

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

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

Announcement 2023-10, page 663.

This Announcement is issued pursuant to § 521(b) of Pub. L. 106-170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public concerning advance pricing agreements (APAs) and the Advance Pricing and Mutual Agreement Program (APMA Program), formerly known as the Advance Pricing Agreement Program (APA Program). This twenty-fourth report describes the experience, structure, and activities of the APMA Program during calendar year 2022.

EXCISE TAX

REG-105954-22, page 713.

This notice of proposed rulemaking provides guidance related to sections 4661, 4662, 4671, and 4672 of the Internal Revenue Code, collectively referred to as the Superfund chemical taxes. Section 4661(a) imposes an excise tax on the sale or use of "taxable chemicals" by manufacturers, producers, or importers. Section 4671(a) imposes an excise tax on the sale or use of "taxable substances" by importers. The Superfund chemical taxes previously expired on December 31, 1995, but were reinstated with certain modifications, effective July 1, 2022, by section 80201 of the Infrastructure Investment and

Bulletin No. 2023-16
April 17, 2023

Jobs Act (IIJA), Public Law 117-58, 135 Stat. 429 (November 15, 2021).

INCOME TAX

Notice 2023-31, page 661.

This Notice announces that when proposed regulations under section 903 (REG-112096-22) are finalized, the Treasury Department and the IRS intend to extend the transition period for the single-country exception's documentation requirement from May 17, 2023 to 180 days after the final regulations are filed with the Federal Register. The single-country exception provides relief from the source-based attribution requirement under section 903 for foreign withholding taxes on royalties paid for the use of intellectual property within the withholding jurisdiction.

REG-120080-22, page 746.

This document contains proposed regulations regarding the credit for clean vehicles under section 30D of the Internal Revenue Code (Code). These proposed regulations will affect persons seeking to claim the § 30D credit and qualified manufacturers of the clean vehicles.

Rev. Rul. 2023-2, page 658.

Revenue Ruling 2023-2 confirms that the basis adjustment under section 1014 generally does not apply to the assets of an irrevocable grantor trust not included in the deceased grantor's gross estate for Federal estate tax purposes.

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.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

Part I

Section 671.—Trust Income, Deductions, and Credits Attributable to Grantors and Others as Substantial Owners; § 1014.—Basis of Property Acquired from a Decedent

26 CFR 1.1014-1: Basis of Property Acquired from a Decedent

Rev. Rul. 2023-2

ISSUE

Is there a basis adjustment under § 1014 of the Internal Revenue Code (Code) to the assets of a trust on the death of the individual who is the owner of the trust under chapter 1 of the Code (chapter 1) if the trust assets are not includible in the owner's gross estate pursuant to chapter 11 of the Code (chapter 11)?¹

FACTS

In Year 1, A, an individual, established irrevocable trust, T, and funded T with Asset in a transfer that was a completed gift for gift tax purposes. A retained a power over T that causes A to be treated as the owner of T for income tax purposes under subpart E of part I of subchapter J of chapter 1 (subpart E). A did not hold a power over T that would result in the inclusion of T's assets in A's gross estate under the provisions of chapter 11. By the time of A's death in Year 7, the fair market value (FMV) of Asset had appreciated. At A's death, the liabilities of T did not exceed the basis of the assets in T, and neither T nor A held a note on which the other was the obligor.

LAW

Section 671 provides that, where subpart E treats the grantor or another person as the owner of any portion of a trust, the

taxable income and credits of the grantor or the other person include those items of income, deductions, and credits against tax of the trust that are attributable to that portion of the trust to the extent that these items would be taken into account under chapter 1 in computing taxable income or credits against the tax of an individual. Any remaining portion of the trust is subject to subparts A through D of part I of subchapter J.

Section 1012(a) provides that the basis of property is its cost, except as otherwise provided in subchapter O of chapter 1 (subchapter O) (relating to gain or loss on disposition of property) and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses) of chapter 1. One of the provisions set forth in subchapter O is § 1014.

Section 1014(a)(1) generally provides that, except as otherwise provided in § 1014 (including § 1014(f) requiring the use of consistent basis), the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent, if not sold, exchanged, or otherwise disposed of before the decedent's death by that person, is the FMV of the property at the date of the decedent's death.

Section 1014(b) lists the seven types of property that are considered to have been acquired from or to have passed from the decedent for purposes of § 1014(a). The types of property are:²

- Section 1014(b)(1) – Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent;
- Section 1014(b)(2) – Property transferred by the decedent during life in trust to pay the income for life or on the order or direction of the decedent, with the right reserved to the decedent at all times before death to revoke the trust;
- Section 1014(b)(3) – In the case of decedents dying after December 31,

1951, property transferred by the decedent during life in trust to pay the income for life or on the order or direction of the decedent with the right reserved to the decedent at all times before death to make any change in its enjoyment through the exercise of a power to alter, amend, or terminate the trust;

- Section 1014(b)(4) – Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will;
- Section 1014(b)(6) – Property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, or United States territory or any foreign country, if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 or § 811 of the Internal Revenue Code of 1939 (1939 Code);
- Section 1014(b)(9) – Property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property must be included in determining the value of the decedent's gross estate under chapter 11 or under the 1939 Code. In this case, if the property is acquired before the death of the decedent, the basis commencing on the death of the decedent is the amount determined under § 1014(a) reduced by the amount allowed to the taxpayer as deductions in computing taxable income under subtitle A of the Code or prior income tax laws for exhaustion, wear and tear, obsolescence, amortization, and depletion on the property before the death of the decedent. However, § 1014(b)(9) does not apply to:

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

² Section 1014(b)(5) applies only to decedents dying before January 1, 2005. Section 1014(b)(7) and (8) were repealed by section 221(a)(74)(B) of the Tax Increase Prevention Act of 2014, Public Law 113-295, 128 Stat. 4010, 4049 (December 19, 2014).

- (A) annuities described in § 72;
- (B) stock or securities of a foreign corporation that would have been a foreign personal holding company prior to the repeal of § 552 of its next preceding taxable year prior to the decedent's death to which § 1014(b)(5) would apply if the stock or securities had been acquired by bequest; and
- (C) property described in any other paragraph of § 1014(b); and

- Section 1014(b)(10) – Property includible in the gross estate of the decedent under § 2044 (relating to certain property for which the marital deduction was previously allowed). In any such case, the basis is determined under § 1014(b)(9) as if such property were described in the first sentence of § 1014(b)(9).

Section 1.1014-1(a) generally provides that the basis of property acquired from a decedent is equal to the value placed upon such property for purposes of chapter 11. Accordingly, generally the basis of property acquired from a decedent is the FMV of such property at the date of the decedent's death, or, if the decedent's executor so elects, at the alternate valuation date prescribed in § 2032. Property acquired from a decedent includes, principally, property acquired by bequest, devise, or inheritance, and, in the case of decedents dying after December 31, 1953, property required to be included in determining the value of the decedent's gross estate under any provision of the Internal Revenue Code of 1954 or the 1939 Code.

Section 1.1014-2(a)(1) provides that property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent, whether the property was acquired under the decedent's will or under the law governing the descent and distribution of the property of decedents, is considered to have been acquired from a decedent and the property's basis is determined under the general rule in § 1.1014-1.

Section 1.1014-2(b)(2) generally provides that property is considered to have been acquired from a decedent to the extent such property is includible in the decedent's gross estate if the decedent died after December 31, 1953.

In Rev. Rul. 84-139, 1984-2 C.B. 168, D, a citizen and resident of foreign country Z, died owning real property located in Z. B, a United States citizen, inherited the real property in accordance with the laws of Z. At the time of D's death, the property had a basis of \$100x and a FMV of \$1,000x. Because the property was located outside the United States and D was a nonresident alien, the value of the property was not includible in D's gross estate under § 2103 for purposes of chapter 11. B sold the property the following year for \$1050x, claiming a basis of \$1,000x and gain of \$50x. The ruling concludes that, because B inherited the property from D, and the property is within the definition of property acquired from a decedent under § 1014(b)(1), it received a basis adjustment to FMV at D's death and B had correctly calculated B's basis and gain. In Rev. Rul. 84-139, which did not involve a grantor trust, the property at issue was acquired by a bequest.

ANALYSIS

For property to receive a basis adjustment under § 1014(a), the property must be acquired or passed from a decedent. For property to be acquired or passed from a decedent for purposes of § 1014(a), it must fall within one of the seven types of property listed in § 1014(b). Asset does not fall within any of the seven types of property listed in § 1014(b).

First, upon A's death, Asset was not "bequeathed," "devised," or "inherited" within the meaning of § 1014(b)(1). A "bequest" is the act of giving property (usually personal property or money) by will. Black's Law Dictionary (11th ed. 2019). The Supreme Court defined "bequest" as a "gift of personal property by will" for purposes of the predecessor provision of § 102 that, as today, excluded gifts, bequests, devises, or inheritance from gross income for income tax purposes. *United States v. Merriam*, 263 U.S. 179, 184 (1923).

A "devise" is the act of giving property, especially real property, by will. Black's Law Dictionary (11th ed. 2019). Volume 97 of the *Corpus Juris Secundum* notes that although "bequest" and "bequeath" strictly refer to a gift by will of personal property, the words may be given

a broader meaning to include real property which, under the narrower definition, would be a devise. See 97 C.J.S. Wills § 1861 (2022).

An "inheritance" is property received from an ancestor under the laws of intestacy or property that a person receives by bequest or devise. Black's Law Dictionary (11th ed. 2019).

In *Bacciocco v. United States*, 286 F.2d 551, 554-55 (6th Cir. 1961), the court found that property transferred in trust prior to the decedent's death is not bequeathed or inherited because it did not pass either by will or intestacy. The court stated, "[w]e construe those terms [bequest and inheritance] according to their usual and normal meaning" and noted that the decedent's death did not transfer the assets to the trust. *Id.* at 554-56. This does not imply that property in a trust could never fall within the meaning of § 1014 (such as property included in the decedent's gross estate or property specifically described by §§ 1014(b)(2), (3), or (4)); however, in the facts outlined above, the trust property does not fall within the meaning of those terms.

The Congressional committee report explaining the basis of property acquired from a decedent for purposes of § 1014(b) (then designated § 113(a)(5) of the 1939 Code) stated that the provision "applies basically to property in the decedent's probate estate and includible in his gross estate under § 811(a) [the predecessor provision of § 2031(a)]. In addition, it applies to property acquired by certain specifically described methods of disposition which are treated as though the acquisition was by bequest, devise, or inheritance." H.R. Rep. No 83-1337 at 4407-08 (March 9, 1954). Citing that report, the court in *Collins v. United States*, 318 F. Supp. 382, 386 (C.D. Cal. 1970) stated, "[i]t seems clear that property cannot be said to come from a decedent by 'bequest, devise, or inheritance' unless it is part of the decedent's probate estate under the laws of the state of his domicile."³ The court determined that payments made to a widow by her deceased husband's employers, under contracts negotiated by her husband, did not pass from the decedent under § 1014 and so would not acquire a basis determined by the contract's FMV at the decedent's death but instead were income

with respect to a decedent that would not receive a basis adjusted to date of death value.

Second, Asset does not fall within any of the remaining types of property listed in § 1014(b). Asset is not described in §§ 1014(b)(2), (3), or (4) because A did not retain a power to revoke or amend T or hold a power to appoint Asset. Asset also is not described by § 1014(b)(6) because it is not community property. Finally, Asset is not described by §§ 1014(b)(9) or (10) because it is not included in A's gross estate under the provisions of chapter 11. Because at A's death Asset does not fall within any of the seven types of property listed in § 1014(b), Asset does not receive

a basis adjustment under § 1014(a) at A's death.

HOLDING

A creates T, an irrevocable trust, retaining a power which causes A to be the owner of the entire trust for income tax purposes under chapter 1 but does not cause the trust assets to be included in A's gross estate for purposes of chapter 11. If A funds T with Asset in a transaction that is a completed gift for gift tax purposes, the basis of Asset is not adjusted to its fair market value on the date of A's death under § 1014 because Asset was not acquired or passed from a decedent as

defined in § 1014(b). Accordingly, under this revenue ruling's facts, the basis of Asset immediately after A's death is the same as the basis of Asset immediately prior to A's death.⁴

DRAFTING INFORMATION

The principal authors of this revenue ruling are Cynthia D. Morton and Daniel J. Gespass of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue ruling, please contact Ms. Morton at (202) 317-5279 or Mr. Gespass at (202) 317-6859 (not a toll-free number).

³The court in *Collins* also determined that the wording of § 1014(b) indicated that the list was exclusive, marking the limits of property acquired from a decedent or passing from a decedent, and that a transfer must therefore be within that list before it could be considered as eligible for a basis adjustment under § 1014(a). *Id.* at 385-86.

⁴This revenue ruling does not alter the result in Rev. Rul. 84-139. Property acquired from a non-resident non-citizen decedent that is not included in his or her gross estate may receive a basis adjustment under § 1014 if the property is acquired by bequest, devise, or inheritance within the meaning of § 1014(b)(1) or is otherwise specifically described in § 1014(b).

Part III

Extension of the Transition Period for the Single-Country Exception Under Section 903 of the Internal Revenue Code

Notice 2023-31

SECTION 1. PURPOSE

This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to provide a longer transition period for the documentation requirement in proposed § 1.903-1(c)(2)(iv)(D) (the documentation requirement) when the exception to the source-based attribution requirement in proposed § 1.903-1(c)(2)(iii)(B) (the single-country exception) is finalized.¹

SECTION 2. BACKGROUND

Section 901 of the Internal Revenue Code (Code) allows a credit for foreign income, war profits, and excess profits taxes, and section 903 provides that such taxes include a tax in lieu of a generally-imposed foreign income, war profits, or excess profits tax. A foreign tax is a creditable net income tax only if the determination of the foreign tax base conforms in essential respects to the determination of taxable income under the Code. To meet this test, a foreign tax must satisfy the net gain requirement, which comprises the realization requirement, the gross receipts requirement, the cost recovery requirement (formerly the net income requirement), and the attribution requirement.

The attribution requirement in § 1.901-2(b)(5) requires that a foreign tax conform to the concepts of taxing jurisdiction reflected in the Code that define an income tax in the U.S. sense. With respect to a foreign tax imposed on nonresident taxpayers, the attribution requirement

limits the scope of gross receipts and costs included in the base of a foreign tax to those that satisfy the activities-based attribution, source-based attribution, or property-based attribution tests. § 1.901-2(b)(5)(i).

