proposed information collection to the IRS via email at *pra.comments@irs.gov* (indicate REG-123525-23 on the Subject line). Comments on the collection of information must be received by March 17, 2025.

III. *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rule. The Treasury Department and the IRS have not determined whether the proposed rule, when finalized, will have a significant economic impact on a substantial number of small entities. This determination requires further study. However, because there is a possibility of a significant economic impact on a substantial number of small entities, these proposed regulations include an IRFA. The Treasury Department and the IRS invite comments on both the number of entities affected by these proposed regulations and the economic impact of these proposed regulations on small entities.

Small business entities that claim the section 45W credit must satisfy reporting requirements. They will continue to file Form 8936, *Clean Vehicle Credits* (or successor form as the Secretary prescribes), as was the case for the section 45W credit prior to the publication of these proposed regulations. The estimated burden for business taxpayers filing Form 8936 is approved under OMB control number 1545-2137 and 1545-0123.

Although the Treasury Department and IRS estimate that small business entities will claim the credit under section 45W in a given year, the proposed regulations will not have a significant economic impact on such entities because the proposed regulations do not impose any additional burden on taxpayers outside of what is provided by the statute. For example, section 30D(f)(5), which is incorporated into the section 45W regime by section 45W(d)(1), requires the Secretary to prescribe regulations that provide for the recapture of the credit with respect to any property which ceases to be property eligible for such credit. These proposed rules merely provide the framework for the statutorily required recapture.

The Treasury Department and IRS have determined that the continued requirement to file a Form 8936 (or successor form as the Secretary prescribes) is unlikely to involve significant administrative costs beyond what was previously required.

A. *Need for and Objectives of the Rule*

The proposed regulations would provide the eligibility rules and key definitions applicable to the section 45W credit to allow taxpayers to know whether the clean vehicle they intend to purchase is eligible for the section 45W credit. In addition, the proposed regulations would provide rules regarding the recapture authority under section 45W(d)(1), so that taxpayers and the IRS would have clear rules regarding when a clean vehicle may cease to be eligible property for purposes of the section 45W credit. Further, the proposed regulations would provide rules for determining the amount of the section 45W credit, including the determination of incremental cost for qualified commercial clean vehicles.

The proposed rules are expected to encourage taxpayers to purchase and place in service qualified commercial clean vehicles, thereby increasing the number of clean vehicles on the roads. Thus, the Treasury Department and the IRS intend and expect that the proposed rules will deliver benefits across the economy and environment that will beneficially impact various industries, including clean vehicle manufacturers and dealers.

B. *Affected Small Entities*

The Small Business Administration estimates in its 2023 Small Business Profile that 99.9 percent of United States businesses meet its definition of a small business. The applicability of these proposed regulations does not depend on the size of the business, as defined by the Small Business Administration. As described more fully in the preamble to this proposed regulation and in this IRFA, these rules may affect a variety of different businesses across several different industries, but will primarily affect commercial purchasers of qualified commercial clean vehicles and qualified manufacturers of qualified commercial clean vehicles. The Treasury Department and the IRS currently estimate the number of manufacturers of on-road qualified commercial clean vehicles to be approximately 77, and the number of manufacturers of off-road mobile machinery to be approximately 4,500.

For off-road mobile machinery manufacturer estimates, the Treasury Department and IRS reviewed tax return filings for relevant industry codes for prior taxable years and made assumptions regarding the likelihood of such taxpayers manufacturing electric or hydrogen-powered off-road mobile machinery. For taxpayers that are not likely to meet the definition of small business entity, the Treasury Department and the IRS assumed that 100 percent would manufacture off-road mobile machinery that may qualify for the credit under section 45W. For taxpayers likely to meet the definition of small business entity, the Treasury Department and the IRS assumed that varying percentages of such taxpayers, based on the size of their operations, would manufacture off-road mobile machinery that may qualify for the credit under section 45W.

Of the estimated 77 manufacturers of on-road qualified commercial clean vehicles, the Treasury Department and the IRS have determined that none of them are small businesses entities. Of the estimated 4,500 manufacturers of off-road mobile machinery, the Treasury Department and the IRS estimate that more than half would likely be considered a small business entity.

The Treasury Department and the IRS expect to receive more information on the impact on small businesses through comments on this proposed rule and again if the integrated system for vehicle identification numbers for purposes of section 45W is established.

1. Impact of the Rules

The recordkeeping and reporting requirements would increase for qualified manufacturers of off-road mobile machinery seeking to become qualified manufacturers in the event of the establishment of an integrated system for vehicle identification numbers. Although the Treasury Department and the IRS do not have sufficient data to precisely determine the likely extent of the increased costs of compliance, the estimated burden of complying with the recordkeeping and reporting requirements are described in the PRA section of the preamble. Based on the total number of estimated manufacturers of off-road mobile machinery (4500) and an estimated registration time of 0.25 hours per registration, the Treasury Department and IRS estimate that off-road mobile machinery manufacturers will spend a total of 1,125 hours registering as qualified manufacturers.

2. Alternatives Considered

The Treasury Department and the IRS considered various alternatives in promulgating these proposed regulations. Significant alternatives and issues considered include: (1) the application of NHTSA rules toward administering vehicle identification numbers; (2) the appropriate length of time for which a vehicle must be used in a trade or business as it relates to the recapture rules provided in proposed §1.45W-4(c); and (3) how best to implement the no double benefit rules and incremental cost calculation to the eligibility of used vehicles for the section 45W credit.

Regarding the application of NHTSA's rules administering vehicle identification numbers compared to an integrated vehicle identification system, the Treasury Department and the IRS considered the appropriate scope of the definition of "vehicle identification number" and how that definition should be consistent with or diverge from the inclusion of and reference to off-road mobile machinery in the statutory text of section 45W(c)(2)(B). The Treasury Department and the IRS considered interpreting the "VIN number" requirement in section 45W(e) to mean a NHTSA-required VIN, consistent with the established definition of "vehicle identification number" in DOT regulations. *See* 49 CFR 565.10 through 565.14. However, the only vehicles regulated by NHTSA are motor vehicles, which are vehicles manufactured primarily for use on public streets, roads, and highways. *See* 49 U.S.C. 30102(7). Thus, off-road vehicles do not have NHTSA-required VINs. Therefore, this interpretation would effectively exclude all off-road mobile machinery, which Congress may have intended to include, as reflected in the parenthetical of section 45W(c)(2)(B).

The Treasury Department and the IRS considered alternatives to the recapture rules provided in proposed §1.45W-4(c). Given that some taxpayers may consider using vehicles for partial business and partial personal use, the Treasury Department and the IRS determined it was necessary to provide rules regarding when the value of the section 45W credit can be recaptured when the vehicle is used less than 100 percent for trade or business use, other than incidental personal use. The Treasury Department and the IRS also considered the appropriate length of time for which the vehicle must be used in a trade or business. Longer and shorter periods of time were considered. Based on knowledge of commercial vehicle leasing practices (fleet leasing), the Treasury Department and the IRS determined that it was appropriate to require a qualified commercial clean vehicle to be used for

100 percent trade or business use for 18 months after it is placed in service.

The Treasury Department and the IRS considered issues raised by the applicability of the section 45W credit to used vehicles, since the statute does not contain an original use requirement. In particular, the Treasury Department and the IRS considered how best to implement the statutory no double benefit rules. Section 45W(d)(3) provides that no credit is allowed with respect to any vehicle for which a credit was allowed under section 30D. Section 45W(d)(1), in turn, incorporates section 30D(f)(8), which provides in relevant part that in the case of any vehicle, the credit shall only be allowed once with respect to such vehicle, as determined based upon the vehicle identification number of such vehicle. Section 45W(d)(1) also incorporates the no double benefit rule in section 30D(f)(2). Subsequent buyers of qualified commercial clean vehicles generally would not know if a prior tax credit for clean vehicles had been claimed with respect to a particular used vehicle. In addition, the IRS generally is legally prohibited from disclosing such confidential tax information. Given these constraints and to ensure compliance with the no double benefit rules, a taxpayer claiming such credit must establish that they are entitled to the credit by keeping evidence in their books and records, which may be provided to the IRS upon request, sufficient to establish that no deduction or other credit was previously allowed on such vehicle.

3. Duplicative, Overlapping, or Conflicting Federal Rules

The proposed regulations would not duplicate, overlap, or conflict with any relevant Federal rules. As discussed in the Explanation of Provisions, the proposed regulations would merely provide requirements, procedures, and definitions related to the section 45W credit. The Treasury Department and the IRS invite input from interested members of the public about identifying and avoiding overlapping, duplicative, or conflicting requirements.

C. Section 7805(f)

Pursuant to section 7805(f), this notice of proposed rulemaking has been 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 (updated annually for inflation). These proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

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

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments regarding the notice of proposed rulemaking 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 will be made available at *https://www.regulations.gov.* Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing with respect to this notice of proposed rulemaking has been scheduled for April 28, 2025, beginning at 10 a.m. EST in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the public hearing. Persons who wish to present oral comments at the public hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by March 17, 2025. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the public hearing. If no outline of the topics to be discussed at the public hearing is received by March 17, 2025, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the ***Federal Register***.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG-123525-23 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG-123525-23.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the public hearing. The subject line of the email must contain the regulation number REG-123525-23 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-123525-23.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG-123525-23 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG-123525-23. Requests to attend the public hearing must be received by 5 p.m. EST on April 24, 2025.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the public hearing. The subject line of the email must contain the regulation number REG-123525-23 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-123525-23. Requests to attend the public hearing must be received by 5 p.m. EST on April 24, 2025.

Public hearings will be made accessible to people with disabilities. To request special assistance during a public hearing please contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317-6901 (not a toll-free number) and must be received by at least April 23, 2025.

Statement of Availability of IRS Documents

Revenue procedures, revenue rulings, notices, and other guidance cited in this preamble is published in the Internal Revenue Bulletin and is 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*.

Drafting Information

The principal authors of these proposed regulations are James Williford, Iris Chung, David Villagrana, and Rika Valdman of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department, the DOE, and the IRS participated in their development.

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 is amended by adding entries in numerical order for §§1.45W-1 through 1.45W-5 to read in part as follows:

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

* * * * *

Section 1.45W-1 also issued under 26 U.S.C. 45W(f) and 30D(d)(3).

Section 1.45W-2 also issued under 26 U.S.C. 45W(f).

Section 1.45W-3 also issued under 26 U.S.C. 45W(f).

Section 1.45W-4 also issued under 26 U.S.C. 45W(f) and 30D(f)(5).

Section 1.45W-5 also issued under 26 U.S.C. 45W(f).

* * * * *

Par. 2. Section 1.25E-2 is amended by:

1. Adding paragraph (b)(3); and
2. Revising paragraph (i).

The addition and revision read as follows:

§1.25E-2 Special rules.

* * * * *

(b) * * *

(3) *Interaction between section 25E and section 45W credits*. A credit that has been allowed under section 45W of the Code with respect to a vehicle in a taxable year before the taxable year in which a section 25E credit is allowable for that vehicle does not reduce the amount allowable under section 25E.

* * * * *

(i) *Applicability dates*—(1) *In general*. Except as provided in paragraph (i)(2) of this section, this section applies to previously-owned clean vehicles placed in service after December 31, 2022, in taxable years ending after October 10, 2023.

(2) *Paragraph (b)(3) of this section*. Paragraph (b)(3) of this section applies to taxable years ending after [date of publication of the final regulations in the **Federal Register**].

Par. 3. Section 1.30D-2 is amended by revising paragraphs (b)(28)(ii) and (d) to read as follows:

§1.30D-2 Definitions for purposes of section 30D.

* * * * *

(b) * * *

(28) * * *

(ii) *Modification of a new motor vehicle*. If a manufacturer modifies a new motor vehicle (as defined in 42 U.S.C. 7550(3)) that does not satisfy the requirements of section 30D(d)(1)(F) or (6) so that the new motor vehicle, after modification, does satisfy such requirements, then such manufacturer may satisfy the requirements of section 30D(d)(3) if the modification occurred prior to the new motor vehicle being placed in service.

* * * * *

(d) *Applicability dates*—(1) *In general*. Except as provided in paragraph (d)(2) of this section, this section applies to taxable years ending after December 4, 2023.

(2) *Paragraph (b)(28)(ii) of this section*. Paragraph (b)(28)(ii) of this section applies to taxable years ending after [date of publication of the final regulations in the **Federal Register**].

Par. 4. Sections 1.45W-0 through 1.45W-5 are added to read as follows:

Sec.

* * * * *

1.45W-0 Table of contents.

1.45W-1 Credit for qualified commercial clean vehicles; definitions.

1.45W-2 Amount of section 45W credit; incremental cost.

1.45W-3 Qualified commercial clean vehicle.

1.45W-4 Special rules.

1.45W-5 Reporting requirements.

* * * * *

§1.45W-0 Table of contents.

This section lists the captions contained in §§1.45W-1 through 1.45W-5.

§1.45W-1 Credit for qualified commercial clean vehicles; definitions.

(a) In general.
(b) Definitions.
(1) Battery.
(2) Battery electric vehicle or BEV.
(3) Fuel cell electric vehicle of FCEV.
(4) Gross Vehicle Weight Rating or GVWR.
(5) Manufacturer.
(6) Placed in service.
(7) Plug-in hybrid electric vehicle or PHEV.
(8) Plug-in hybrid fuel cell electric vehicle or PHFCEV.
(9) Qualified commercial clean vehicle.
(10) Qualified manufacturer.
(11) Secretary.
(12) Section 45W regulations.
(13) Statutory references.
(i) Chapter 1.
(ii) Code.
(iii) Subtitle A.
(c) Applicability date.

§1.45W-2 Amount of section 45W credit; incremental cost.

(a) Per vehicle amount.
(b) Incremental cost.
(1) In general.
(2) Manufacturer's cost.
(3) Retail price equivalent.
(i) In general.
(ii) Retail price.
(iii) Retail delivered price.
(iv) Safe harbor.
(4) Comparable vehicle.
(i) In general.
(ii) Gasoline- or diesel-powered vehicle by same manufacturer.
(iii) Vehicle comparable in size and use.
(iv) Example.
(A) Facts.
(B) Analysis.
(c) Incremental cost equations and calculations.
(1) ICE powertrain cost.
(2) Battery electric vehicles.
(3) Plug-in hybrid electric vehicles.
(4) Fuel cell electric vehicles.
(5) Plug-in hybrid fuel cell electric vehicles.
(6) Incremental cost determined exclusive of auxiliary power units.
(7) Incremental cost determine inclusive of additional batteries, fuel cells, or hydrogen storage.
(8) Negative incremental cost treated as zero.
(9) Incremental cost if no comparable vehicle exists.
(10) Taxpayer reliance on qualified manufacturer's incremental cost determination.
(11) Safe harbor.
(d) Definitions.
(1) Battery.
(2) Electric traction drive system and components.
(3) Electrical accessories.
(4) Engine and engine components.
(5) Fuel cell.
(6) Hydrogen storage.
(7) Hydrogen storage cost.
(8) Mechanical accessories.
(9) Transmission.
(e) Examples.
(1) Example 1.
(i) Facts.
(ii) Analysis.
(2) Example 2.
(i) Facts.
(ii) Analysis.
(3) Example 3.
(i) Facts.
(ii) Analysis.
(f) Incremental cost of qualified commercial clean vehicle previously placed in service by another person or entity.
(1) In general.
(2) Age of a qualified commercial clean vehicle previously placed in service by another person or entity.
(3) Residual value factor.
(4) Example.
(i) Facts.
(ii) Analysis.
(g) Applicability date.

§1.45W-3 Qualified commercial clean vehicle.

(a) In general.
(b) Acquired for use or lease and not for resale by the taxpayer.
(1) In general.
(2) Recharacterization of lease.
(c) Type of vehicle.
(1) In general.
(2) On-road vehicle.
(3) Mobile machinery.
(d) Electric motor and battery requirements.
(1) In general.
(2) Battery capable of being recharged from an external source of electricity.
(e) Applicability date.

§1.45W-4 Special rules.

(a) No double benefit.
(1) Previous allowance of section 45W or 30D credit.
(2) Allowance of other deduction or credit.
(b) Credit ineligibility resulting from certain transactions and uses.
(1) In general.
(2) Cancelled sale.
(3) Vehicle return.
(4) Resale.
(5) Less than 100 percent trade or business use in taxable year vehicle is placed in service.
(c) Recapture.
(1) In general.
(2) Recapture in the case of less than 10 percent trade or business use.
(i) In general.
(ii) Applicability to vehicles placed in service by a tax-exempt entity.
(d) Elective payment elections.
(e) Leases.
(f) Applicability date.

§1.45W-5 Reporting requirements.