Under the source-based attribution requirement in § 1.901-2(b)(5)(i)(B), a foreign tax imposed on the nonresident's income on the basis of source meets the attribution requirement only if the foreign tax law's sourcing rules are reasonably similar to the sourcing rules that apply for Federal income tax purposes. In the case of gross income arising from royalties, § 1.901-2(b)(5)(i)(B)(2) provides that the foreign tax law must source royalties based on the place of use of, or the right to use, the intangible property, consistent with how the Code sources royalty income.

For foreign withholding taxes, § 1.903-1(c)(2)(iii) provides that the foreign withholding tax must meet the source-based attribution requirement in § 1.901-2(b)(5)(i)(B) to qualify as a "covered withholding tax" that may be creditable as a tax in lieu of an income tax. Thus, a withholding tax on a royalty payment is creditable only if the foreign tax law sources royalties based upon the place of use of, or the right to use, the intangible property, consistent with how the Code sources royalty income.

On November 22, 2022, the Treasury Department and the IRS published proposed regulations (REG-112096-22) in the Federal Register (87 FR 71271) (the 2022 FTC proposed regulations). The 2022 FTC proposed regulations provide a limited exception to the source-based attribution requirement for withholding taxes on certain royalty payments. Under proposed § 1.903-1(c)(2)(iii), a tested foreign tax satisfies the source-based attribution requirement if the tax meets either the source-based attribution requirement or the single-country exception. In general, the single-country exception applies if (1) the income subject to the tested foreign tax is char-

acterized as royalty income under the foreign tax law,² and (2) the payment giving rise to such income is made pursuant to a single-country license (such license, the required agreement). Proposed § 1.903-1(c)(2)(iii)(B).

Under the documentation requirement, the required agreement pursuant to which the royalty is paid must be executed no later than the date on which the royalty is paid. However, recognizing that the single-country exception is proposed to be applicable to periods preceding the release of the 2022 FTC proposed regulations, proposed § 1.903-1(c)(2)(iv)(D) provides a special transition documentation rule for royalties paid on or before May 17, 2023 (the transition documentation rule). Under the transition documentation rule, the required agreement must be executed no later than May 17, 2023, and the agreement must state (whether in the terms of the agreement or in recitals) that royalties paid on or before the execution of the agreement are considered paid pursuant to the terms of the agreement. According to the preamble to the 2022 FTC proposed regulations, taxpayers may choose to rely on the provisions addressing the attribution requirement for royalty payments (proposed § 1.901-2(b)(5)(i)(B)(2) and (d)(1)(iii) and proposed § 1.903-1(c)(2) and (d)(3), (4), and (8) through (11)) for foreign taxes paid in taxable years beginning on or after December 28, 2021, and ending before the effective date of final regulations adopting these rules.

The Treasury Department and the IRS have received comments with respect to the 2022 FTC proposed regulations, including with respect to the documentation requirement for the single-country exception. The Treasury Department and the IRS are considering those comments.

SECTION 3. EXTENSION OF THE TRANSITION PERIOD FOR THE DOCUMENTATION REQUIREMENT

To allow for an orderly implementation of the requirements of the single-country

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

² Income from the sale of a copyrighted article (as determined under rules similar to § 1.861-18) is not characterized as royalty income regardless of the characterization of the income under the foreign tax law.

exception, including for relevant periods before the finalization of the single-country exception, the Treasury Department and the IRS intend to modify the transition documentation rule when the single-country exception in proposed § 1.903-1(c)(2)(iii) (B) is finalized to provide that the required agreement must be executed no later than 180 days after the date final regulations adopting the single-country exception are filed with the Federal Register.

SECTION 4. TAXPAYER RELIANCE

Consistent with the preamble to the 2022 FTC proposed regulations, taxpayers may rely on Section 3 of this notice for foreign taxes paid in taxable years beginning on or after December 28, 2021, and ending before the effective date of final regulations adopting the single-country exception, provided that the foreign tax is otherwise eligible for the single-country

exception under the 2022 FTC proposed regulations.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Teisha M. Ruggiero of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Ms. Ruggiero at (646) 259-8116 (not a toll-free number).

Part IV

Announcement and Report Concerning Advance Pricing Agreements

March 27, 2023

Announcement 2023-10

This Announcement is issued pursuant to § 521(b) of Pub. L. 106-170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public concerning advance pricing agreements (APAs) and the Advance Pricing and Mutual Agreement Program (APMA Program), formerly known as the Advance Pricing Agreement Program (APA Program). The first report covered calendar years 1991 through 1999. Subsequent reports covered each calendar year 2000 through 2021 separately. This twenty-fourth report describes the experience, structure, and activities of the APMA Program during calendar year 2022. It does not provide guidance regarding the application of the arm's length standard.

Part I of this report includes information on the structure, composition, and operation of the APMA Program; Part II presents statistical data; and Part III includes general descriptions of various elements of the APAs executed in 2022, including types of transactions covered, transfer pricing methods used, and completion time.

John M. Wall
Acting Director, APMA Program

Part I. The APMA Program – Structure, Composition, and Operation
[Pub. L. 106-170 § 521(b)(2)(A)]

In February 2012, the former APA Program was moved from the Office of Chief Counsel to the Office of Transfer Pricing Operations¹ within the Large Business and International Division of the IRS and combined with the U.S. Competent Authority staff responsible for transfer pricing cases, thereby forming the APMA Program (APMA).

As of December 31, 2022, APMA's APA cases were handled by 59 team leaders, 26 economists, 9 managers, and 3 assistant directors.² Each assistant director oversees three managers who lead teams consisting of both team leaders and economists. APMA's main office is in Washington, DC, and it also has offices in northern California (San Francisco and San Jose), southern California (Los Angeles and Laguna Niguel), Chicago, and New York.

On August 31, 2015, a new revenue procedure governing APA applications was published in 2015-35 I.R.B. on page 263. Revenue Procedure (Rev. Proc.) 2015-41 provides guidance, information and instructions on APA requests and the administration of APAs. Rev. Proc. 2015-41 updates and supersedes Rev. Proc. 2006-9, 2006-1 C.B. 278, as modified by Rev. Proc. 2008-31, 2008-1 C.B. 1133, which is also superseded.

Model APAs appear as appendices to this report. Appendix 1 is the model for APAs covered by Rev. Proc. 2006-9. Appendix 2 is the current model APA for APAs covered by Rev. Proc. 2015-41. A list of primary APMA contacts is available at <https://www.irs.gov/businesses/corporations/apma-contacts>.

¹ In 2017, Transfer Pricing Operations became Treaty & Transfer Pricing Operations ("TTPO").

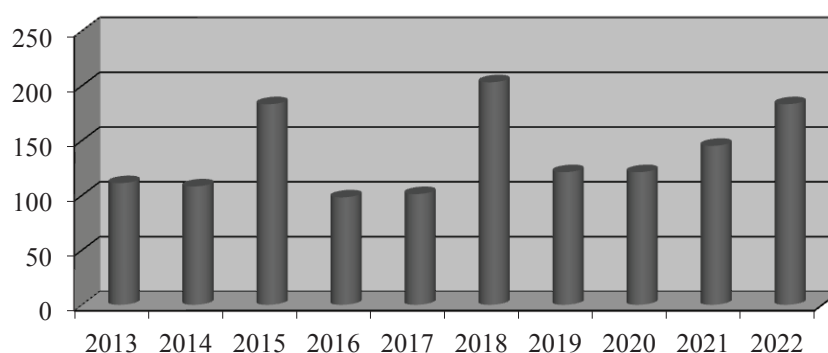
² In late 2020, TTPO's Treaty Assistance and Interpretation Team (TAIT) joined APMA, bringing the total number of groups in APMA to four. The three legacy APMA groups have primary responsibility for cases arising under the business profits and associated enterprises articles of U.S. tax treaties. TAIT endeavors to resolve competent authority issues arising under all other articles of U.S. tax treaties including issues arising under U.S. tax treaties relating to estate and gift taxes. As such, TAIT is separate from APMA's APA program, and the total numbers of team leaders and managers handling APA cases do not include TAIT analysts and managers.

Part II. APMA Program Statistical Data
[Pub. L. 106-170 § 521(b)(2)(C)(i-viii)]

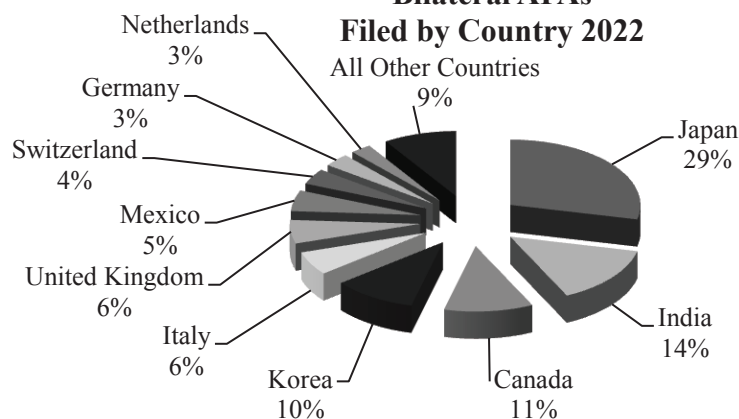
Table 1: APA Applications Filed
§ 521(b)(2)(C)(i)

	Unilateral	Bilateral	Multilateral	Total
Filed 1991-1999 ³				401
Filed 2000-2021	653	1,845	37	2,535
Filed in 2022	22	154	7	183
Total Filed 1991-2022				3,119

Applications Filed
2013-2022



Bilateral APAs
Filed by Country 2022



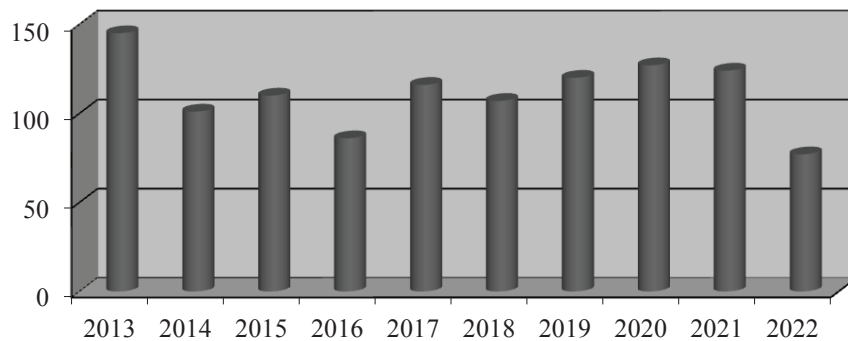
The charts above illustrate the number of complete applications filed per year and the percentage of bilateral requests received in 2022 per foreign country. As of December 31, 2022, APMA had also received 34 user fee filings that were not yet accompanied by a substantially complete APA application, in addition to the 183 complete APA applications.

³The first APA Statutory Report, which compiled APA data from 1991-1999, did not report the cumulative number of applications for those years by submission type, so the cumulative totals cannot be reported in that manner.

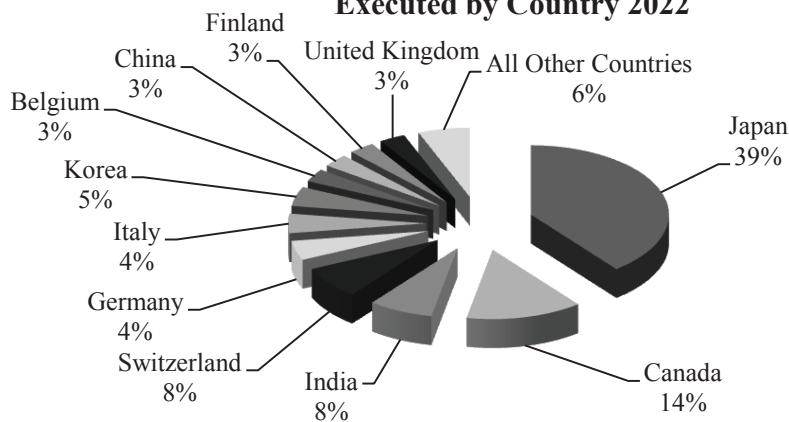
Table 2: Executed⁴ and Pending APAs
§ 521(b)(2)(C)(ii-vi)

	Unilateral	Bilateral	Multilateral	Total
Total Executed 1991-2021	687	1,483	21	2,191
Total Executed in 2022	10	66	1	77
Total Executed 1991-2022	697	1,549	22	2,268
Total Pending as of 12/31/2022	54	480	30	564
<i>Renewals Executed in 2022⁵</i>	<i>10</i>	<i>32</i>	<i>0</i>	<i>42</i>
<i>Renewals Pending⁶ as of 12/31/2022</i>	<i>37</i>	<i>185</i>	<i>15</i>	<i>237</i>

**APAs Executed
2013-2022**



**Bilateral APAs
Executed by Country 2022**



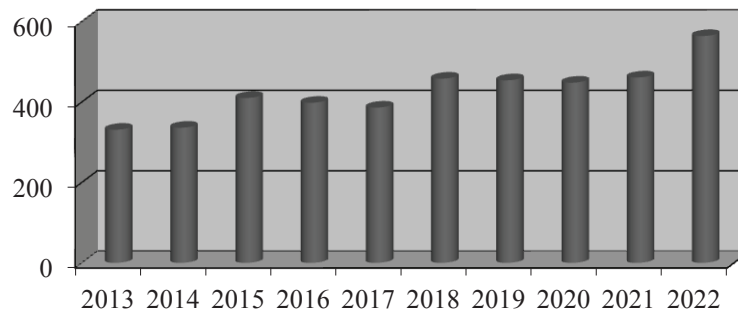
In 2022, the percentage of renewals executed decreased (55 percent of all APAs executed in 2022 versus 63 percent in 2021). The charts above illustrate trends in the number of APAs executed per year and the countries involved in the bilateral APAs that were executed in 2022.

⁴“Executed APAs” refers to APAs that were finalized and includes both initial and renewal APAs.

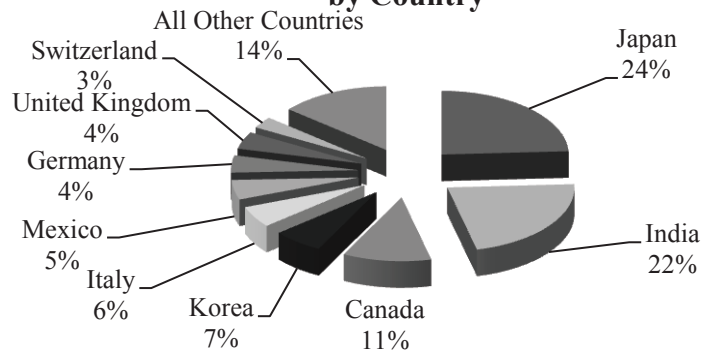
⁵The number of renewals executed is included in the total number of APAs executed during the year.

⁶The number of renewals still pending as of year-end is also included in the total number of pending APAs.

Pending APAs 2013-2022



Pending Bilateral APAs by Country



As the top chart illustrates, the number of pending requests increased relative to December 31, 2021. As of December 31, 2022, almost half of the pending bilateral APA requests involved either Japan or India.

Table 3: APAs Revoked or Cancelled and Applications Withdrawn
§ 521(b)(2)(C)(vii)

	Unilateral	Bilateral	Multilateral	Total
Revoked or Cancelled 1991-2000 ⁷				1
Revoked or Cancelled 2001-2021	8	2	0	10
Revoked or Cancelled in 2022	0	0	0	0
Total Revoked or Cancelled 1991-2022				11
Withdrawn 1991-2000 ⁸				49
Withdrawn 2001-2021	75	152	2	229
Withdrawn in 2022	1	5	0	6
Withdrawn 1991-2022				284

⁷The first APA Statutory Report, which compiled APA data from 1991-1999, and the second APA Statutory Report, which compiled APA data for 2000, did not report the cumulative number of applications for those years by submission type, so the cumulative totals cannot be reported in that manner.

⁸See *supra* note 7.

Table 4: APAs Executed in 2022 by Industry
§ 521(b)(2)(C)(viii)

Industry	
Wholesale/Retail Trade	32
Manufacturing	31
Services	10
Finance, Insurance, and Real Estate	3
All Other Industries	1

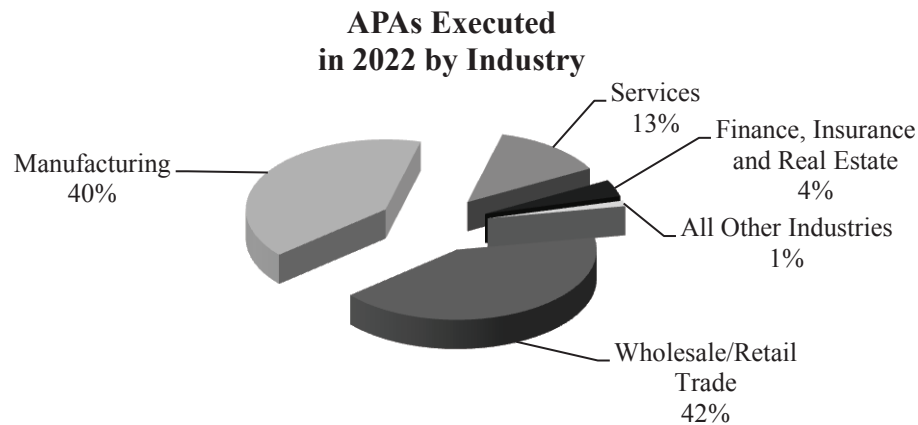
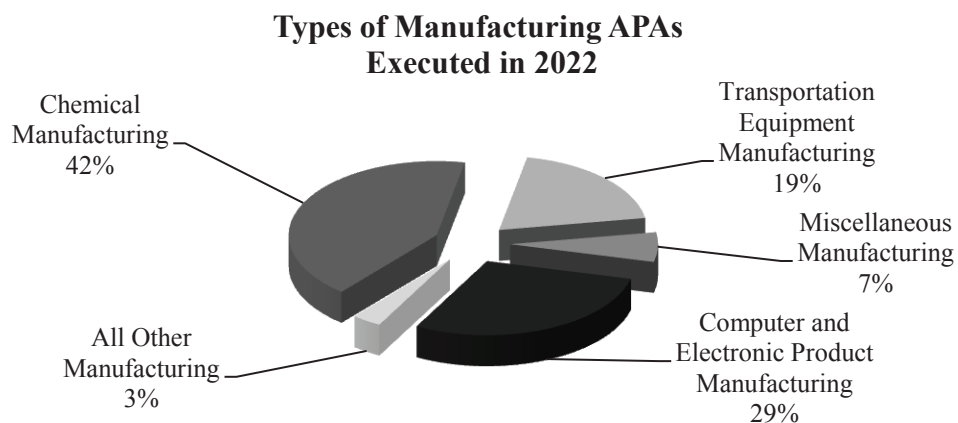


Table 4a: Manufacturing APAs Executed in 2022

Type of Manufacturing	
Chemical	13
Computer and Electronic Product	9
Transportation Equipment	6
Miscellaneous ⁹	2
All Other Manufacturing	1

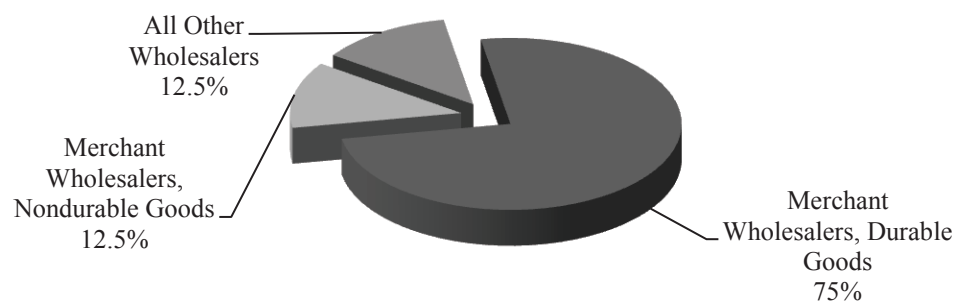


⁹Industries in the Miscellaneous Manufacturing subsector (NAICS Code 339) make a wide range of products that cannot readily be classified in specific NAICS manufacturing subsectors.

Table 4b: Wholesale/Retail Trade APAs Executed in 2022

Type of Wholesale/Retail Trade	
Merchant Wholesalers, Durable Goods	24
Merchant Wholesalers, Nondurable Goods	4
All Other Wholesalers	4

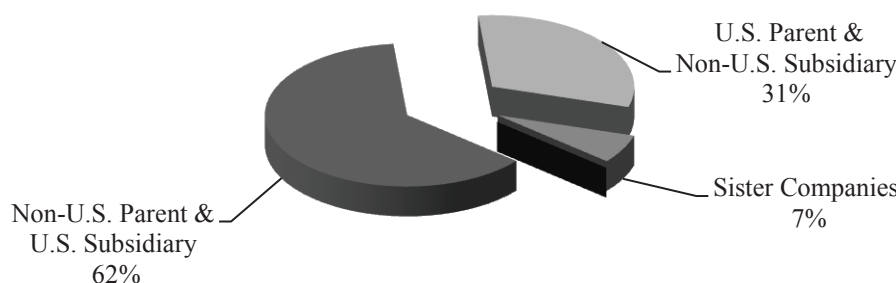
**Types of Wholesale/Retail Trade APAs
Executed in 2022**



Part III. General Descriptions of APAs Executed in 2022
[Pub. L. 106-170 § 521(b)(2)(D) and (E)]

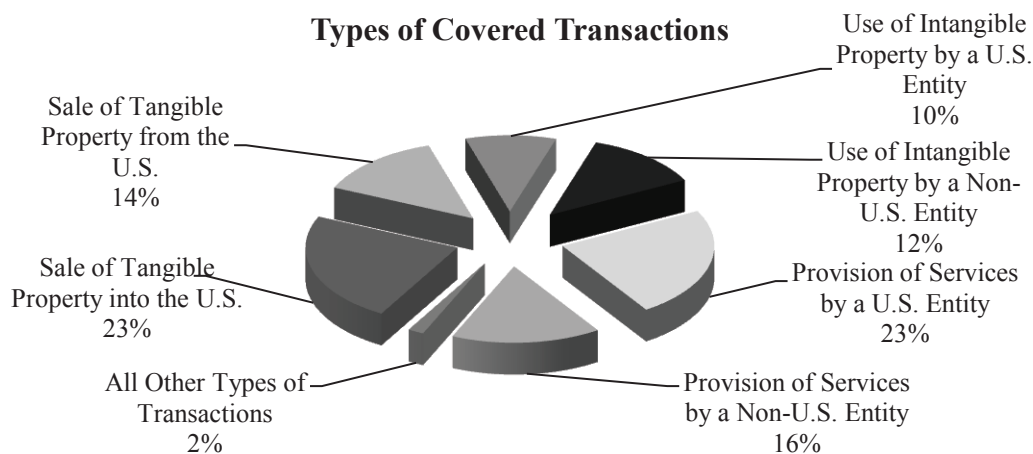
Nature of the Relationships
§ 521(b)(2)(D)(i)

Relationships between Controlled Parties



As in prior years, more than half of the APAs executed in 2022 involved transactions between non-U.S. parents and U.S. subsidiaries.

Covered Transactions, Functions and Risks, and Tested Parties
§ 521(b)(2)(D)(ii-iii)

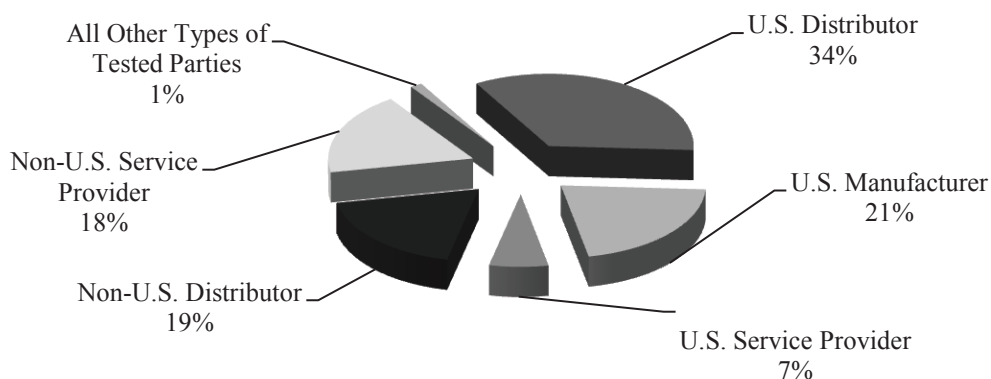


Most of the transactions¹⁰ covered in APAs executed in 2022 involve the sale of tangible goods or the provision of services. Twenty-two percent of the transactions involve the use of intangible property, which can be among the most challenging transactions in APMA's inventory.

In the majority of APAs, the covered transactions involve numerous business functions and risks. For instance, with respect to functions, APAs involving manufactured products typically involve a controlled group that conducts research and development (R&D), engages in product design and engineering, manufactures the product, markets and distributes the product, and performs support functions such as legal, finance, and human resources. Regarding risks, the controlled group may assume a variety of risks, including market risks, R&D risks, financial risks, credit and collection risks, product liability risks, and general business risks. In the APA evaluation process, a significant amount of time and effort is devoted to understanding how the functions and risks are allocated among the controlled group of companies that are party to the covered transactions. For methods requiring the selection of a tested party, the tested party chosen generally will be the least complex of the controlled taxpayers.

¹⁰ APAs often cover more than one type of transaction.

Types of Tested Parties



Consistent with prior years, a majority of tested parties¹¹ in 2022 were U.S. distributors, U.S. manufacturers, or U.S. service providers.

Transfer Pricing Methods Used § 521(b)(2)(D)(iv)

In 2022, the most commonly used transfer pricing method (TPM) for both the sale of tangible property and the use of intangible property continued to be the comparable profits method/transactional net margin method (CPM/TNMM). The CPM/TNMM was used for 77 percent of these types of transactions.

For covered transactions involving tangible and intangible property that used the CPM/TNMM, the operating margin (OM) is still the most common profit level indicator (PLI) used to benchmark results. It was used 73 percent of the time. Other PLIs, such as the Berry Ratio and return on total cost, made up the other 27 percent. As used here, “OM” is defined as the ratio of operating profit to sales,¹² and “Berry Ratio” is defined as the ratio of gross profit to operating expenses.¹³ Most services transactions (80 percent) also used the CPM/TNMM with the OM and operating profit to operating expense being the most common PLIs (used 53 percent of the time).¹⁴

Sources of Comparables, Comparables Selection Criteria, and Nature of Adjustments to Comparables or Tested Party Data § 521(b)(2)(D)(v-vii)

For the APAs executed in 2022 that involved the CPM/TNMM with a North American tested party, the most widely used data source for comparables was Standard and Poor’s Compustat/Capital IQ database. Different sources were used in other cases (e.g., where the tested party was not a U.S. or Canadian entity or where transaction-based methods were applied). The other most commonly used databases are listed in the table below.

Table 5: Sources of Comparable Data

Bureau van Dijk (BvD)	Prowess
Global Vantage	RoyaltySource
ktMINE	RoyaltyStat
Orbis	

In making comparability adjustments, typical balance sheet adjustments, as identified in Treas. Reg. §§ 1.482-1(d)(2) and 1.482-5(c)(2)(iv), were made in most cases, including where appropriate, adjustments for payables, receivables, inventory, and fixed assets. In addition, where appropriate, adjustments for different accounting practices were made to convert from LIFO to FIFO inventory accounting, and a small number of cases involved the accounting reclassification of expenses, e.g., from COGS to operating expenses.

¹¹ Not all the executed APAs involve a tested party.

¹² See Treas. Reg. § 1.482-5(b)(4)(ii)(A).

¹³ See Treas. Reg. § 1.482-5(b)(4)(ii)(B).

¹⁴ The majority of APAs that covered services transactions also included tangible/intangible transactions and are not tested under a separate PLI.

Ranges, Goals, and Adjustment Mechanisms

§ 521(b)(2)(D)(viii-ix)

Most transactions covered in APAs target an interquartile range or point within the interquartile range as described in Treas. Reg. § 1.482-1(e)(2)(iii)(C), and other targeted arm's length ranges. Where the transaction involves a royalty payment for the use of intangible property, both specific royalty rates and ranges have been used. Where the covered transaction is the sale or license of intangible property, and the payment for such transfer would be a royalty based solely on external comparable uncontrolled transactions, a secondary or confirming method, e.g., a test of the post-royalty operating margin or cost-plus mark-up, has sometimes also been used. The testing periods of the APAs executed in 2022 were either a single year, the term of the APA only, or the term of the APA plus rollback years.

APAs executed in 2022 included several mechanisms for making adjustments to the tested party's results when the results fall outside the interquartile range or do not match the point required by the APA. Examples of the mechanisms used include an adjustment bringing the tested party's results for a single year to either the closer edge of the range or the median of the range, an adjustment to bring the results over the APA term to the closer edge of the range, or an adjustment to bring the results to a specified point or royalty rate.