(a) Requirement to file return.
(b) Credit may generally be claimed on only one tax return.
(1) In general.
(2) Grantor trusts.
(3) Partnerships and S corporations.
(c) Taxpayer reliance on manufacturer certifications and periodic written reports to the IRS.
(d) Applicability date.

§1.45W-1 Credit for qualified commercial clean vehicles; definitions.

(a) *In general*. The section 45W regulations (defined in paragraph (b)(12) of this section) apply for purposes of determining the availability and amount of any credit under section 45W of the Internal Revenue Code (Code) with respect to a qualified commercial clean vehicle placed in service by a taxpayer during such taxpayer's taxable year (section 45W credit). Paragraph (b) of this section provides definitions of terms for purposes of applying section 45W and the section 45W regulations. Section 1.45W-2 provides rules for determining the per-vehicle credit amount under section 45W(b). Section 1.45W-3 provides rules related to the definition of *qualified commercial clean vehicle* under section 45W(c). Section 1.45W-4 provides special rules related to section 45W(d). Section 1.45W-5 provides reporting requirements for purposes of section 45W.

(b) *Definitions*. The following definitions apply for purposes of section 45W and the section 45W regulations. For definitions specific to incremental cost calculations, *see* §1.45W-2(d).

(1) *Battery*. *Battery* means a collection of one or more battery modules, each of which has two or more battery cells, electrically configured in series or parallel, to create voltage or current. The term *battery* does not include items such as thermal management systems or other parts of a battery cell or module that do not directly contribute to the electrochemical storage of energy within the battery, such as battery cell cases, cans, or pouches.

(2) *Battery electric vehicle or BEV*. *Battery electric vehicle* or *BEV* means a vehicle propelled solely by an electric motor that draws electricity from batteries capable of being recharged from an external source of electricity.

(3) *Fuel cell electric vehicle or FCEV*. *Fuel cell electric vehicle* or *FCEV* means a vehicle—

(i) That is propelled by power derived from one or more cells that convert chemical energy directly into electricity by combining oxygen with hydrogen fuel that is stored on board the vehicle in any form and may or may not require reformation prior to use; and

(ii) That, in the case of a light-duty vehicle (that is, a passenger automobile or light truck), has received on or after August 8, 2005 (the date of the enactment of section 30B of the Code), a certificate indicating that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations in 40 CFR chapter I prescribed by the Administrator of the Environmental Protection Agency (EPA) under section 202(i) of the Clean Air Act (CAA) (42 U.S.C. 7521(i)) for that make and model year vehicle.

(4) *Gross vehicle weight rating or GVWR*. *Gross vehicle weight rating* or *GVWR* has the meaning provided in 40 CFR 86.082-2 and 49 CFR 571.3(b).

(5) *Manufacturer*—(i) *In general*. *Manufacturer* means any manufacturer within the meaning of the regulations in 40 CFR chapter I prescribed by the Administrator of the EPA for purposes of the administration of title II of the CAA (42 U.S.C. 7521 *et seq.*) and as defined in 42 U.S.C. 7550(1). If multiple manufacturers are involved in the production of a vehicle, the requirements of section 30D(d)(3) must be met by the manufacturer that satisfies the reporting requirements of the greenhouse gas emissions standards set by the EPA under the CAA (42 U.S.C. 7521 *et seq.*) for the subject vehicle.

(ii) *Modification of a new motor vehicle.* If a manufacturer modifies a new motor vehicle (as defined in 42 U.S.C. 7550(3)) that does not satisfy the requirements of section 45W(c)(3) so that the vehicle, after modification, does satisfy such requirements, then such manufacturer may satisfy the requirements of section 30D(d)(3) of the Code and §1.30D-2(b)(28)(i) for purposes of paragraph (b)(5)(i) of this section if the modification occurs prior to the vehicle being placed in service.

(6) *Placed in service*. A qualified commercial clean vehicle is considered to be placed in service on the date the taxpayer takes possession of the vehicle.

(7) *Plug-in hybrid electric vehicle or PHEV*. *Plug-in hybrid electric vehicle* or *PHEV* means a vehicle that uses batteries that can be recharged from an external source of electricity to power an electric motor that propels the vehicle to a significant extent, and another fuel, such as gasoline or diesel, to power an internal combustion engine or other propulsion source.

(8) *Plug-in hybrid fuel cell electric vehicle or PHFCEV*. *Plug-in hybrid fuel cell electric vehicle* or *PHFCEV* means a vehicle that uses batteries that can be recharged from an external source of electricity to power an electric motor that propels the vehicle to a significant extent and a hydrogen fuel source that powers an electric motor through the fuel cell system.

(9) *Qualified commercial clean vehicle. Qualified commercial clean vehicle* means a vehicle that meets the requirements of section 45W(c) and §1.45W-3(b) through (d). Vehicles that may qualify as qualified commercial clean vehicles include BEVs, FCEVs, PHEVs, and PHFCEVs. A vehicle does not meet the requirements of section 45W(c) if—

(i) The qualified manufacturer fails to provide a periodic written report for such vehicle prior to the vehicle being placed in service by the taxpayer claiming the credit that reports the vehicle identification number of such vehicle and certifies compliance with the requirements of section 45W(c);

(ii) The qualified manufacturer provides incorrect information with respect to the periodic written report for such vehicle; or

(iii) The qualified manufacturer fails to update its periodic written report in the event of a material change with respect to such vehicle.

(10) *Qualified manufacturer*. *Qualified manufacturer* means a manufacturer that meets the requirements described in section 30D(d)(3) at the time the manufacturer submits a periodic written report to the Internal Revenue Service (IRS) under a written agreement described in section 30D(d)(3). The term *qualified manufacturer* does not include any manufacturer whose qualified manufacturer status has been terminated by the IRS. The IRS may terminate qualified manufacturer status for fraud, intentional disregard, or gross negligence with respect to any requirements of section 45W, the section 45W regulations, or any guidance under section 45W, including with respect to the periodic written reports described in section 30D(d)(3) and this paragraph (b)(10). The IRS may also terminate qualified manufacturer status for fraud, intentional disregard, or gross negligence with respect to any requirement of section 25E or 30D or any regulations in this chapter or guidance thereunder.

(11) *Secretary*. *Secretary* has the meaning provided in section 7701(a)(11)(B) of the Code.

(12) *Section 45W regulations*. *Section 45W regulations* means this section and §§1.45W-2 through 1.45W-5.

(13) *Statutory references*—(i) *Chapter 1. Chapter 1* means chapter 1 of the Code.

(ii) *Code. Code* means the Internal Revenue Code.

(iii) *Subtitle A.* S*ubtitle A* means subtitle A of the Code.

(c) *Applicability date*. This section applies to qualified commercial clean vehicles placed in service in taxable years ending after [date of publication of the final regulations in the **Federal Register**].

§1.45W-2 Amount of section 45W credit; incremental cost.

(a) *Per-vehicle credit amount.* Subject to the limitation in section 45W(b)(4) of the Code, the per-vehicle credit amount under section 45W(b)(1) with respect to any qualified commercial clean vehicle is the lesser of 15 percent of the basis of such vehicle (or 30 percent in the case of a vehicle not powered by a gasoline or diesel internal combustion engine (ICE)), or the incremental cost of such vehicle.

(b) *Incremental cost*—(1) *In general*. For purposes of section 45W(b)(2), the incremental cost of any qualified commercial clean vehicle is determined using the incremental cost calculations and equations in paragraph (c) of this section to determine the amount equal to the excess of—

(i) The product of the qualified manufacturer's cost of components necessary for the BEV powertrain, FCEV powertrain, PHEV powertrain, or PHFCEV powertrain used in the vehicle and the retail price equivalent (RPE) of such vehicle; minus

(ii) The product of the manufacturer's cost of components necessary for the powertrain of a comparable vehicle powered solely by a gasoline or diesel ICE and the RPE of such comparable vehicle.

(2) *Manufacturer's cost*. For purposes of this section, a manufacturer's cost includes only its direct manufacturing costs, which may include, but are not limited to, the costs of materials and labor.

(3) *Retail price equivalent*—(i) *In general*. The *RPE* is the ratio of the manufacturer's suggested retail price (MSRP) of a vehicle to the manufacturer's cost to manufacture such vehicle. The MSRP is the sum of the retail price and the retail delivered price.

(ii) *Retail price*. For purposes of paragraph (b)(3)(i) of this section, *retail price* is the retail price of the vehicle suggested by the manufacturer as described in 15 U.S.C. 1232(f)(1).