Critical Assumptions

§ 521(b)(2)(D)(v)

The model APAs used by the IRS (included as Appendix 1 and Appendix 2 of this report) include standard critical assumptions that there will be no material changes to the taxpayer's business or to its tax or financial accounting practices during the APA term. A few bilateral cases have also included critical assumptions tied to the taxpayer's profitability in a certain year or over the term of the APA. Pursuant to § 7.06(3) of Rev. Proc. 2015-41, APMA will cancel an APA in the event of a failure of a critical assumption unless the parties agree to revise the APA.

Term Lengths of APAs Executed in 2022

§ 521(b)(2)(D)(x)

Table 6: Term Lengths of APAs Executed in 2022

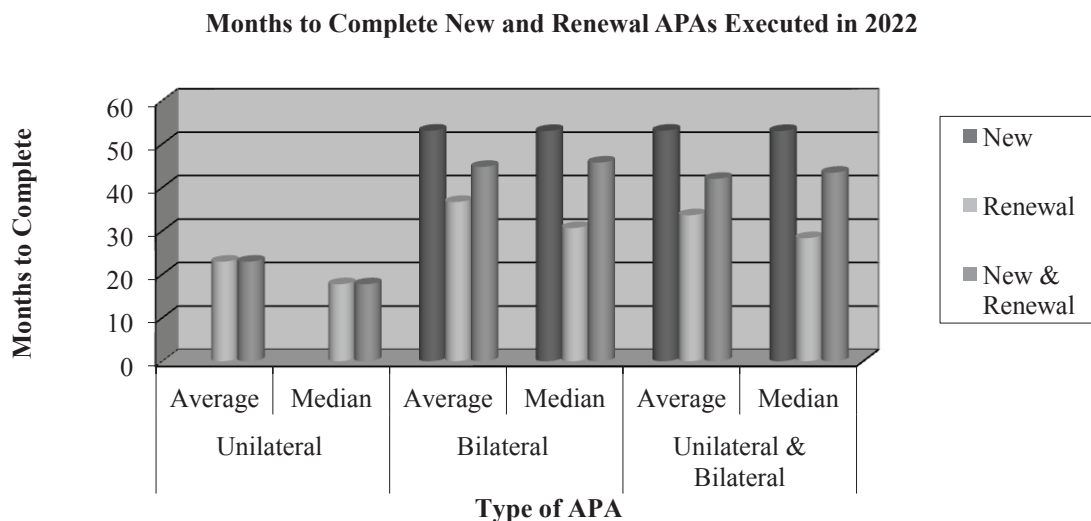
Term Length (years)	Number of APAs
1	1
2	1
3	2
4	1
5	37
6	12
7	9
8	5
9	3
10	4
11	2
Average	6

As described in § 3.03(1) of Rev. Proc. 2015-41, taxpayers should request an APA term that will cover at least five prospective years and may also request that the APA be "rolled back" to cover one or more earlier taxable years, although the appropriate APA term is decided on a case-by-case basis. Of the APAs executed in 2022, 16 percent included rollback years. A substantial number of those APAs with terms of greater than five years were submitted as a request for a five-year term, and the additional years were agreed to between the taxpayer and the IRS (or, in the case of a bilateral APA, between the IRS and the foreign government upon the taxpayer's request) to ensure a reasonable amount of prospectivity in the APA term.

Amount of Time Taken to Complete New and Renewal APAs
§ 521(b)(2)(E)

Table 7: Months to Complete New and Renewal APAs Executed in 2022

	Unilateral		Bilateral		Unilateral & Bilateral	
	Average	Median	Average	Median	Average	Median
New	N/A	N/A	53.0	53.0	53.0	53.0
Renewal	22.9	17.7	36.6	30.6	33.6	28.3
New & Renewal	22.9	17.7	44.7	45.7	42.0	43.4



Median completion time continued to rise in 2022 to 43.4 months (from 35.1 months in 2021 and 32.7 months in 2020).

Efforts to Ensure Compliance with APAs
§ 521(b)(2)(F)

As described in § 7.02(1) of Rev. Proc. 2015-41, taxpayers are required to file annual reports to demonstrate compliance with the terms and conditions of their APAs. The filing and review of these annual reports are critical parts of the APA process. Through annual report review, the APMA Program monitors taxpayer compliance with APAs on a contemporaneous basis. Annual report review also provides current information on the success or problems associated with the various TPMs adopted in the APA process.

Nature of Documentation Required in Annual Report
§ 521(b)(2)(D)(xi)

APAs require taxpayers to file timely and complete annual reports describing their operations and demonstrating compliance with the APA's terms and conditions. Not every annual report will include each of the items listed in the following table; they are required where the facts demonstrate a need for such documentation. The requirements for the information to be included in a specific APA annual report is included in Appendix C of the executed APA.

1.	Statement regarding all material differences between Taxpayer's business operations during APA year and description of Taxpayer's business operations contained in Taxpayer's APA request. If there are no material differences, a statement to that effect.
2.	Statement concerning all material changes in Taxpayer's accounting methods and classifications, and methods of estimation, from those described or used in Taxpayer's request for the APA. If there has been no material change in accounting methods and classifications or methods of estimation, a statement to that effect.
3.	Any change to the Taxpayer notice information.
4.	Description of any failure to meet critical assumptions. If there has been none, a statement to that effect.
5.	Statement identifying whether any material information submitted while the APA request was pending is discovered to be false, incorrect, or incomplete.
6.	The amount, reason for, and financial analysis of any compensating adjustment, for the APA year, including but not limited to the amounts paid or received by each affected entity; the character (such as capital or ordinary expense) and country source of the funds transferred, and the specific line item(s) of any affected U.S. tax return; and any change to any entity classification for federal income tax purposes of any member of Taxpayer's group that is relevant to the APA.
7.	The amounts, description, reason for, and financial analysis of any book-tax difference relevant to the TPM for the APA year, as reflected on Schedule M-1 or Schedule M-3 of the U.S. return for the APA year.
8.	Statement regarding whether Taxpayer contemplates requesting, or has requested, to renew, modify, or cancel the APA.
9.	Financial statements and any necessary account detail to show compliance with the TPM, with a copy of the opinion from an independent certified public accountant or other documentation required by paragraph 5(f) of the APA.
10.	Financial analysis demonstrating Taxpayer's compliance with TPM.
11.	Organizational chart.
12.	A copy of the APA and any amendment.
13.	A penalty of perjury statement.

Approaches for Sharing of Currency or Other Risks
§ 521(b)(2)(D)(xii)

In appropriate cases, APAs may provide specific approaches for dealing with risks, including currency risk, such as adjustment mechanisms and/or critical assumptions.

ADVANCE PRICING AGREEMENT

between

[Insert Taxpayer's Name]

and

THE INTERNAL REVENUE SERVICE

PARTIES

The Parties to this Advance Pricing Agreement (APA) are the Internal Revenue Service (IRS) and [Insert Taxpayer's Name], EIN _____.

RECITALS

[Insert Taxpayer Name] is the common parent of an affiliated group filing consolidated U.S. tax returns (collectively referred to as "Taxpayer") and is entering into this APA on behalf of itself and other members of its consolidated group.

Taxpayer's principal place of business is [City, State]. [Insert general description of taxpayer and other relevant parties].

This APA contains the Parties' agreement on the best method for determining arm's-length prices of the Covered Transactions under I.R.C. section 482, the Treasury Regulations thereunder, and any applicable tax treaties.

{If renewal, add} [Taxpayer and IRS previously entered into an APA covering taxable years ending _____ to _____, executed on _____.]

AGREEMENT

The Parties agree as follows:

1. *Covered Transactions.* This APA applies to the Covered Transactions, as defined in Appendix A.
2. *Transfer Pricing Method.* Appendix A sets forth the Transfer Pricing Method (TPM) for the Covered Transactions.
3. *Term.* This APA applies to the APA Term, as defined in Appendix A.
4. *Operation.*
 - a. Revenue Procedure 2006-9 governs the interpretation, legal effect, and administration of this APA.
 - b. Nonfactual oral and written representations, within the meaning of sections 10.04 and 10.05 of Revenue Procedure 2006-9 (including any proposals to use particular TPMs), made in conjunction with the APA Request constitute statements made in compromise negotiations within the meaning of Rule 408 of the Federal Rules of Evidence.
5. *Compliance.*
 - a. Taxpayer must report its taxable income in an amount that is consistent with Appendix A and all other requirements of this APA on its timely filed U.S. Return. However, if Taxpayer's timely filed U.S. Return for any taxable year covered by this APA (APA Year) is filed prior to, or no later than 60 days after, the effective date of this APA, then Taxpayer must report its taxable income for that APA Year in an amount that is consistent with Appendix A and all other requirements of this APA either on the original U.S. Return or on an amended U.S. Return filed no later than 120 days after the effective date of this APA, or through such other means as may be specified herein.

- b. *{Use or edit the following when U.S. Group or Foreign Group contains more than one member.}* [This APA addresses the arm's-length nature of prices charged or received in the aggregate between Taxpayer and Foreign Participants with respect to the Covered Transactions. Except as explicitly provided, this APA does not address and does not bind the IRS with respect to prices charged or received, or the relative amounts of income or loss realized, by particular legal entities that are members of U.S. Group or that are members of Foreign Group.]
 - c. For each APA Year, if Taxpayer complies with the terms and conditions of this APA, then the IRS will not make or propose any allocation or adjustment under I.R.C. section 482 to the amounts charged in the aggregate between Taxpayer and Foreign Participant[s] with respect to the Covered Transactions.
 - d. If Taxpayer does not comply with the terms and conditions of this APA, then the IRS may:
 - i. enforce the terms and conditions of this APA and make or propose allocations or adjustments under I.R.C. section 482 consistent with this APA;
 - ii. cancel or revoke this APA under section 11.06 of Revenue Procedure 2006-9; or
 - iii. revise this APA, if the Parties agree.
 - e. Taxpayer must timely file an Annual Report (an original and four copies) for each APA Year in accordance with Appendix C and section 11.01 of Revenue Procedure 2006-9. Taxpayer must file the Annual Report for all APA Years through the APA Year ending [insert year] by [insert date]. Taxpayer must file the Annual Report for each subsequent APA Year by [insert month and day] immediately following the close of that APA Year. (If any date falls on a weekend or holiday, the Annual Report shall be due on the next date that is not a weekend or holiday.) The IRS may request additional information reasonably necessary to clarify or complete the Annual Report. Taxpayer will provide such requested information within 30 days. Additional time may be allowed for good cause.
 - f. The IRS will determine whether Taxpayer has complied with this APA based on Taxpayer's U.S. Returns, the Financial Statements, and other APA Records, for the APA Term and any other year necessary to verify compliance. For Taxpayer to comply with this APA, *{use the following or an alternative}* an independent certified public accountant must render an opinion that Taxpayer's Financial Statements present fairly, in all material respects, Taxpayer's financial position under U.S. GAAP.
 - g. In accordance with section 11.04 of Revenue Procedure 2006-9, Taxpayer will (1) maintain the APA Records, and (2) make them available to the IRS in connection with an examination under section 11.03. Compliance with this subparagraph constitutes compliance with the record-maintenance provisions of I.R.C. sections 6038A and 6038C for the Covered Transactions for any taxable year during the APA Term.
 - h. The True Taxable Income within the meaning of Treasury Regulations sections 1.482-1(a)(1) and (i)(9) of a member of an affiliated group filing a U.S. consolidated return will be determined under the I.R.C. section 1502 Treasury Regulations.
 - i. *{Optional for US Parent Signatories}* To the extent that Taxpayer's compliance with this APA depends on certain acts of Foreign Group members, Taxpayer will ensure that each Foreign Group member will perform such acts.
6. *Critical Assumptions.* This APA's critical assumptions, within the meaning of Revenue Procedure 2006-9, section 4.05, appear in Appendix B. If any critical assumption has not been met, then Revenue Procedure 2006-9, section 11.06, governs.
7. *Disclosure.* This APA, and any background information related to this APA or the APA Request, are: (1) considered "return information" under I.R.C. section 6103(b)(2)(C); and (2) not subject to public inspection as a "written determination" under I.R.C. section 6110(b)(1). Section 521(b) of Pub. L. 106-170 provides that the Secretary of the Treasury must prepare a report for public disclosure that includes certain specifically designated information concerning all APAs, including this APA, in a form that does not reveal taxpayers' identities, trade secrets, and proprietary or confidential business or financial information.
8. *Disputes.* If a dispute arises concerning the interpretation of this APA, the Parties will seek a resolution by the Director of the Advance Pricing and Mutual Agreement Program, to the extent reasonably practicable, before seeking alternative remedies.

9. *Materiality.* In this APA the terms “material” and “materially” will be interpreted consistently with the definition of “material facts” in Revenue Procedure 2006-9, section 11.06(4).
10. *Section Captions.* This APA’s section captions, which appear in *italics*, are for convenience and reference only. The captions do not affect in any way the interpretation or application of this APA.
11. *Terms and Definitions.* Unless otherwise specified, terms in the plural include the singular and vice versa. Appendix D contains definitions for capitalized terms not elsewhere defined in this APA.
12. *Entire Agreement and Severability.* This APA is the complete statement of the Parties’ agreement. The Parties will sever, delete, or reform any invalid or unenforceable provision in this APA to approximate the Parties’ intent as nearly as possible.
13. *Successor in Interest.* This APA binds, and inures to the benefit of, any successor in interest to Taxpayer.
14. *Notice.* Any notices required by this APA or Revenue Procedure 2006-9 must be in writing. Taxpayer will send notices to the IRS at the address and in the manner set forth in Revenue Procedure 2006-9, section 4.11. The IRS will send notices to:

Taxpayer Corporation Attn: Jane Doe, Sr. Vice President (Taxes) 1000 Any Road Any City, USA 10000 (phone: _____)
--

15. *Effective Date and Counterparts.* This APA is effective starting on the date, or later date of the dates, upon which all Parties execute this APA. The Parties may execute this APA in counterparts, with each counterpart constituting an original.

WITNESS,

The Parties have executed this APA on the dates below.

[Taxpayer Name in all caps]

By: _____
Jane Doe
Sr. Vice President (Taxes)

Date: _____, 201__

IRS

By: _____
John M. Wall
Acting Director, Advance Pricing and Mutual
Agreement Program

Date: _____, 201__

APPENDIX A

COVERED TRANSACTIONS AND TRANSFER PRICING METHOD (TPM)

1. Covered Transactions.

[Define the Covered Transactions.]

2. APA Term.

This APA applies to Taxpayer's taxable years ending _____ through _____ (APA Term).

3. TPM.

{Note: If appropriate, adapt language from the following examples.}

[The Tested Party is _____.]

• CUP Method

The TPM is the comparable uncontrolled price (CUP) method. The Arm's Length Range of the price charged for _____ is between _____ and _____ per unit.

• CUP Method

The TPM is the CUT Method. The Arm's Length Range of the royalty charged for the license of _____ is between _____ % and _____ % of [Taxpayer's, Foreign Participants', or other specified party's] Net Sales Revenue. [Insert definition of net sales revenue or other royalty base.]

• Resale Price Method (RPM)

The TPM is the resale price method (RPM). The Tested Party's Gross Margin for any APA Year is defined as follows: the Tested Party's gross profit divided by its sales revenue (as those terms are defined in Treasury Regulations sections 1.482-5(d)(1) and (2)) for that APA Year. The Arm's Length Range is between _____ % and _____ %, and the Median of the Arm's Length Range is _____ %.

• Cost Plus Method

The TPM is the cost plus method. The Tested Party's Cost Plus Markup is defined as follows for any APA Year: the Tested Party's ratio of gross profit to production costs (as those terms are defined in Treasury Regulations sections 1.482-3(d)(1) and (2)) for that APA Year. The Arm's Length Range is between _____ % and _____ %, and the Median of the Arm's Length Range is _____ %.

• CPM with Berry Ratio PLI

The TPM is the comparable profits method (CPM). The profit level indicator is a Berry Ratio. The Tested Party's Berry Ratio is defined as follows for any APA Year: the Tested Party's gross profit divided by its operating expenses (as those terms are defined in Treasury Regulations sections 1.482-5(d)(2) and (3)) for that APA Year. The Arm's Length Range is between _____ and _____, and the Median of the Arm's Length Range is _____.

• CPM using an Operating Margin PLI

The TPM is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Operating Margin is defined as follows for any APA Year: the Tested Party's operating profit divided by its sales revenue (as those terms are defined in Treasury Regulations section 1.482-5(d)(1) and (4)) for that APA Year. The Arm's Length Range is between _____ % and _____ %, and the Median of the Arm's Length Range is _____ %.

• **CPM using a Three-year Rolling Average Operating Margin PLI**

The TPM is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Three-Year Rolling Average operating margin is defined as follows for any APA Year: the sum of the Tested Party's operating profit (within the meaning of Treasury Regulation section 1.482-5(d)(4) for that APA Year and the two preceding years, divided by the sum of its sales revenue (within the meaning of Treasury Regulation section 1.482-5(d)(1)) for that APA Year and the two preceding years. The Arm's Length Range is between ____% and ____%, and the Median of the Arm's Length Range is ____%.

• **Residual Profit Split Method**

The TPM is the residual profit split method. *[Insert description of routine profit level determinations and residual profit-split mechanism].*

[Insert additional provisions as needed.]

4. Application of TPM.

For any APA Year, if the results of Taxpayer's actual transactions produce a [price per unit, royalty rate for the Covered Transactions] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] within the Arm's Length Range, then the amounts reported on Taxpayer's U.S. Return must clearly reflect such results.

For any APA year, if the results of Taxpayer's actual transactions produce a [price per unit, royalty rate] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] outside the Arm's Length Range, then amounts reported on Taxpayer's U.S. Return must clearly reflect an adjustment that brings the [price per unit, royalty rate] [or] [Tested Party's Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin] to the Median.

For purposes of this Appendix A, the "results of Taxpayer's actual transactions" means the results reflected in Taxpayer's and Tested Party's books and records as computed under U.S. GAAP *[insert another relevant accounting standard if applicable]*, with the following adjustments:

- (a) [The fair value of stock-based compensation as disclosed in the Tested Party's audited financial statements shall be treated as an operating expense]; and
- (b) To the extent that the results in any prior APA Year are relevant (for example, to compute a multi-year average), such results shall be adjusted to reflect the amount of any adjustment made for that prior APA Year under this Appendix A.

5. APA Revenue Procedure Treatment

If Taxpayer makes an adjustment under paragraph 4 of this Appendix A (a "primary adjustment"), Taxpayer and its related foreign entity may elect APA Revenue Procedure Treatment in accordance with section 11.02(3) of Revenue Procedure 2006-9 and avoid the possible adverse tax consequences of a secondary adjustment that would otherwise follow the primary adjustment.

[Insert additional provisions as needed.]

APPENDIX B
CRITICAL ASSUMPTIONS

This APA's critical assumptions are:

1. The business activities, functions performed, risks assumed, assets employed, and financial and tax accounting methods and classifications [and methods of estimation] of Taxpayer in relation to the Covered Transactions will remain materially the same as described or used in Taxpayer's APA Request. A mere change in business results will not be a material change.

[Insert additional provisions as needed.]

APPENDIX C

APA RECORDS AND ANNUAL REPORT

APA RECORDS

The APA Records will consist of all documents listed below for inclusion in the Annual Report, as well as all documents, notes, work papers, records, or other writings that support the information provided in such documents.

ANNUAL REPORT

The Annual Report (and each of the four copies required by paragraph 5(e) of this APA) will include:

1. Two copies of a properly completed APA Annual Report Summary in the form of Appendix E to this APA, one copy of the form bound with, and one copy provided separately from, the rest of the Annual Report.
2. A table of contents, organized as follows:
3. Statements that fully identify, describe, analyze, and explain:
 - a. All material differences between the U.S. Group's business operations (including functions, risks assumed, markets, contractual terms, economic conditions, property, services, and assets employed) during the APA Year from the business operations described in the APA Request. If there have been no material differences, the Annual Report will include a statement to that effect.
 - b. All material differences between the U.S. Group's accounting methods and classifications, and methods of estimation used during the APA Year, from those described or used in the APA Request. If any change was made to conform to changes in U.S. GAAP (or other relevant accounting standards) Taxpayer will specifically identify the change. If there has been no material change in accounting methods and classifications or methods of estimation, the Annual Report will include a statement to that effect.
 - c. Any change to the Taxpayer notice information in paragraph 14 of this APA.
 - d. Any failure to meet any critical assumption. If there has been no failure, the Annual Report will include a statement to that effect.
 - e. Whether or not material information submitted while the APA Request was pending is discovered to be false, incorrect, or incomplete.
 - f. Any change to any entity classification for federal income tax purposes (including any change that causes an entity to be disregarded for federal income tax purposes) of any Worldwide Group member that is a party to the Covered Transactions or is otherwise relevant to the TPM.
 - g. The amount, reason for, and financial analysis of (1) any primary adjustments made under Appendix A for the APA Year; and (2) any (a) secondary adjustments that follow such primary adjustments or (b) accounts receivable that Taxpayer establishes, in lieu of secondary adjustments, by electing APA Revenue Procedure Treatment pursuant to paragraph 5 of Appendix A and Revenue Procedure 2006-9, section 11.02(3), for the APA Year, including but not limited to:
 - i. the amounts due or owed, and paid or received by each affected entity;
 - ii. the character (such as capital, ordinary, income, expense) and country source of the funds transferred, and the specific affected line item(s) of any affected U.S. Return;

- iii. the date(s) and means by which the payments are or will be made; and
 - iv. whether or not APA Revenue Procedure Treatment was elected pursuant to paragraph 5 of Appendix A and Revenue Procedure 2006-9, section 11.02(3).
 - h. The amounts, description, reason for, and financial analysis of any book-tax difference relevant to the TPM for the APA Year, as reflected on Schedule M-1 or Schedule M-3 of the U.S. Return for the APA Year.
 - i. Whether Taxpayer contemplates requesting, or has requested, to renew, modify, or cancel the APA.
- 4. The Financial Statements, and any necessary account detail to show compliance with the TPM, including consolidating financial statements, segmented financial data, records from the general ledger, or similar information if the assets, liabilities, income, or expenses relevant to showing compliance with the TPM are a subset of the assets, liabilities, income, or expenses presented in the Financial Statements.
 - 5. *{Use the following or the alternative prescribed by paragraph 5(f) of this APA:}* A copy of the independent certified public accountant's opinion required by paragraph 5(f) of this APA.
 - 6. A financial analysis that reflects Taxpayer's TPM calculations for the APA Year. The calculations must reconcile with and reference the information required under item 4 above in sufficient account detail to allow the IRS to determine whether Taxpayer has complied with the TPM.
 - 7. An organizational chart for the Worldwide Group, revised annually to reflect all ownership or structural changes of entities that are parties to the Covered Transactions or are otherwise relevant to the TPM.
 - 8. A copy of the APA and any amendment.
 - 9. A penalty of perjury statement, executed in accordance with Revenue Procedure 2006-9, section 11.01(6) and (7).

APPENDIX D

DEFINITIONS

The following definitions control for all purposes of this APA. The definitions appear alphabetically below:

Term	Definition
Annual Report	A report within the meaning of Revenue Procedure 2006-9, section 11.01.
APA	This Advance Pricing Agreement, which is an “advance pricing agreement” within the meaning of Revenue Procedure 2006-9, section 2.04.
APA Records	The records specified in Appendix C.
APA Request	Taxpayer’s request for this APA dated _____, including any amendments or supplemental or additional information thereto.
APA Year	This term is defined in paragraph 5(a) of this APA.
Covered Transaction(s)	This term is defined in Appendix A.
Financial Statements	Financial statements prepared in accordance with U.S. GAAP and stated in U.S. dollars.
Foreign Group	Worldwide Group members that are not U.S. persons.
Foreign Participants	[name the foreign entities involved in Covered Transactions].
I.R.C.	The Internal Revenue Code of 1986, 26 U.S.C., as amended.
Pub. L. 106-170	The Ticket to Work and Work Incentives Improvement Act of 1999.
Revenue Procedure 2006-9	Rev. Proc. 2006-9, 2006-1 C.B. 278.
Transfer Pricing Method (TPM)	A transfer pricing method within the meaning of Treasury Regulation section 1.482-1(b) and Revenue Procedure 2006-9, section 2.04.
U.S. GAAP	U.S. generally-accepted accounting principles.
U.S. Group	Worldwide Group members that are U.S. persons.
U.S. Return	For each taxable year, the “returns with respect to income taxes under subtitle A” that Taxpayer must “make” in accordance with I.R.C. section 6012. { <i>Or substitute for partnership:</i> For each taxable year, the “return” that Taxpayer must “make” in accordance with I.R.C. section 6031.}
Worldwide Group	Taxpayer and all organizations, trades, businesses, entities, or branches (whether or not incorporated, organized in the United States, or affiliated) owned or controlled directly or indirectly by the same interests.

APPENDIX E

APA ANNUAL REPORT SUMMARY FORM

The APA Annual Report Summary on the next page is a required APA Record. The APA Team Leader supplies some of the information requested on the form. Taxpayer is to supply the remaining information requested by the form and submit the form as part of its Annual Report.

APA Annual Report SUMMARY	Department of the Treasury—Internal Revenue Service Large Business and International Division Treaty and Transfer Pricing Operations Advance Pricing and Mutual Agreement Program	APA No. _____ Team Leader _____ Economist _____ Intl Examiner _____
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APA Information	Taxpayer Name: _____ Taxpayer EIN: _____ NAICS: _____ APA Term: Taxable years ending _____ to _____ Original APA <input type="checkbox"/> Renewal APA <input type="checkbox"/> Annual Report due dates: _____, 201__ for all APA Years through APA Year ending in 200__; for each APA Year thereafter, on _____ [month and day] immediately following the close of the APA Year Principal foreign country(ies) involved in covered transaction(s): _____ Type of APA: <input type="checkbox"/> unilateral <input type="checkbox"/> bilateral with _____ Tested party is <input type="checkbox"/> US <input type="checkbox"/> foreign <input type="checkbox"/> both Approximate dollar volume of covered transactions (on an annual basis) involving tangible goods and services: <input type="checkbox"/> N/A <input type="checkbox"/> <\$50 million <input type="checkbox"/> \$50-100 million <input type="checkbox"/> \$100-250 million <input type="checkbox"/> \$250-500 million <input type="checkbox"/> >\$500 million APA tests on (check all that apply): <input type="checkbox"/> annual basis <input type="checkbox"/> multi-year basis <input type="checkbox"/> term basis APA provides (check all that apply) a: <input type="checkbox"/> range <input type="checkbox"/> point <input type="checkbox"/> floor only <input type="checkbox"/> ceiling only <input type="checkbox"/> other _____ APA provides for adjustment (check all that apply) to: <input type="checkbox"/> nearest edge <input type="checkbox"/> median <input type="checkbox"/> other point
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APA Annual Report Information (to be completed by the Taxpayer)	APA date executed: _____, 201__ This APA Annual Report Summary is for APA Year(s) ending in 200__ and was filed on _____, 201__ Check here <input type="checkbox"/> if Annual Report was filed after original due date but in accordance with extension. Has this APA been amended or changed? <input type="checkbox"/> yes <input type="checkbox"/> no Effective Date: _____ Has Taxpayer complied with all APA terms and conditions? <input type="checkbox"/> yes <input type="checkbox"/> no Were all the critical assumptions met? <input type="checkbox"/> yes <input type="checkbox"/> no Has a Primary Compensating Adjustment been made in any APA Year covered by this Annual Report? <input type="checkbox"/> yes <input type="checkbox"/> no If yes, which year(s): 200__ Have any necessary Secondary Compensating Adjustments been made? <input type="checkbox"/> yes <input type="checkbox"/> no Did Taxpayer elect APA Revenue Procedure treatment? <input type="checkbox"/> yes <input type="checkbox"/> no Any change to the entity classification of a party to the APA? <input type="checkbox"/> yes <input type="checkbox"/> no Taxpayer notice information contained in the APA remains unchanged. <input type="checkbox"/> yes <input type="checkbox"/> no Taxpayer's current US principal place of business: (City, State) _____
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APA Annual Report Checklist of Key Contents (to be completed by the Taxpayer)	Financial analysis reflecting TPM calculations <input type="checkbox"/> yes <input type="checkbox"/> no Financial statements showing compliance with TPM(s) <input type="checkbox"/> yes <input type="checkbox"/> no Schedule M-1 or M-3 book-tax differences <input type="checkbox"/> yes <input type="checkbox"/> no Current organizational chart of relevant portion of world-wide group <input type="checkbox"/> yes <input type="checkbox"/> no Attach copy of APA <input type="checkbox"/> yes <input type="checkbox"/> no Other APA records and documents included:
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Contact Information	Authorized Representative Phone Number Affiliation and Address

TEMPLATE FOR ADVANCE PRICING AGREEMENT

UNDER REVENUE PROCEDURE 2015-41

The Advance Pricing and Mutual Agreement Program (“APMA”) of the Internal Revenue Service (“IRS”) is providing this template for use in drafting advance pricing agreements (“APAs”) issued under IRS Revenue Procedure 2015-41, 2015-35 I.R.B. 263 (“Rev. Proc. 2015-41”). This template is designed to systematize how taxpayers propose terms for their APAs and standardize language used in executed APAs. It will improve efficiency in the APA process and enhance consistency in the administration of the APA program.