(iii) *Retail delivered price*. *Retail delivered price*, for purposes of paragraph (b)(3)(i) of this section, is the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to such vehicle at the time of its delivery to the dealer that is not included within the price of such vehicle as stated pursuant to 15 U.S.C. 1232(f)(1), as described in 15 U.S.C. 1232(f)(2).

(iv) *Safe harbor*. The Secretary may publish guidance in the Internal Revenue Bulletin (see §601.601 of this chapter) no more frequently than annually that will provide RPE safe harbors for different segments of the vehicle market. Any taxpayer that uses an RPE provided in safe harbor guidance published in the Internal Revenue Bulletin (see §601.601 of this chapter) to determine the cost of a BEV, PHEV, FCEV, PHFCEV, or ICE powertrain will be deemed to have satisfied the requirements of this paragraph (b)(3), provided all requirements specified in the applicable RPE safe harbor guidance have been met. No formal election is required for a taxpayer to use a safe harbor RPE.

(4) *Comparable vehicle*—(i) *In general.* A comparable vehicle is any vehicle that is powered solely by a gasoline or diesel ICE and is comparable in size and use to the qualified commercial clean vehicle. Except as provided in paragraph (b)(4)(ii) of this section, the manufacturer of the comparable vehicle need not be the manufacturer of the qualified commercial clean vehicle.

(ii) *Gasoline- or diesel-powered vehicle by same manufacturer*. If the qualified manufacturer of a qualified commercial clean vehicle also manufactures a solely gasoline- or diesel-powered ICE version of such vehicle, meaning a vehicle of the same model, produced in the same model year, and with features substantially similar to those of the qualified commercial clean vehicle, such solely gasoline- or diesel-powered vehicle is the only comparable vehicle with respect to such qualified commercial clean vehicle.

(iii) *Vehicle comparable in size and use*. A vehicle is comparable to a qualified commercial clean vehicle in size and use if, as relevant to the particular qualified commercial clean vehicle, it has substantially similar features, such as GVWR, number of doors, towing capacity, passenger capacity, cargo capacity, mounted equipment, drivetrain type, overall width, height and ground clearance, and trim level.

(iv) *Example: Comparable vehicle*—(A) *Facts*. A passenger car with a BEV powertrain (BEV X) that is a qualified commercial clean vehicle has a GVWR of 4,800 pounds, four doors, five-passenger seating capacity, a mid-range trim level, and a 250-horsepower powertrain. A passenger car with an ICE powertrain (ICE Car 1) has a GVWR of 4,500 pounds, four doors, five-passenger seating capacity, a mid-range trim level, and a 200-horsepower powertrain. A second passenger car with an ICE powertrain (ICE Car 2) has a GVWR of 4,500 pounds, two doors, two-passenger seating capacity, a high-end trim level, and a 250-horsepower powertrain.

(B) *Analysis*. ICE Car 1 is comparable to BEV X because ICE Car 1 and BEV X have substantially similar GVWRs (4,800 pounds compared to 4,500 pounds), numbers of doors (4), passenger capacity (5), and trim levels (mid-range). The fact that ICE Car 1 and BEV X have dissimilar horsepower is not determinative because whether two vehicles are comparable vehicles under the rules of paragraph (b)(4) of this section is not entirely dependent on the performance characteristics of the powertrains. ICE Car 2 and BEV X, which have different numbers of doors (4 compared to 2), passenger capacities (5 compared to 2), and trim levels (mid-range compared to high-end), are not comparable. Therefore, ICE Car 1 is a comparable vehicle for purposes of calculating the incremental cost of BEV X, but ICE Car 2 is not.

(c) *Incremental cost equations and calculations*. The incremental cost equations and calculations set forth in this paragraph (c) apply to determine the incremental cost of a qualified commercial clean vehicle for purposes of section 45W(b)(2) and this section.

(1) *ICE powertrain cost*. For purposes of the equations and calculations in this paragraph (c), the ICE powertrain cost is

the sum of the cost of the engine, the ICE transmission, and the mechanical accessories.

(2) *Battery electric vehicles*. In the case of a BEV, the incremental cost of the BEV is the product of the manufacturer's cost of the BEV powertrain and the RPE of such vehicle, less the product of the manufacturer's cost of the comparable vehicle ICE powertrain and the RPE of such vehicle. The BEV powertrain cost is the sum of the cost of the electric traction drive system (which, for purposes of equation 1 to this paragraph (c)(2), includes the BEV transmission), the battery, and the electrical accessories. Expressed formulaically, the rule is as follows:

Equation 1 to Paragraph (c)(2)

$$\text{Incremental cost of BEV} = (\text{BEV powertrain cost} \times \text{RPE}) - (\text{ICE powertrain cost} \times \text{RPE})$$

(3) *Plug-in hybrid electric vehicles*. In the case of a PHEV, the incremental cost of the PHEV is the product of the manufacturer's cost of the PHEV powertrain and the RPE of such vehicle, less the product of the manufacturer's cost of the comparable vehicle ICE powertrain and the RPE of such vehicle. The PHEV powertrain cost is the sum of the cost of the engine, the electric traction drive system (which, for purposes of equation 2 to this paragraph (c)(3), includes the PHEV transmission), the battery, and the electrical accessories. Expressed formulaically, the rule is as follows:

Equation 2 to Paragraph (c)(3)

$$\text{Incremental cost of PHEV} = (\text{PHEV powertrain cost} \times \text{RPE}) - (\text{ICE powertrain cost} \times \text{RPE})$$

(4) *Fuel cell electric vehicles.* In the case of a FCEV, the incremental cost of the FCEV is the product of the manufacturer's cost of the FCEV powertrain and the RPE of such vehicle, less the product of the manufacturer's cost of the comparable vehicle ICE powertrain and the RPE of such vehicle. The FCEV powertrain cost is the sum of the cost of the fuel cell system, the hydrogen storage, the electric traction drive system (which, for purposes of equation 3 to this paragraph (c)(4), includes the FCEV transmission), the battery, and the electrical accessories. Expressed formulaically, the rule is as follows:

Equation 3 to Paragraph (c)(4)

$$\text{Incremental cost of FCEV} = (\text{FCEV powertrain cost} \times \text{RPE}) - (\text{ICE powertrain cost} \times \text{RPE})$$

(5) *Plug-in hybrid fuel cell electric vehicles*. In the case of a PHFCEV, the incremental cost of the PHFCEV is the product of the manufacturer's cost of the PHFCEV powertrain and the RPE of such vehicle, less the product of the manufacturer's cost of the comparable vehicle ICE powertrain and the RPE of such vehicle. The PHFCEV powertrain cost is the sum of the cost of the fuel cell system, the hydrogen storage, the electric traction drive system (which, for purposes of equation 4 to this paragraph (c)(5), includes the PHFCEV transmission), the battery, and the electrical accessories. Expressed formulaically, the rule is as follows:

Equation 4 to Paragraph (c)(5)

$$\text{Incremental cost of PHFCEV} = (\text{PHFCEV powertrain cost} \times \text{RPE}) - (\text{ICE powertrain cost} \times \text{RPE})$$

(6) *Incremental cost determined exclusive of auxiliary power units*. The incremental cost of a qualified commercial clean vehicle is determined without regard to any auxiliary power unit installed on such vehicle or on a comparable vehicle.

(7) *Incremental cost determined inclusive of additional batteries, fuel cells, or hydrogen storage*. The incremental cost of a qualified commercial clean vehicle is determined by adding to the cost of the BEV, FCEV, PHEV, or PHFCEV powertrain the cost of additional batteries installed on such vehicle, regardless of whether such additional batteries are required by a power takeoff, as well as additional fuel cells or additional hydrogen storage installed on such vehicle, regardless of whether such additional fuel cells are required by a power takeoff.

(8) *Negative incremental cost treated as zero*. If the incremental cost calculation results in a negative number, meaning that the cost of the BEV, FCEV, PHEV, or PHFCEV powertrain used in the qualified commercial clean vehicle is less than the cost of the ICE powertrain of a comparable vehicle, then the incremental cost of the qualified commercial vehicle is zero. This paragraph (c)(8) does not affect the availability of the safe harbor described in paragraph (c)(11) of this section.

(9) *Incremental cost if no comparable vehicle exists*. If a taxpayer or manufacturer cannot identify a comparable vehicle with respect to a particular qualified commercial clean vehicle, then the incremental cost of such qualified commercial clean vehicle is zero. This paragraph (c)

(9) does not affect the availability of the safe harbor described in paragraph (c)(11) of this section.

(10) *Taxpayer reliance on qualified manufacturer's incremental cost determination*. If a qualified manufacturer provides a taxpayer with written documentation of the incremental cost of a qualified commercial clean vehicle that identifies the comparable vehicle such manufacturer used for the incremental cost calculation and the taxpayer keeps such incremental cost documentation in the taxpayer's records for as long as the period of limitations for the taxable period in which the credit was claimed is open, the taxpayer may rely on such incremental cost for purposes of calculating the amount of the section 45W credit (defined in §1.45W-1(a)) with respect to such vehicle. *See* §1.45W-1(b)(9) for consequences of qualified manufacturer fraud, intentional disregard, or gross negligence with respect to any requirements of section 45W, the section 45W regulations (defined in §1.45W-1(b)(12)), or any guidance issued by the Secretary under section 45W.

(11) *Safe harbor*. The Secretary may publish guidance in the Internal Revenue Bulletin (see §601.601 of this chapter) no more frequently than annually that will provide incremental cost safe harbors for different types and classes of qualified commercial clean vehicles placed in service during a specified period. Any taxpayer that uses an incremental cost safe harbor provided in guidance published in the Internal Revenue Bulletin (see §601.601 of this chapter) will be deemed to have satisfied the requirements of section 45W(b)(1)(B) and (2) and paragraphs (b) and (c) of this section, provided all requirements specified in the applicable safe harbor guidance have been met. No formal election is required for a taxpayer to use an incremental cost safe harbor.

(d) *Definitions*. This paragraph (d) provides definitions related to the incremental cost rules in section 45W(b)(1)(B) and paragraphs (b) and (c) of this section.

(1) *Battery*. *Battery* has the meaning provided in §1.45W-1(b)(1).

(2) *Electric traction drive system and components*—(i) *Electric traction drive system*. *Electric traction drive system* means a system used to provide vehicle propulsion in BEVs, FCEVs, PHEVs, and PHFCEVs by delivering torque to the wheels and axle of the vehicle, and includes, but is not limited to, an electric motor, an inverter, and a transmission.

(ii) *Electric motor*. *Electric motor* means the component that includes the stator, rotor, shaft, housing, bearings, and lubrication elements. Multiple electric motors may be used in a vehicle.

(iii) *Inverter*. *Inverter* means a component that converts direct current (DC) from the battery into alternating current (AC) to power the electric motor, providing precise control over motor operations.

(iv) *BEV, FCEV, PHEV, and PHFCEV transmission.* For the definition of *transmission* for BEVs, FCEVs, PHEVs, and PHFCEVs, see paragraph (d)(9)(i) of this section.

(3) *Electrical accessories*—(i) *In general*. *Electrical accessories* means accessories that support, but do not independently facilitate, the function of essential vehicle systems, and include, but are not limited to, battery enclosures, a compressor, an electric steering pump, high voltage cables and connections, thermal management systems, and a vacuum pump.

(ii) *Battery enclosures*. *Battery enclosures* means components that consist of battery cases, cans or pouches, or casings or packaging used to enclose and protect battery cells and modules into a pack.

(iii) *Compressor*. *Compressor* means a component that powers the air conditioning system, ensuring effective climate control within the vehicle.

(iv) *Electric steering pump*. *Electric steering pump* means a component that provides hydraulic assistance for the steering mechanism, enhancing ease of steering and vehicle maneuverability.

(v) *High voltage cables and connections*. *High voltage cables and connections* means components that include all high voltage cables, connections to electric drive units, cables from the onboard charger, DC-DC converter, air compressors, and the charging cable from the charging port to the onboard charger.

(vi) *Thermal management systems*. *Thermal management systems* means components that manage heating and cooling loads to ensure the efficient operation of the battery and electric traction drive system.

(vii) *Vacuum pump*. *Vacuum pump* means a component that is essential for various vehicle systems that require vacuum assistance, contributing to overall system functionality.

(4) *Engine and engine components*—(i) *Engin*e. The *engine* generates power by burning fuel with air inside the engine. The engine includes, but is not limited to, air intake and cooling systems, assembly accessories, core engine components, engine management sensors and electronics, exhaust gas regulator and breather systems, fuel systems, induction air charging and fuel induction systems, power distribution and sensing for after-treatment, primary exhaust and after-treatment modules, and a valve train.

(ii) *Air intake and cooling systems*. *Air intake and cooling systems* means components that ensure adequate airflow for combustion and regulate engine temperature through the use of pumps, pipes, and cooling fans.

(iii) *Assembly accessories*. *Assembly accessories* means auxiliary components that are necessary for the assembly and integration of the powertrain system.

(iv) *Core engine components*. *Core engine components* means components that include the engine cylinder head, crankshaft, and cylinder block, which form the fundamental structure of the engine, facilitating combustion and power generation.

(v) *Engine management sensors and electronics*. *Engine management sensors and electronics* means control units and sensors that monitor and adjust engine parameters to maximize engine performance and minimize emissions.

(vi) *Exhaust gas regulator and breather systems*. *Exhaust gas regulator and breather systems* means components that control the release of exhaust gases and maintain proper ventilation of the engine crankcase.

(vii) *Fuel system*. *Fuel system* means components that encompass fuel storage, distribution, and evaporative control components, ensuring proper fuel delivery and reducing emissions.

(viii) *Induction air charging and fuel induction systems*. *Induction air charging and fuel induction systems* means components that regulate the intake of air and fuel into the combustion chambers, ensuring efficient mixing and combustion.

(ix) *Power distribution and sensing for after-treatment*. *Power distribution and sensing for after-treatment* means sensors and distribution mechanisms that manage the after-treatment process, ensuring effective emission control.

(x) *Primary exhaust and after-treatment modules*. *Primary exhaust and after-treatment modules* means components that handle the initial expulsion of exhaust gases and subsequent treatment to meet emission standards.

(xi) *Valve train. Valve train* means a component that manages the timing and operation of the engine's intake and exhaust valves, optimizing airflow and exhaust processes.

(5) *Fuel cell*. *Fuel cell* means one or more cells in a stack that convert chemical energy directly into electricity by combining oxygen with hydrogen fuel that is stored on board the vehicle in any form and may or may not require reformation prior to use. The fuel cell system includes the stack as well as auxiliary components that include but are not limited to pumps, sensors, heat exchangers, gaskets, compressors, recirculation blowers, or humidifiers.

(6) *Hydrogen storage*. *Hydrogen storage* means storage of hydrogen on board the vehicle in high-pressure tanks as a gas or liquid.

(7) *Hydrogen storage cost. Hydrogen storage cost* includes the cost of the tank and the components that manage the flow of hydrogen from the tank to the fuel cell system (that is, hydrogen supply and regulation).

(8) *Mechanical accessories*—(i) *In general*. *Mechanical accessories* are accessories that support, but do not independently facilitate, the function of essential vehicle systems, and include, but are not limited to, a compressor, a mechanical steering pump, and a water pump.

(ii) *Compressor*. *Compressor* means a component that powers the air conditioning system, ensuring effective climate control within the vehicle.

(iii) *Mechanical steering pump*. *Mechanical steering pump* means a component that provides hydraulic assistance to the steering mechanism, reducing the effort required by the driver to turn the steering wheel.

(iv) *Water pump*. *Water pump* means a component that circulates coolant throughout the engine to maintain optimal operating temperatures and prevent overheating.

(9) *Transmission*—(i) *BEVs, FCEVs, PHEVs and PHFCEVs.* For BEVs, FCEVs, PHEVs, and PHFCEVs, *transmission* means a mechanical device that uses a gear set—two or more gears working together—to change the speed or direction of rotation in a machine. For BEVs and FCEVs (electric vehicles), *transmission* means a component that consists of a single- or multi-speed, single- or multi-reduction gearbox that transfers power from the electric machine to the wheels. For PHEVs and PHFCEVs (plug-in hybrid vehicles), transmission components will depend on the vehicle driveline and orientation of the hybrid system (i.e., parallel or series) and may include, but are not limited to:

(A) Two transmissions (one ICE transmission and one electric vehicle transmission);

(B) One transmission with some components of both ICE and EV transmissions; and

(C) One electric vehicle transmission only.

(ii) *ICE vehicles*—(A) *In general*. For ICE vehicles, *transmission* means a mechanical device that uses a gear set (that is, two or more gears working together) to change the speed or direction of rotation in a machine. For ICE vehicles, a transmission may include, but is not limited to, a case, a drivetrain and geartrain, an internal clutch and torque converter, a lubrication system, a mechanical controls and electronic distribution system, a park-brake mechanism, and a transmission cooling system.