Rev. Proc. 2015-41 requires that taxpayers include as part of a complete APA request a draft APA and a “redline” comparison of the proposed draft APA against the current model APA. *See* section 2.03, exhibit 15, of the Appendix to Rev. Proc. 2015-41. This template serves as the model APA. A taxpayer is required to produce the “redline” comparison by following the instructions below to edit this template with tracked changes. The draft APA and “redline” comparison are then to be included in Word format in the complete APA request. (Before editing the template with tracked changes, a taxpayer should remove this introduction and the instructions below from the Microsoft Word file.)

The assigned APMA team will review the APA’s terms proposed in the draft APA. If the APMA team accepts the proposed terms in light of its review of the taxpayer’s complete APA request and other information obtained during the APA process, then the text of the draft APA, edited as needed to fill in any information not available at the time of the APA Request, will be adopted as the text of a finally executed APA. If the APMA team does not accept the proposed terms, it will discuss modifications to the draft APA with the taxpayer during the APA process. For bilateral and multilateral APAs, the terms of the executed APA will of necessity be consistent with the terms of the underlying mutual agreement between the United States and one or more treaty partners.

GENERAL INSTRUCTIONS

The template is designed to minimize editing by using an options-based format for selecting from terms presented in certain sections of the model APA. The options presented are those which APMA considers standard and which it has accepted in final APAs. These options are not binding on APMA, however. APMA reserves the right to modify the option selections, the specific option language used, or any other terms before executing an APA with the taxpayer.

Options are indicated by square brackets (“[]”). An “x” should be inserted between the brackets to indicate the selected option (“[x]”). Options that are not selected should not be deleted, but instead should be left in the text of the draft APA. The options to which APMA and the taxpayer ultimately agree for the final APA will be indicated by the presence or absence of an “x”. The term associated with the “x” will be given operative effect in the executed APA.

Certain options are flagged with an asterisk after the square brackets (“[]*”). To facilitate the APMA team’s subsequent review of the draft APA, the asterisks should not be deleted. Taxpayers that select flagged options are required to specifically provide justification for the selection in the APA request. *See* section 1.02, Part 5, of the Appendix to Rev. Proc. 2015-41.

The template contains placeholder phrases consisting of a hashtag followed by one or more words in block capital letters (e.g., “#COUNTRY”). Generally, the taxpayer should replace a placeholder phrase with appropriate text, subject to the following conventions:

- If a placeholder phrase occurs within an option that the taxpayer has rejected, the taxpayer should change the hashtag to a caret (e.g., change “#COUNTRY” to “^COUNTRY”) but otherwise leave the phrase intact.¹⁵ The caret indicates that the Taxpayer has rejected this option. For example, for a bilateral APA with Japan, the lines on the first page just below the title would read:

¹⁵ As a result, almost all occurrences of the hashtag in the template will be replaced with a caret or other text in the taxpayer’s draft APA. The few remaining occurrences of the hashtag will mark a placeholder phrase that cannot yet be replaced with appropriate text (see, for example, the placeholder phrase in paragraph 6(e) for a date that cannot be determined until the APA nears execution). Searching the draft APA for the hashtag will locate all placeholder phrases that still need replacement.

☒ Bilateral with Japan

☐ Multilateral with ^COUNTRIES

☐ Unilateral

- The placeholder phrase “#CURRENCY” should be replaced, for example, with “U.S. dollars,” “Euros,” or “Japanese yen.”
- The placeholder phrase “#DATE” should be replaced with a date in the format of “December 31, 2020.”

The APA Term will be expressed as dates certain, e.g., “January 1, 2017 to December 31, 2022, inclusive”, rather than as particular tax years.

Taxpayers may need to draft custom text for situations or options not included in the template. For example, a taxpayer may propose additional critical assumptions to address specific regulatory contingencies or conditions the taxpayer is expected to face during the term of the APA. As another example, the provision titled “Limitation on Assistance” at the end of the Recitals might be modified based on an understanding reached in the prefilling stage of the APA process. In some cases, a particular critical assumption might facilitate reaching an agreement on an APA. Taxpayers that include custom text are required to specifically provide justification for the inclusion in the APA request, just as selecting an option with an asterisk requires justification. Any custom text must also be evident in the “redline” comparison of the proposed draft APA.

INSTRUCTIONS ON TABLES

The template contains certain tables that the taxpayer should edit. Entries in the tables will not contain hashtags, but taxpayers nevertheless should fill in the information and add additional rows to the tables if needed. Taxpayers also should fill in the “APA Information” in the table in Appendix D, to the extent available or proposed.

INSTRUCTIONS ON APPENDIX A

Appendix A of this template contains the description of the APA’s covered issue(s) and covered method(s). Taxpayers should note the following points in completing Appendix A:

- The template includes just one covered issue with one corresponding covered method. If there is more than one covered Issue proposed for the APA, the taxpayer should add additional covered issues in Appendix A, section 3, *with* tracked changes.
- If there is more than one covered method, the taxpayer should first replicate the template’s entire text for Covered Method 1 in Appendix A, section 4, *without* tracked changes, to provide template text for each additional covered method, and then edit the text for each covered method *with* tracked changes.
- Normally, each covered issue will have its own corresponding covered method. However, in some cases, a covered method may apply at once to more than one covered issue. For example, covered issues may be proposed to be aggregated and tested by a single covered method. In such cases, the heading for that covered method could read, for example, “Covered Method for Covered Issues 1-3”.
- Any interaction between different covered methods should be adequately explained in the text, and in an appropriate manner. For example, an explanation might be provided in an introduction at the start of section 4 of Appendix A, preceding the description of the respective covered methods.

Appendix A uses the term “Tested Party.” When applied in the context of methods that consider, or test, data from only one party to a transaction, this term is similar in concept to the term “tested party” as discussed in the OECD Guidelines at paragraphs 3.18 and 3.19, and as defined in the U.S. Treasury Regulations section 1.482-5(b)(2). However, some methods consider, or test, data from both parties to a transaction, where there is no singular “tested” party. Even in applying such methods, however, it is typically the case that one particular party’s results are formally tested for compliance with the method. For purposes of this template, in such circumstances, the party whose results are formally tested in applying any particular method is the “Tested Party”, even if that party is not strictly a “tested party” as discussed in the OECD Guidelines paragraphs 3.18 and 3.19, or as defined in the U.S. Treasury Regulations section 1.482-5(b)(2).

ADVANCE PRICING AGREEMENT

between
#SIGNATORY
and
THE INTERNAL REVENUE SERVICE

- ☐ Bilateral with #COUNTRY
☐ Multilateral with #COUNTRIES
☐ Unilateral

Term: #DATE to #DATE, inclusive

☐ This APA is commonly referred to as #APA NAME.

PARTIES

The Parties to this APA are the Internal Revenue Service (“IRS”) and #NAME OF EACH NON-IRS SIGNATORY, WITH EIN.

- ☐ #SIGNATORY will be referred to as “U.S. Taxpayer.”
- ☐ #SIGNATORY is the common parent of an affiliated group filing consolidated U.S. tax returns and is entering into this APA on behalf of both itself and the following members of its consolidated group: #MEMBERS OF GROUP. All members of this consolidated group will be referred to collectively as “U.S. Taxpayer.”

RECITALS

- ☐ This APA is a renewal of one or more prior APAs, which are listed below in reverse chronological order:

Party(ies)	Execution Date	Term

Key:

- **Party(ies):** The signatory(ies) to the prior APA, other than the IRS, with each signatory’s taxpayer identification number;
- **Execution Date:** The date, or the later of the dates, on which the prior APA was executed;
- **Term:** The term of the prior APA.

- ☐ This is a bilateral APA within the meaning of Rev. Proc. 2015-41 and implements the terms of a mutual agreement reached between the United States and #COUNTRY.
- ☐ This is a multilateral APA within the meaning of Rev. Proc. 2015-41 and implements the terms of a mutual agreement reached among the United States, #COUNTRIES.
- ☐ This APA is a unilateral APA within the meaning of Rev. Proc. 2015-41 and is not based on any mutual agreement.

The Parties to this APA are defined in the “Parties” section above. Regarding the Party(ies) to this APA other than the IRS:

- ☐ No such Party has an immediate parent or owner that is not a U.S. entity.
- ☐ One or more such Parties has an immediate parent or owner that is not a U.S. entity, as follows:

Party	Parent's or Owner's Identifying Information	Parent's or Owner's Contact Information

Key:

- **Party:** Name of the Party having an immediate parent or owner that is not a U.S. entity;
- **Parent's or Owner's Identifying Information:** Name of the immediate parent or owner of such Party, and the taxpayer identification number of that parent or owner for income tax purposes in its country of residence;
- **Parent's or Owner's Contact Information:** The immediate parent's or owner's address and phone number.

The term "Worldwide Group" is defined below in paragraph 12 of this APA. The ultimate parent entity or owner of Worldwide Group is:

#ENTITY NAME, ADDRESS, AND PHONE

U.S. Taxpayer's principal place of business is #CITY, #STATE. #BRIEF DESCRIPTION OF U.S. TAXPAYER AND NON-U.S. TAXPAYER (DEFINED IN SECTION 1 OF APPENDIX A), AND SPECIFICALLY OF EACH COVERED ENTITY (DEFINED IN SECTION 1 OF APPENDIX A).

This APA contains the Parties' agreement on the Covered Method(s) for resolving the Covered Issue(s) under Code section 482 and any other Code sections that are identified in Appendix A to this APA, the U.S. Treasury Regulations thereunder, and (if applicable):

☐ The income tax convention(s) between the United States and #COUNTRY(IES).

This APA shall not limit the authority of the IRS to (1) verify compliance with this APA as to the Covered Issue(s), or (2) audit issues other than Covered Issue(s), including issues that arise under Code section 482 and any other Code sections identified in Appendix A to this APA, and the U.S. Treasury Regulations thereunder.

LIMITATION ON ASSISTANCE

The Covered Issue(s) may relate to one or more countries which (i) have an income tax convention with the United States, but (ii) are not a party to a mutual agreement whose terms are implemented by this APA. U.S. Taxpayer acknowledges that the IRS may decline to provide competent authority assistance concerning taxation by such country(ies) that relates to the Covered Issue(s). See section 2.02(4)(d) of Rev. Proc. 2015-41.

AGREEMENT

The Parties agree as follows:

1. *Covered Entities*. This APA's Covered Entities are defined in Appendix A.
2. *Covered Issue(s)*. This APA applies to the Covered Issue(s), as defined in Appendix A.
3. *Covered Method(s)*. Appendix A sets forth the Covered Method(s) for the Covered Issue(s).
4. *Term*. This APA applies to the APA Term, as defined in Appendix A.
5. *Operation*.
 - a. Rev. Proc. 2015-41 governs the interpretation, legal effect, and administration of this APA.
 - b. The APMA program provides a voluntary process whereby the IRS and taxpayers may resolve transfer pricing issues and issues for which transfer pricing principles may be relevant in a principled and cooperative manner on a prospective basis. As such, the APA process (as defined in Rev. Proc. 2015-41) is an alternative to dispute resolution that benefits both taxpayers and the IRS and that is intended to promote and encourage open communication. Accordingly, the IRS and U.S. Taxpayer agree that neither party will attempt to use nonfactual oral or written representations, within the meaning of sections 6.04 and 6.05 of IRS Revenue Procedure 2015-41 (including any proposals to use particular Covered Method(s)), made in conjunction with the APA Request in any judicial or administrative proceeding. The IRS and U.S. Taxpayer also agree that factual representations made in conjunction with the APA Request may be used in judicial and administrative proceedings.
6. *Compliance*.
 - a. U.S. Taxpayer must report its taxable income in an amount that is consistent with Appendix A and all other requirements of this APA. U.S. Taxpayer must so report its taxable income in the following manner:
 - i. For any APA Tax Year for which U.S. Taxpayer timely files its original U.S. return prior to, or no later than 60 days after, the U.S. Effective Date, U.S. Taxpayer must so report its taxable income for that APA Tax Year in one of the following ways:
 - A. on such original U.S. return;
 - B. on an amended U.S. return submitted no later than 120 days after the U.S. Effective Date;
 - C. through a means proposed by U.S. Taxpayer and accepted by the applicable IRS practice area no later than 120 days after the U.S. Effective Date (or by such other deadline as is agreed between U.S. Taxpayer and the applicable IRS practice area); or
 - D. if applicable:

[]* no later than 120 days after the U.S. Effective Date through the following means: #DESCRIPTION OF MEANS.
 - ii. For all other APA Tax Years, U.S. Taxpayer must so report its taxable income on its timely filed original U.S. return.
 - iii. The provisions of paragraphs 6(a)(i) and 6(a)(ii) are modified by this paragraph 6(a)(iii). If a Covered Method includes a term test (including the case of an annual test with a supplemental term test) or a subterm test, as described in section 4 of Appendix A, then the APA Covered Year as of which the term test or subterm test applies would change in the event of an Early Termination. Specifically, while in the absence of an Early Termination a term test would apply as of the last APA Covered Year, in the event of an Early Termination the term test would apply as of an earlier APA Covered Year. Similarly, while in the absence of an Early Termination a subterm test would apply as of the last APA Covered Year in the subterm, in the event of an Early Termination the subterm test might apply as of an earlier APA Covered Year. In these situations, the Early Termination might not be established in time for U.S. Taxpayer to know to apply the term test

or subterm test as of the earlier APA Covered Year in reporting taxable income as required under paragraphs 6(a)(i) and 6(a)(ii) for the APA Tax Year corresponding to that earlier APA Covered Year. In such cases, U.S. Taxpayer may need to correct its reporting for that APA Tax Year. Specifically, U.S. Taxpayer will need to correct its income reporting for that APA Tax Year if the application of the term test or subterm test in that earlier APA Covered Year changes the existence or amount of an APA Primary Adjustment for the Covered Method for that APA Tax Year. In such cases:

- A) The resulting incorrectness in the prior reporting for that APA Tax Year is excused; and
 - B) U.S. Taxpayer must correct such prior reporting through a means listed in paragraph 6(a)(i) within 120 days of the Early Termination being established.
- b. For each Covered Issue, if any, that involves determination of pricing and/or income allocation¹⁶ under Code section 482 (or Code section 367(d)) as modified by any applicable income tax convention, this APA addresses the pricing and/or income allocation between U.S. Taxpayer and Non-U.S. Taxpayer in the aggregate. Except as explicitly provided, this APA does not address and does not bind the IRS with respect to pricing or income allocation (1) among particular legal entities that are members of U.S. Taxpayer, or (2) among particular legal entities that are members of Non-U.S. Taxpayer. In addition, this APA does not address pricing or income allocation between an entity that is not a Covered Entity, and any entity.
 - c. For each APA Tax Year, if U.S. Taxpayer complies with the terms and conditions of this APA, then, provided that this APA remains effective for that APA Tax Year for a particular Covered Issue, the IRS will not make or propose any allocation or adjustment that is inconsistent with the application under this APA of the applicable Covered Method to that Covered Issue.
 - d. If U.S. Taxpayer does not comply with the terms and conditions of this APA, then the IRS may:
 - i. enforce the terms and conditions of this APA and make or propose allocations or adjustments based on the application of the Covered Method(s) to the Covered Issue(s) as provided in this APA;
 - ii. cancel or revoke this APA under section 7.06 of Rev. Proc. 2015-41; or
 - iii. revise this APA, if the Parties agree.
 - e. U.S. Taxpayer must timely file an Annual Report for each APA Tax Year in accordance with this paragraph 6(e), Appendix C to this APA, and section 7.02 of Rev. Proc. 2015-41. Annual Reports for multiple APA Tax Years may be combined, provided that all required information for each APA Tax Year is clearly presented. For each Annual Report, U.S. Taxpayer must submit an original printed version containing a signed original “penalties of perjury” declaration, one printed copy of the contents of the original printed version, and an electronic copy of the contents of the original printed version. Any exhibits in the printed version must be tabbed, and the electronic copy is subject to the same requirements, as to medium and format, that are specified for APA requests in section 2 of the Appendix to Rev. Proc. 2015-41. Upon request, U.S. Taxpayer must provide additional copies of the printed version, at addresses specified by the IRS. U.S. Taxpayer must file the Annual Report for each APA Tax Year by the later of (i) #DATE CERTAIN, NORMALLY APPROXIMATELY 90 DAYS AFTER THE U.S. EFFECTIVE DATE, and (ii) the fifteenth day of the twelfth month following the close of the APA Tax Year. The IRS may by notice request additional information reasonably necessary to clarify or complete the Annual Report. (See paragraph 16, and section 3(c) of Appendix C, regarding notices.) U.S. Taxpayer will provide such requested information within 30 days from the date of the notice unless a later date is specified in the notice. Additional time may be allowed for good cause in the discretion of the Director of the Advance Pricing and Mutual Agreement Program.
 - f. The IRS will determine whether U.S. Taxpayer has complied with this APA based on U.S. Taxpayer’s U.S. returns, the Financial Statements and additional statements required under this paragraph 6(f), and other APA Records, for all APA Tax Years and any other tax year necessary to verify compliance. The Financial Statements and additional statements required for a particular tax year are:

¹⁶ As used in this APA, “income allocation” includes allocation of loss.

- ☐ For every U.S. Covered Entity, the Financial Statements together with the additional statements specified in paragraph 6(f)(i); and for every Non-U.S. Covered Entity, the Financial Statements together with the additional statements specified in paragraph 6(f)(ii).
 - ☐* For every U.S. Covered Entity, the Financial Statements together with the additional statements specified in paragraph 6(f)(i).
 - ☐* For every Non-U.S. Covered Entity, the Financial Statements together with the additional statements specified in paragraph 6(f)(ii).
- i. For each U.S. Covered Entity, the additional statements consist of the following statement(s):
- ☐ An audit opinion for that U.S. Covered Entity's Financial Statements, as defined in paragraph 6(f)(iii).
 - ☐* One or more of the following, as indicated:
 - ☐ An accountant's report for that U.S. Covered Entity's Financial Statements, as defined in paragraph 6(f)(iii).
 - ☐ A self-certification for that U.S. Covered Entity's Financial Statements, as defined in paragraph 6(f)(iii).
 - ☐ A self-certification for that U.S. Covered Entity's Financial Statements, together with a tying certification for that entity's Financial Statements, as defined in paragraph 6(f)(iii).
 - ☐ #OTHER MEANS OF VERIFYING THE RELIABILITY OF THE U.S. COVERED ENTITY'S FINANCIAL STATEMENTS.
- ii. For each Non-U.S. Covered Entity, the additional statements consist of the following statement(s):
- ☐ An audit opinion for that Non-U.S. Covered Entity's Financial Statements, as defined in paragraph 6(f)(iii).
 - ☐* One or more of the following, as indicated:
 - ☐ An accountant's report for that Non-U.S. Covered Entity's Financial Statements, as defined in paragraph 6(f)(iii).
 - ☐ A self-certification for that Non-U.S. Covered Entity's Financial Statements, as defined in paragraph 6(f)(iii).
 - ☐ A self-certification for that Non-U.S. Covered Entity's Financial Statements, together with a tying certification for that Covered Entity's Financial Statements, as defined in paragraph 6(f)(iii).
 - ☐ #OTHER MEANS OF VERIFYING THE RELIABILITY OF THE NON-U.S. COVERED ENTITY'S FINANCIAL STATEMENTS.
- iii. With reference to the Financial Statements for a particular Covered Entity for a particular tax year, certain terms used in paragraphs 6(f)(i) and 6(f)(ii) are defined as follows:
- A. An audit opinion is an opinion of an independent certified public or chartered accountant who audited the Financial Statements.
 - B. An accountant's report is a report of an independent certified public or chartered accountant who is associated with the Financial Statements.
 - C. A self-certification is an attestation, as defined in paragraph 6(f)(iii)(E), that the Financial Statements have been prepared according to the Applicable Accounting Standard.

- D. A tying certification consists of the following:
- (1) An attestation, as defined in paragraph 6(f)(iii)(E), that the Financial Statements can be reconciled to the consolidated Financial Statements for that entity's direct or indirect parent according to workpapers provided with the attestation;
 - (2) The workpapers referred to in paragraph 6(f)(iii)(D)(1), which must demonstrate the consolidation of the Covered Entity's Financial Statements into the Financial Statements of the parent referred to in paragraph 6(f)(iii)(D)(1);
 - (3) The Financial Statements of the parent referred to in paragraph 6(f)(iii)(D)(1); and
 - (4) An audit opinion (as defined in paragraph 6(f)(iii)(A)) for the Financial Statements of the parent referred to in paragraph 6(f)(iii)(D)(1).

E. An attestation is an affirmation by an officer of the Covered Entity in the following form:

I, *[Officer's Name and Title]*, of *[Name of Covered Entity]* affirm under penalties of perjury that the facts stated below are true. I either have adequate first-hand knowledge to make this affirmation or have gained adequate knowledge to make this affirmation through diligent consultation(s) with one or more individuals who have first-hand knowledge.

[Facts attested to.]

[Signature]

- g. In accordance with section 7.04 of Rev. Proc. 2015-41, U.S. Taxpayer will (1) maintain the APA Records, and (2) make them available to the IRS in connection with an examination under section 7.03 of Rev. Proc. 2015-41. Compliance with this subparagraph constitutes compliance with the record-maintenance provisions of Code sections 6038A and 6038C for the Covered Issue(s) for any APA Covered Year.
- h. The "true taxable income" within the meaning of U.S. Treasury Regulations sections 1.482-1(a)(1) and (i)(9) of a member of an affiliated group filing a U.S. consolidated return will be determined under the U.S. Treasury Regulations under Code section 1502.
- i. To the extent that U.S. Taxpayer's compliance with this APA depends on certain acts of other members of Worldwide Group, U.S. Taxpayer will ensure that such other members will perform such acts.
7. *Critical Assumptions.* The Critical Assumptions, which are this APA's critical assumptions as defined in Rev. Proc. 2015-41, appear in Appendix B. If any Critical Assumption has not been met, then Rev. Proc. 2015-41, section 7.06, governs, as modified by Appendix B to this APA.
8. *Disclosure.* This APA, and any background information related to this APA or the APA Request, are: (1) considered "return information" under Code section 6103(b)(2)(C); and (2) not subject to public inspection as a "written determination" under Code section 6110(b)(1). Section 521(b) of Pub. L. 106-170 provides that the Secretary of the Treasury must prepare a report for public disclosure that includes certain specifically designated information concerning all APAs, including this APA, in a form that does not reveal taxpayers' identities, trade secrets, and proprietary or confidential business or financial information.
9. *Disputes.* If a dispute arises concerning the interpretation or application of this APA, the Parties will seek a resolution by the Director, Treaty and Transfer Pricing Operations, to the extent reasonably practicable, before seeking alternative remedies.
10. *Materiality.* In this APA the terms "material" and "materially" will be interpreted in a manner consistent with the description of "material facts" in Rev. Proc. 2015-41, section 7.06(4).
11. *Paragraph Captions.* This APA's paragraph captions, which appear in italic type, are for convenience and reference only. The captions do not affect in any way the interpretation or application of this APA.

12. *Terms and Definitions.*

- a. Unless otherwise specified, terms in the plural include the singular and vice versa.
- b. Appendix A contains definitions for certain terms used in this APA's body and appendices.
- c. Certain terms used in this APA's body and appendices are defined as follows:

Term	Definition
Annual Report	A report within the meaning of Rev. Proc. 2015-41, section 7.02.
Advance Pricing Agreement, or "APA"	An "advance pricing agreement" within the meaning of Rev. Proc. 2015-41, section 2.02. Unless context indicates otherwise, "this APA" or "the APA" denotes the particular APA that is executed below.
APA Records	(Defined in Appendix C.)
APA Request	U.S. Taxpayer's request for this APA, which was dated #DATE, including any amendments or supplemental or additional information thereto (including but not limited to any responses to due diligence questions).
Critical Assumptions	(Defined in paragraph 7.)
Financial Statements	Balance sheet, income statement, statement of cash flow, and explanatory notes, prepared in accordance with the Applicable Accounting Standard as defined in section 7 of Appendix A.
Non-U.S. Group	In any APA Tax Year, Worldwide Group members that are not U.S. persons.
Parties	(Defined in the Recitals near the start of this APA.)
Pub. L. 106-170	The Ticket to Work and Work Incentives Improvement Act of 1999.
U.S. Effective Date	(Defined in paragraph 17 and in section 7 of Appendix A. Those definitions are intended to have the same meaning. In case of conflict, the definition in paragraph 17 controls.)
U.S. Group	In any APA Tax Year, Worldwide Group members that are U.S. persons.
Worldwide Group	In any APA Tax Year, U.S. Taxpayer and all organizations, trades, businesses, entities, or branches (whether or not incorporated, organized in the United States, or affiliated) owned or controlled directly or indirectly by the same interests.

13. *Deadline References.* If a deadline under this APA falls on a Saturday, Sunday, or a legal holiday in the District of Columbia, the deadline is extended to the next succeeding day that is not a Saturday, Sunday, or legal holiday in the District of Columbia.
14. *Entire Agreement and Severability.* This APA is the complete statement of the Parties' agreement. The Parties will sever, delete, or reform any invalid or unenforceable provision in this APA to approximate the Parties' intent as nearly as possible.
15. *Successor in Interest.* This APA binds, and inures to the benefit of, any successor in interest to U.S. Taxpayer.
16. *Notice.* Any notices required by this APA or Rev. Proc. 2015-41 must be in writing. U.S. Taxpayer will send notices to the IRS at:

Commissioner, Large Business and International Division
Internal Revenue Service
1111 Constitution Avenue, NW
SE:LB:TTPO:APMA:NCA534-01
Washington, DC 20224
(Attention: APMA)

The IRS will send notices to:

#NAME AND ADDRESS
(phone: #PHONE)

The IRS also will send notices to, if applicable:

☐ #REPRESENTATIVE'S NAME AND ADDRESS
(phone: #PHONE)

provided that a valid IRS Form 2848 "Power of Attorney and Declaration of Representative" for that person was included in the most recent Annual Report (or, if no Annual Report has been filed, was included in the APA Request).

17. *U.S. Effective Date and Counterparts.* This APA is effective starting on the date, or later date of the dates, upon which all Parties execute this APA ("U.S. Effective Date"). The Parties may execute this APA in counterparts, with each counterpart constituting an original.

WITNESS,

The Parties have executed this APA on the dates below.

#SIGNATORY NAME IN BOLD FACE BLOCK CAPITAL LETTERS

By: _____ Date: _____, 20____
#NAME
#TITLE

INTERNAL REVENUE SERVICE

By: _____ Date: _____, 20____
John M. Wall
Acting Director, Advance Pricing and Mutual Agreement Program

APPENDIX A
COVERED ENTITIES, TERM, COVERED ISSUE(S), COVERED METHOD(S), INCOME REPORTING,
CONFORMING ADJUSTMENTS AND REPATRIATION OF FUNDS,
CERTAIN SUBSEQUENT ADJUSTMENTS,
AND DEFINITIONS

Section 1 of this Appendix lists the Covered Entities. Section 2 defines the APA Term, APA Tax Years, and APA Covered Years. Section 3 describes the Covered Issue(s). Section 4 describes the Covered Method applicable to each Covered Issue.

Section 5 describes the application of the Covered Method(s) to income reporting and the possible need for an APA Primary Adjustment under one or more Covered Methods. Section 6 addresses conforming adjustments and repatriation of funds following APA Primary Adjustments.

Section 7 provides definitions that apply both to this Appendix and to the APA as a whole. The definitions table is based on a standard, inclusive model, and thus may include terms not used in this APA.

1. Covered Entities

The U.S. Covered Entity(ies) are:

#LIST OF EACH U.S. ENTITY INVOLVED IN ONE OR MORE COVERED ISSUE(S), AND ALSO (LISTED FIRST) ANY CONSOLIDATED RETURN PARENT FOR ANY SUCH ENTITY. FOR EACH ENTITY, NAME, ADDRESS, PHONE, AND EIN.

The term “U.S. Taxpayer” includes collectively all U.S. Covered Entities and any other entities that are in a consolidated return group with a U.S. Covered Entity.

The Non-U.S. Covered Entity(ies) are:

LIST OF EACH NON-U.S. ENTITY INVOLVED IN ONE OR MORE COVERED ISSUE(S), AND ALSO (LISTED FIRST) ANY COMMON TAX REPORTING PARENT FOR ANY SUCH ENTITY. FOR EACH ENTITY, NAME, ADDRESS, AND PHONE.