(B) *Case, drivetrain, and geartrain*. *Case, drivetrain, and geartrain* means the mechanical components within the transmission that transfer power from the engine to the wheels, including gears and shafts.

(C) *Internal clutch and torque converter*. *Internal clutch and torque converter* means components that facilitate smooth power transfer and gear changes, enhancing drivability.

(D) *Lubrication system*. *Lubrication system* means components that ensure all moving parts within the transmission are adequately lubricated, reducing friction and wear.

(E) *Mechanical controls and electronic distribution system*. *Mechanical controls and electronic distribution system* means components that manage the operation of the transmission, including gear selection and shifting through both mechanical and electronic means.

(F) *Park-brake mechanism*. *Park-brake mechanism* means a component that ensures the vehicle remains stationary when parked.

(G) *Transmission cooling system*. *Transmission cooling system* means components that prevent overheating of the transmission components, ensuring reliable performance under various operating conditions.

(e) *Examples*—(1) *Example 1: Incremental cost calculation for a qualified commercial clean vehicle*—(i) *Facts*. Manufacturer is the qualified manufacturer of a model year 2024 battery electric sport utility vehicle (BEV SUV). The BEV SUV is a qualified commercial clean vehicle with a GVWR of 4,600 pounds. Manufacturer is also the manufacturer of a gasoline-powered ICE SUV (ICE SUV) that, except for the powertrain, is identical to the BEV SUV. Manufacturer's costs of the BEV SUV powertrain components are: electric traction drive system ($1,881.00), battery ($12,060.00), and electrical accessories ($1,437.00). The RPE of the BEV SUV is 1.49. Manufacturer's costs of the ICE SUV powertrain components are: engine ($5,757.00), transmission ($1,744.00), and mechanical accessories ($415.00). The RPE of the ICE SUV is 1.52. In 2025, Taxpayer purchases the BEV SUV for $50,000 and places the vehicle in service. At the time of Taxpayer's purchase, Manufacturer provides Taxpayer with a written disclosure of Manufacturer's incremental cost calculation, which Manufacturer calculated as described in paragraphs (b) and (c) of this section.

(ii) *Analysis*—(A) *Calculation of incremental cost*. Under paragraph (b)(1) of this section, the incremental cost of the BEV SUV is the product of Manufacturer's cost of the BEV SUV powertrain and the RPE of such vehicle, less the product of Manufacturer's cost of the comparable vehicle ICE powertrain and the RPE of such vehicle.

(*1*) *Step 1*. Under paragraph (c)(2) of this section, the BEV SUV powertrain cost is the sum of the cost of the electric traction drive system ($1,881.00), the battery ($12,060.00), and the electrical accessories ($1,437.00), multiplied by the RPE of the vehicle (1.49), or $22,913.22.

(*2*) *Step 2*. Under paragraph (b)(4) of this section, the ICE SUV is the comparable vehicle with respect to the BEV SUV. Under paragraph (c)(1) of this section, the ICE SUV powertrain cost is the sum of the cost of the engine ($5,757.00), the ICE transmission ($1,744.00), and the mechanical accessories ($415.00), multiplied by the RPE of the vehicle (1.52), or $12,032.32.

(*3*) *Step 3*. Under paragraph (c)(2) of this section, the incremental cost of the BEV SUV is determined by subtracting the cost of the ICE SUV powertrain in step 2 ($12,032.32) from the cost of the BEV SUV powertrain in step 1 ($22,913.22), or $10,880.90 ($22,913.22 - $12,032.32 = $10,880.90).

(B) *Determination of credit amount*. Under paragraph (c)(10) of this section, Taxpayer may rely on Manufacturer's incremental cost calculation, which is described in paragraphs (b) and (c) of this section, for purposes of determining the amount of the section 45W credit allowable for the BEV SUV. Subject to the limitation in section 45W(b)(4), the credit amount is the lesser of 30 percent of Taxpayer's basis in the BEV SUV ($50,000.00 × 30% = $15,000.00) or the incremental cost of the BEV SUV ($10,880.90). Under section 45W(b)(4), the taxpayer's credit is limited to a maximum of $7,500.00 because the vehicle has a GVWR of less than 14,000 pounds. Therefore, the allowable section 45W credit with respect to the BEV SUV is $7,500.00.

(2) *Example 2: Section 45W credit equal to 30 percent of Taxpayer's basis in a qualified commercial clean vehicle*—(i) *Facts*. The facts are the same as in paragraph (e)(1) of this section (*Example 1*), except that Taxpayer purchases the BEV SUV for $21,600.00 and the incremental cost calculated by Manufacturer and provided in writing to Taxpayer is $7,000.00.

(ii) *Analysis*. Under paragraph (c)(10) of this section, Taxpayer may rely on Manufacturer's incremental cost calculation, which is described in paragraphs (b) and (c) of this section, for purposes of determining the amount of the section 45W credit allowable for the BEV SUV. Subject to the limitation in section 45W(b)(4), the credit amount equals the lesser of 30 percent of Taxpayer's basis in the BEV SUV ($21,600.00 × 30% = $6,480.00) or the incremental cost of the BEV SUV ($7,000.00). Because $6,480.00 is below the $7,500 limitation in section 45W(b)(4), the allowable section 45W credit with respect to the BEV SUV is $6,840.00.

(3) *Example 3: Incremental cost limit for a BEV with a GVWR over 14,000 pounds*—(i) *Facts*. Manufacturer is the qualified manufacturer of a model year 2025 battery electric bus (BEV Bus). The BEV Bus has a GVWR of 14,500 pounds and is a qualified commercial clean vehicle. Manufacturer is also the manufacturer of an ICE Bus that, except for the powertrain, is substantially similar to the BEV Bus. Manufacturer's costs of the BEV Bus powertrain components are: electric traction drive system ($4,586.00), battery ($18,535.00), and electrical accessories ($2,150.00). The RPE of the BEV Bus is 1.49. Manufacturer's costs of the ICE Bus powertrain components are: engine ($7,350.00), ICE transmission ($4,730.00), and mechanical accessories ($780.00). The RPE of the ICE Bus is 1.52. In 2025, Taxpayer purchases the BEV Bus for $105,500.00, takes possession of the vehicle, and places it in service that same year. At the time Taxpayer purchases the BEV Bus, Manufacturer provides Taxpayer with a written disclosure of Manufacturer's incremental cost calculation, which Manufacturer calculated in the manner described in paragraphs (b) and (c) of this section.

(ii) *Analysis*—(A) *Calculation of incremental cost*. Under paragraph (c)(2) of this section, the incremental cost of the BEV Bus is the product of Manufacturer's cost of the BEV Bus powertrain and the RPE of such vehicle, less the product of Manufacturer's cost of the comparable vehicle ICE powertrain and the RPE of such vehicle.

(*1*) *Step 1*. Under paragraph (c)(2) of this section, the BEV Bus powertrain cost is the sum of the cost of the electric traction drive system ($4,586.00), the battery ($18,535.00), and the electrical accessories ($2,150.00) multiplied by the RPE of the vehicle (1.49), or $37,653.79.

(*2*) *Step 2*. Under paragraph (b)(4) of this section, the ICE Bus is the comparable vehicle with respect to the BEV Bus. Under paragraph (c)(1) of this section, the ICE Bus powertrain cost is the sum of the cost of the engine ($7,350.00), the ICE transmission ($4,730.00), and the mechanical accessories ($780.00) multiplied by the RPE of the vehicle (1.52), or $19,547.20.

(*3*) *Step 3*. Under paragraph (c)(2) of this section, the incremental cost of the BEV Bus is determined by subtracting the cost of the ICE Bus powertrain ($19,547.20) from the cost of the BEV Bus powertrain ($37,653.79), or $18,106.59 ($37,653.79 - $19,547.20 = $18,106.59).

(B) *Determination of credit amount*. Under paragraph (c)(1) of this section, Taxpayer may rely on Manufacturer's incremental cost calculation, which is described in paragraphs (b) and (c) of this section. Subject to the limitation in section 45W(b)(4), the credit amount is the lesser of 30 percent of Taxpayer's basis in the BEV Bus ($105,500 × 30% = $31,650.00) or the incremental cost of the BEV Bus ($18,106.59). Under section 45W(b)(4), the section 45W credit is limited to $40,000 for the BEV Bus because it has a GVWR of more than 14,000 pounds. Because $18,106.59 is below the $40,000.00 limitation in section 45W(b)(4), the allowable section 45W credit with respect to the BEV Bus is $18,106.59.

(f) *Incremental cost of qualified commercial clean vehicle previously placed in service by another person or entity*—(1) *In general*. The incremental cost of a qualified commercial clean vehicle previously placed in service by another person or entity is the product of the incremental cost of the qualified commercial clean vehicle as calculated under paragraphs (b) and (c) of this section (that is, the incremental cost of such vehicle when new) and the residual value factor that corresponds to the age of the qualified commercial clean vehicle as determined under paragraph (f)(2) of this section.

(2) *Age of a qualified commercial clean vehicle previously placed in service by another person or entity*. The age of a qualified commercial clean vehicle previously placed in service by another person or entity is determined by subtracting the model year of the vehicle from the calendar year in which the taxpayer places the vehicle in service. For purposes of this paragraph (f)(2) and paragraph (f)(3) of this section, a negative age (for example, a case in which a model year vehicle is sold twice prior to the calendar year that corresponds to that model year) is treated as zero.

(3) *Residual value factor*. The residual value factor described in paragraph (f)(1) of this section applicable to relevant vehicle classes, based on GVWR, is as provided in the following tables:

Table 1 to Paragraph (f)(3)

Vehicle Class and Description	GVWR (lbs.)
Class 1 Passenger car	<14,000
Class 1 or 2-3 Light Truck (Van, Sport Utility Vehicle, Pickup Truck)	<14,000
Class 4-5	14,000-19,500
Class 6	19,500-26,000
Class 7-8 Box/Other	26,000-60,000
Class 8 Day Cab/Sleeper	>33,000

Table 2 to Paragraph (f)(3)

Vehicle Class / Vehicle Age	Class 1 Passenger Car	Class 1 or 2-3 Light Truck	Class 4-5	Class 6 Box	Class 7-8 Box/Other	Class 8 Day Cab/ Sleeper
0 years	70%	75%	95%	90%	95%	85%
1 year	60%	70%	85%	80%	85%	75%
2 years	55%	60%	80%	70%	80%	60%
3 years	50%	55%	75%	60%	70%	55%
4 years	40%	45%	70%	55%	65%	45%
5 years	40%	40%	65%	45%	60%	40%
6 years	35%	35%	60%	40%	55%	35%
7 years	30%	35%	55%	35%	50%	30%
8 years	25%	30%	50%	35%	45%	25%
9 years	25%	25%	45%	30%	45%	25%
10 years	20%	25%	45%	25%	40%	20%
11 years	20%	20%	40%	25%	35%	20%
12 years	15%	20%	40%	20%	35%	15%
13 years	15%	15%	35%	20%	30%	15%
14 or more years	10%	15%	35%	15%	30%	15%

(4) *Example*—(i) *Facts*. In December 2024, X purchases and places in service a model year 2025 battery electric car (BEV car). The BEV car is a qualified commercial clean vehicle and has a GVWR of 3,900 pounds and an incremental cost of $15,000. X did not claim a section 45W credit with respect to the BEV car. X sells the BEV car to Y in December 2025 for $40,000. Y is a fiscal year taxpayer whose taxable year begins on October 1.

(ii) *Analysis*. Under paragraph (f)(2) of this section, the BEV car is 0 years old because the model year of the BEV car (2025) subtracted from the calendar year Y placed the BEV car in service (2025) equals 0. Neither the calendar year in which X places the BEV car in service nor Y's fiscal year is relevant to determining the age of the BEV car for purposes of paragraph (f)(2) of this section. The applicable residual value factor under paragraph (f)(3) of this section is therefore 70%. The incremental cost of the BEV car is $10,500 ($15,000 × 70%). Because the incremental cost of the BEV car ($10,500) is less than 30% of Y's basis in the vehicle ($40,000 × 30% = $12,000), $10,500 is the amount determined under section 45W(b)(1). Under section 45W(b)(4), the allowable section 45W credit for the BEV car is limited to $7,500 because the BEV car has a GVWR of less than 14,000 pounds. Therefore, Y's allowable section 45W credit with respect to the BEV car is $7,500.

(g) *Applicability date.* This section applies to qualified commercial clean vehicles placed in service in taxable years ending after [date of publication of the final regulations in the **Federal Register**].

§1.45W-3 Qualified commercial clean vehicle.

(a) *In general*. To qualify as a qualified commercial clean vehicle for purposes of section 45W of the Code, a vehicle must meet the requirements of section 45W(c) and paragraphs (b) through (d) of this section.

(b) *Acquired for use or lease and not for resale by the taxpayer*—(1) *In general.* Under section 45W(c)(1), a qualified commercial clean vehicle must be acquired for use or lease and not for resale by the taxpayer. For purposes of section 45W(c)(1), a taxpayer that is not a tax-exempt entity described in section 168(h)(2)(A)(i), (ii), or (iv) of the Code acquires a vehicle for use or lease if the taxpayer acquires the vehicle for use or lease in a trade or business of the taxpayer.

(2) *Recharacterization of lease*. If a lease of a qualified commercial clean vehicle would be treated as a sale rather than a lease for purposes of subtitle A, such lease will not be respected for purposes of section 45W(c)(1). In such case, the lessor will be treated as having acquired the vehicle for resale, and no credit will be allowed to such lessor under section 45W with respect to the vehicle. To the extent the lessor has claimed a section 45W credit (defined in §1.45W-1(a)) with respect to such vehicle, the recapture rules in §1.45W-4(c) apply.

(c) *Type of vehicle*—(1) *In general*. Under section 45W(c)(2), a qualified commercial clean vehicle must be either an on-road vehicle, as described in section 45W(c)(2)(A) and paragraph (c)(2) of this section, or mobile machinery, as described in section 45W(c)(2)(B) and paragraph (c)(3) of this section. Some vehicles, such as a digger derrick truck, may qualify as both an on-road vehicle and mobile machinery.

(2) *On-road vehicle.* An *on-road vehicle* is a vehicle that meets the requirements of section 30D(d)(1)(D) of the Code (that is, the vehicle is treated as a motor vehicle for purposes of title II of the Clean Air Act), is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails).

(3) *Mobile machinery*. *Mobile machinery* has the meaning provided in section 4053(8) of the Code.

(d) *Electric motor and battery requirements*—(1) *In general*. Under section 45W(c)(3), a qualified commercial clean vehicle must be propelled to a significant extent by an electric motor that draws electricity from a battery that has a capacity of not less than 15 kilowatt hours (or, in the case of a vehicle that has a gross vehicle weight rating of less than 14,000 pounds, 7 kilowatt hours) and is capable of being recharged from an external source of electricity, or is a motor vehicle that satisfies the requirements under section 30B(b)(3)(A) and (B).

(2) *Battery capable of being recharged from an external source of electricity.* For

purposes of section 45W(c)(3)(A), a battery is capable of being recharged from an external source of electricity if such source of electricity is not an integral part of the vehicle. For example, a regenerative braking system, in which the kinetic energy generated by the motion of the vehicle is used to recharge a battery, is not an external source of electricity for purposes of section 45W(c)(3)(A) and this paragraph (d)(2).

(e) *Applicability date*. This section applies to taxable years ending after [date of publication of the final regulations in the **Federal Register**].

§1.45W-4 Special rules.

(a) *No double benefit*—(1) *Previous allowance of section 45W or 30D credit.* No credit is allowed under section 45W(a) of the Code (section 45W credit) with respect to any vehicle for which a section 45W credit or a section 30D credit was previously allowed for such vehicle.

(2) *Allowance of other deduction or credit.* Under sections 45W(d)(1) and 30D(f)(2) of the Code, the amount of any deduction or other credit allowable under chapter 1 of the Code (chapter 1) for a vehicle for which a section 45W credit is allowable must be reduced by the amount of the section 45W credit allowed for such vehicle. *See also* §1.25E-2(b)(1).

(3) *Recordkeeping for the qualified commercial clean vehicle credit*. In accordance with §1.6001-1, a taxpayer claiming a credit under section 45W must keep permanent books of account or records sufficient to establish the amount of any such credit required to be shown by such taxpayer in any return of tax or information return. Such records must be sufficient to establish, for example, that the section 45W credit claimed is not disallowed by paragraph (a)(1) of this section, subject to reduction under §1.25E-2(b)(1), or, if any such reduction is required, the amount of such reduction.

(b) *Credit ineligibility resulting from certain transactions and uses*—(1) *In general.* This paragraph (b) provides rules that apply to certain transactions involving qualified commercial clean vehicles and certain uses of such vehicles, including cancelled sales, vehicle returns, resales, or less than 100 percent use in a trade or business.

(2) *Cancelled sale.* If a sale of a qualified commercial clean vehicle is cancelled before the taxpayer places the vehicle in service, then—

(i) The taxpayer may not claim the section 45W credit with respect to the vehicle;

(ii) The vehicle may still be eligible for the section 45W credit; and

(iii) A subsequent buyer of the vehicle will not be required to apply the residual value rules of §1.45W-2(f) to determine the incremental cost of the vehicle.

(3) *Vehicle return.* If a taxpayer returns a qualified commercial clean vehicle to the seller within 30 days of placing such vehicle in service, then—

(i) The taxpayer may not claim the section 45W credit with respect to the vehicle;

(ii) The vehicle may still be eligible for the section 45W credit; and

(iii) A subsequent buyer of the vehicle must apply the residual value rules of §1.45W-2(f) to determine the incremental cost of the vehicle.

(4) *Resale.* If a taxpayer resells a qualified commercial clean vehicle within 30 days of placing the vehicle in service, then—

(i) The taxpayer is treated as having acquired such vehicle with the intent to resell;

(ii) The taxpayer may not claim the section 45W credit with respect to the vehicle;

(iii) The vehicle may still be eligible for the section 45W credit; and

(iv) A subsequent buyer of the vehicle must apply the residual value rules of §1.45W-2(f) to determine the incremental cost of the vehicle.

(5) *Less than 100 percent trade or business use in taxable year vehicle is placed in service.* If a taxpayer's trade or business use of a qualified commercial clean vehicle for the taxable year such vehicle is placed in service by the taxpayer is less than 100 percent of the taxpayer's total use of that vehicle for that taxable year (other than incidental personal use, such as a stop for lunch on the way between two job sites), including because the vehicle is sold or otherwise disposed of, the vehicle is ineligible for the section 45W credit. This rule also applies to a qualified commercial clean vehicle placed in service by a tax-exempt entity, except that 100 percent trade or business use means the tax-exempt entity's use that is related to an exempt purpose or an unrelated trade or business purpose.

(c) *Recapture*—(1) *In general.* This paragraph (c) provides rules regarding the recapture of the section 45W credit pursuant to sections 45W(d)(1) and 30D(f)(5).

(2) *Recapture in the case of less than 100 percent trade or business use*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, if a taxpayer ceases to use a qualified commercial clean vehicle for 100 percent trade or business use (other than incidental personal use) during the 18-month period beginning on the date the vehicle is placed in service, including because the vehicle is sold or otherwise disposed of, then—

(A) The taxpayer may not claim the section 45W credit with respect to the vehicle. If the taxpayer has already claimed the section 45W credit, the credit is recaptured as a tax under chapter 1.

(B) The vehicle may still be eligible for the section 45W credit; and

(C) A subsequent buyer must apply the residual value rules of §1.45W-2(f)(3) to determine the incremental cost of the vehicle.

(ii) *Applicability to vehicles placed in service by a tax-exempt entity.* For a qualified commercial clean vehicle placed in service by a tax-exempt entity, the 100 percent trade or business use rule in paragraph (c)(2)(i) of this section applies, except that, as provided in paragraph (b)(5) of this section, 100 percent trade or business use means the tax-exempt entity's use that is related to an exempt purpose or an unrelated trade or business purpose.

(d) *Elective payment elections*. In the case of an applicable entity, as described in section 6417(d)(1) of the Code and §1.6417-1(c) with respect to which an applicable credit listed in section 6417(b) is determined for a taxable year, section 6417(a) allows the applicable entity to make an election to treat the applicable entity as making a payment against the tax imposed by subtitle A of the Code equal to the amount of the applicable credit. Section 6417(b)(6) and §1.6417-1(d)(6) include the section 45W credit as an applicable credit, but only with respect to a section 45W credit determined by reason of section 45W(d)(2) by a tax-exempt entity described in section 168(h)(2)(A)(i), (ii), or (iv) that is also an applicable entity listed in section 6417(d)(1) and §1.6417-1(c).

(e) *Leases*. For purposes of section 45W(d)(2), a vehicle is subject to a lease if it is leased within 30 days of being placed in service by a tax-exempt entity.

(f) *Applicability date*. This section applies to taxable years ending after [date of publication of the final regulations in the **Federal Register**].

§1.45W-5 Reporting requirements.

(a) *Requirement to file return.* No section 45W credit (defined in §1.45W-1(a)) can be determined unless the taxpayer claiming such credit files a Federal income tax return or information return, as appropriate, for the taxable year in which the qualified commercial clean vehicle is placed in service. The taxpayer must attach to such return a completed Form 8936, *Clean Vehicle Credits*, or successor form, that includes all information required by the form and instructions. The taxpayer must also attach a completed Schedule A (Form 8936), *Clean Vehicle Credit Amount*, or successor form or schedule, that includes all information required by the schedule and instructions, including the vehicle identification number of the qualified commercial clean vehicle.

(b) *Credit may generally be claimed on only one tax return*—(1) *In general.* Except as provided in paragraphs (b)(2) and (3) of this section, the amount of the section 45W credit attributable to a qualified commercial clean vehicle may be claimed on only one Federal income tax return, including on a joint return in which one of the spouses or the spouse's wholly-owned business entity is listed on the title as the sole owner of the vehicle. In the event a qualified commercial clean vehicle is placed in service by multiple taxpayers that do not file a joint tax return (for example, in the case of married individuals filing separate returns), no allocation or proration of the section 45W credit is available.

(2) *Grantor trusts.* In the case of a qualified commercial clean vehicle placed in service by a trust, to the extent the grantor or another person is treated as owning all or part of the trust under sections 671 through 679 of the Code, the section 45W credit is allocated to such grantor or other person in accordance with §1.671-3(a)(1).

(3) *Partnerships and S corporations*. In the case of a qualified commercial clean vehicle placed in service by a partnership or S corporation, the section 45W credit is allocated among the partners of the partnership under §1.704-1(b)(4)(ii) or among the shareholders of the S corporation under sections 1366(a) and 1377(a) of the Code and claimed on the tax returns of the ultimate partners or of the S corporation shareholder(s).

(c) *Taxpayer reliance on manufacturer certifications and periodic written reports to the IRS.* A taxpayer that acquires a qualified commercial clean vehicle and places it in service may rely on the information and certifications contained in the qualified manufacturer's written reports to the IRS. The procedures for such periodic written reports are established in guidance published in the Internal Revenue Bulletin (*see* §601.601 of this chapter). To the extent a taxpayer relies on certifications or attestations from the qualified manufacturer, the qualified commercial clean vehicle the taxpayer acquires will be deemed to meet the requirements of sections 30D(d)(1)(C) and 45W(c)(1) of the Code.

(d) *Applicability date*. This section applies to taxable years ending after [date of publication of the final regulations in the **Federal Register**].

Par. 5. Section 1.6417-6 is amended by:

1. Adding two sentences to the end of paragraph (b)(1); and
2. Revising paragraph (e).

The addition and revision read as follows:

§1.6417-6 Special rules.

* * * * *

(b) * * *

(1) * * * For purposes of this paragraph (b)(1), if an applicable credit is subject to section 50, then section 50 applies without regard to section 50(b)(3) and (b)(4)(A)(i). If another provision of the Code contains a basis reduction and/or recapture provision outside of section 50 that impacts the available credit (such as sections 30C(e), 45Q(f)(4), 45W(d)(1), and 48(a)(10)), then the rules of that provision of the Code and the regulations in this chapter issued under that provision of the Code apply, except that any applicable credit continues to be determined without regard to section 50(b)(3) and (b)(4)(A)(i) and by treating any property with respect to which such credit is determined as used in a trade or business of the applicable entity, consistent with section 6417(d)(2) and §1.6417-2(c).

* * * * *

(e) *Applicability dates*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies to taxable years ending on or after March 11, 2024. For taxable years ending before March 11, 2024, taxpayers, however, may choose to apply the rules of §§1.6417-1 through 1.6417-4 and this section, provided the taxpayers apply the rules in their entirety and in a consistent manner.

(2) *Paragraph (b)(1) of this section*. The second and third sentences of paragraph (b)(1) of this section apply to property placed in service in taxable years ending after [date of publication of the final regulations in the **Federal Register**].

Douglas W. O'Donnell,
Deputy Commissioner.

(Filed by the Office of the Federal Register January 10, 2025, 8:45 a.m., and published in the issue of the Federal Register for January 14, 2025, 90 FR 3506)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2024–27 through 2024–52 is in Internal Revenue Bulletin 2024–52, dated December 23, 2024.

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