The term “Non-U.S. Taxpayer” includes collectively all Non-U.S. Covered Entities and any other entities that are in a common tax reporting group with a Non-U.S. Covered Entity.

The term “Covered Entities” includes both the U.S. Covered Entities and the Non-U.S. Covered Entities.

2. APA Term, APA Tax Years, and APA Covered Years

The APA applies to the period from #DATE to #DATE, inclusive (the “APA Term”).

☐ The APA Term does not include a Rollback.

☐ The APA Term includes a Rollback, which covers from #DATE to #DATE, inclusive (the “Rollback Period”).

A tax year of U.S. Taxpayer that is wholly or partly contained in the APA Term is called an “APA Tax Year.” For a particular APA Tax Year, the portion of such APA Tax Year that is contained in the APA Term is called an “APA Covered Year.” Such APA Tax Year and APA Covered Year are said to “correspond” to each other or to be “corresponding.”

3. Covered Issue(s)

The Covered Issue(s) are as described below.

Covered Issue 1:

#DESCRIPTION OF COVERED ISSUE.

4. Covered Method(s)

Each Covered Method applies to one or more Covered Issues. A Covered Method and the Covered Issue(s) to which the Covered Method applies are said to “correspond,” or to be “corresponding”.

The Covered Methods are summarized in the following table and are described in detail below. In case of conflict with this table, the detailed descriptions of the Covered Methods below, and the descriptions in section 3 above of the Covered Issues, control.

Covered Method Number	Applies to Covered Issues Number(s)	Summary Description of Corresponding Covered Issues	Type of Method; Results Tested	Point or Range	Testing Frequency and Periods
1					

This Appendix A uses the term “Tested Party.” When applied in the context of methods that consider, or test, data from only one party to a transaction, this term is similar in concept to the term “tested party” as discussed in the OECD Guidelines paragraphs 3.18 and 3.19, and as defined in the U.S. Treasury Regulations section 1.482-5(b)(2). However, some methods consider, or test, data from both parties to a transaction, where there is no singular “tested” party. Even in applying such methods, however, it is typically the case that one particular party’s results are formally tested for compliance with the method. For purposes of this template, in such circumstances, the party whose results are formally tested in applying any particular method is the “Tested Party”, even if that party is not strictly a “tested party” as discussed in the OECD Guidelines paragraphs 3.18 and 3.19, or as defined in the U.S. Treasury Regulations section 1.482-5(b)(2).

Covered Method for Covered Issue 1:

a. Tested Party

The Tested Party is #TESTED PARTY.

b. Financial Results Tested (Type of Method)

- ☐ The Covered Method is an implementation of the comparable uncontrolled price method under the OECD Guidelines and of the comparable uncontrolled price method under the U.S. Treasury Regulations. The Tested Party’s financial results to be tested are:
 - ☐ per unit price paid, defined as the total amount paid for #DESCRIPTION OF GOODS divided by the number of #DESCRIPTION OF A UNIT OF GOODS purchased.
 - ☐ per unit price received, defined as the total amount received for #DESCRIPTION OF GOODS divided by the number of #DESCRIPTION OF A UNIT OF GOODS sold.
- ☐ The Covered Method is an implementation of the comparable uncontrolled price method under the OECD Guidelines and of the comparable uncontrolled services price method under the U.S. Treasury Regulations. The Tested Party’s financial results to be tested are:
 - ☐ per unit price paid, defined as the total amount paid for #DESCRIPTION OF SERVICES divided by the number of #DESCRIPTION OF A UNIT OF SERVICES received.
 - ☐ per unit price received, defined as the total amount received for #DESCRIPTION OF SERVICES divided by the number of #DESCRIPTION OF A UNIT OF SERVICES provided.
- ☐ The Covered Method is an implementation of the comparable uncontrolled price method under the OECD Guidelines and of the comparable uncontrolled transaction method under the U.S. Treasury Regulations. The Tested Party’s financial results to be tested are the royalty paid for the license of #DESCRIPTION OF LICENSED INTANGIBLE PROPERTY divided by the Tested Party’s:
 - ☐ sales revenue from sales of #DESCRIPTION OF GOODS/SERVICES.
 - ☐ #OTHER ROYALTY BASE.

- ☐ The Covered Method is an implementation of the comparable uncontrolled price method under the OECD Guidelines and of the acquisition price method under the U.S. Treasury Regulations. The Tested Party's financial results to be tested are described in subsection (c) below.
- ☐ The Covered Method is an implementation of the comparable uncontrolled price method under the OECD Guidelines and of the market capitalization method under the U.S. Treasury Regulations. The Tested Party's financial results to be tested are described in subsection (c) below.
- ☐ The Covered Method is an implementation of the resale price method under the OECD Guidelines and of the resale price method under the U.S. Treasury Regulations. The Tested Party's financial results to be tested are the gross profit margin from the sale of #DESCRIPTION OF GOODS.
- ☐ The Covered Method is an implementation of the resale price method under the OECD Guidelines and of the gross services margin method under the U.S. Treasury Regulations. The Tested Party's financial results to be tested are the gross services margin from the provision of #DESCRIPTION OF SERVICES.
- ☐ The Covered Method is an implementation of the cost plus method under the OECD Guidelines and of the cost plus method under the U.S. Treasury Regulations. The Tested Party's financial results to be tested are the gross profit markup.
- ☐ The Covered Method is an implementation of the cost plus method under the OECD Guidelines and of the cost of services plus method under the U.S. Treasury Regulations. The Tested Party's financial results to be tested are the gross services profit markup from the provision of #DESCRIPTION OF SERVICES.
- ☐ The Covered Method is based on the principles of the low value-adding intra-group services approach under the OECD Guidelines and of the services cost method under the U.S. Treasury Regulations. The Tested Party's financial results to be tested are the markup on total costs for providing #DESCRIPTION OF SERVICES.
- ☐ The Covered Method is an implementation of the transactional net margin method under the OECD Guidelines and of the comparable profits method under the U.S. Treasury Regulations. The Tested Party's financial results to be tested, as reflected in its net profit indicator (per OECD Guidelines) or profit level indicator (per U.S. Treasury Regulations), are its:
 - ☐ operating margin.
 - ☐ markup on total costs.
 - ☐ Berry ratio.
 - ☐ return on operating assets.
 - ☐ return on invested capital.
 - ☐* #OTHER NET PROFIT INDICATOR OR PROFIT LEVEL INDICATOR, WITH DEFINITION.
- ☐ The Covered Method is an implementation of the profit split (residual analysis) method under the OECD Guidelines and of the residual profit split method under the U.S. Treasury Regulations. The Tested Party's financial results to be tested are described in subsection (c) below.
- ☐ The Covered Method is an implementation of the profit split (contribution analysis) method under the OECD Guidelines and of the comparable profit split method under the U.S. Treasury Regulations. The Tested Party's financial results to be tested are described in subsection (c) below.
- ☐ The Covered Method is an implementation of an income based valuation technique as referenced in paragraph 6.153 of the OECD Guidelines and of the income method under the U.S. Treasury Regulations. The Tested Party's financial results to be tested are described in subsection (c) below.
- ☐ The Covered Method is an implementation of (i) a sharing of the cost of current contributions in proportion to overall expected benefits, within a cost contribution arrangement under the OECD Guidelines, and (ii) a sharing of intangible devel-

opment costs in proportion to reasonably anticipated benefits, within a cost sharing arrangement under the U.S. Treasury Regulations. The Tested Party's financial results to be tested are described in subsection (c) below.

- ☐ The Covered Method is a method that is not specified under the OECD Guidelines and not specified under the U.S. Treasury Regulations. The Tested Party's financial results to be tested are described in subsection (c) below.

Such financial results are determined according to the Applicable Accounting Standard, with the proviso that in determining such results, accounting principles and conventions that are generally accepted in the trade or industry must be used.

Such financial results are tested against a point or range as described below. The test is carried out with a frequency, and for certain time periods, as described below. If and when these financial results do not satisfy the test, they must be adjusted as described in section 5 of this Appendix A.

c. Testing of Financial Results Against a Point or Range

The Tested Party's financial results are tested as follows:

- ☐ The financial results must equal #X.
- ☐ The financial results must be within an Arm's Length Range.
 - ☐ The Arm's Length Range is from #X to #Y inclusive.
 - ☐ This Arm's Length Range has an associated Median value of #Z.
 - ☐ This Arm's Length Range has no associated Median value.
 - ☐ Two Arm's Length Ranges apply. The first is from #W to #X inclusive and applies to the annual test described in subsection (d) below. The second is from #Y to #Z inclusive and applies to the term test described in subsection (d) below.
 - ☐ The first Arm's Length Range has an associated Median value of #P, and the second Arm's Length Range has an associated Median value of #Q.
 - ☐ These Arm's Length Ranges have no associated Median value.
 - ☐ Two Arm's Length Ranges apply. The first is from #W to #X inclusive and applies to the subterm test described in subsection (d) below. The second is from #Y to #Z inclusive and applies to the annual test described in subsection (d) below.
 - ☐ The first Arm's Length Range has an associated Median value of #P, and the second Arm's Length Range has an associated Median value of #Q.
 - ☐ These Arm's Length Ranges have no associated Median value.
 - ☐ Two Arm's Length Ranges apply. The first is from #W to #X inclusive and applies to the test for the first subterm described in subsection (d) below. The second is from #Y to #Z inclusive and applies to the test for the second subterm described in subsection (d) below.
 - ☐ The first Arm's Length Range has an associated Median value of #P, and the second Arm's Length Range has an associated Median value of #Q.
 - ☐ These Arm's Length Ranges have no associated Median value.
- ☐ #OTHER DESCRIPTION, FOR EXAMPLE THE EVALUATION AND TESTING MECHANICS FOR A PROFIT SPLIT, AN INCOME METHOD, AN UNSPECIFIED METHOD, OR A SHARING OF COSTS UNDER A COST CONTRIBUTION ARRANGEMENT/COST SHARING ARRANGEMENT.

d. Testing Frequency and Testing Periods

The Tested Party's financial results are tested as of certain APA Covered Years, and for certain time periods, as follows:

- ☐ The results are tested annually, meaning that they are tested as of each APA Covered Year, for a period consisting of that APA Covered Year.
- ☐ There is no additional term test.
- ☐ There is an additional term test. For this test, the results are tested as of the Last Effective APA Covered Year, for the period consisting of the Last Effective APA Covered Year and all prior APA Covered Years.

The application of the annual test and the application of the additional term test are coordinated as described in section 5 of this Appendix A.

- ☐* The results are tested on a term basis, meaning that they are tested only once, as of the Last Effective APA Covered Year, for a period consisting of the Last Effective APA Covered Year and all prior APA Covered Years.
- ☐* The results are tested on the basis of two subterms. For this purpose, the APA Term is divided into two subterms. The first subterm consists of all APA Covered Years ending on or before #DATE, and the second subterm consists of all other APA Covered Years. For each subterm, the results are tested as of the Last Effective APA Subterm Covered Year, for a period consisting of the Last Effective APA Subterm Covered Year and all prior APA Covered Years in the subterm.
- ☐* The results are tested on a subterm basis for all APA Covered Years ending on or before #DATE (the "subterm"), and are tested annually for each other APA Covered Year, as follows:

The results are tested as of the Last Effective APA Subterm Covered Year, for a period consisting of the Last Effective APA Subterm Covered Year and all prior APA Covered Years in the subterm.

The results are tested as of each APA Covered Year that is not in the subterm, for a period consisting of that APA Covered Year.

- ☐* The results are tested on a cumulative basis, meaning that (except as provided in the following sentence) they are not tested as of the first APA Covered Year but they are tested as of each other particular APA Covered Year for a period consisting of such particular APA Covered Year and all prior APA Covered Years. However, if the Last Effective APA Covered Year is the first APA Covered Year, then the results are tested as of the first APA Covered Year, for a period consisting of such APA Covered Year.
- ☐* The results are tested on a three-year rolling average basis, meaning that the results are tested as of each APA Covered Year, for a period consisting of the APA Tax Year corresponding to the APA Covered Year (but excluding any portion of that APA Tax Year that is after the APA Term), and the Tested Party's two preceding tax years.

e. Other Provisions

The Tested Party's financial results, to be tested as described above, are for:

- ☐ The Tested Party as a whole.
- ☐ Only a segment of the Tested Party's activity. #DETAILED DESCRIPTION OF THE SEGMENT AND OF THE ALLOCATION AND APPORTIONMENT METHODS USED, INCLUDING ANY APPLICABLE FORMULAS AND DEFINITIONS OF QUANTITIES USED IN THOSE FORMULAS. THIS DESCRIPTION SHOULD BE DETAILED ENOUGH TO ENABLE A STRAIGHTFORWARD VERIFICATION OF COMPLIANCE BY THE IRS EXAMINATION TEAM.

When the Tested Party's financial results are tested as of a given APA Covered Year, those results shall reflect, to the extent relevant, any APA Primary Adjustment for this Covered Method made under section 5 of this Appendix A for the APA Tax Year corresponding to any prior APA Covered Year.

For this Covered Method, if applicable:

- ☐* For APA Covered Years ending on or before #DATE, it is agreed that this Covered Method, yields financial results as shown below, and that any APA Primary Adjustments under section 5 of this Appendix A are as shown below.

#TEXT AND/OR TABLES SHOWING THE FINANCIAL RESULTS, THE TESTING OF THOSE FINANCIAL RESULTS UNDER THE COVERED METHOD, AND ANY RESULTING APA PRIMARY ADJUSTMENTS.

For this Covered Method, if applicable:

- ☐ This Covered Method addresses the pricing for a transfer of intangible property (which does not constitute a platform contribution transaction as defined in U.S. Treasury Regulations section 1.482-7(b)(1)(ii)) within the meaning of U.S. Treasury Regulations section 1.482-4. That pricing will not be subject to periodic adjustments by the IRS, during or after the APA Term, under U.S. Treasury Regulations section 1.482-4(f)(2) or (6).
- ☐ This Covered Method addresses the pricing for a platform contribution transaction (“PCT”). That PCT will not be treated as a Trigger PCT within the meaning of U.S. Treasury Regulations section 1.482-7(i)(6)(i) for purposes of making periodic adjustments, during or after the APA Term, under U.S. Treasury Regulations section 1.482-7(i)(6).

5. Application of Covered Method(s) to Income Reporting

For each APA Tax Year, and for each Covered Method and corresponding Covered Issue(s), the amounts reported by U.S. Taxpayer and Non-U.S. Taxpayer for income tax purposes under the laws of the United States and #COUNTRY(IES) must clearly reflect the Tested Party’s actual transactions, allocations, and/or recordkeeping, as applicable, that relate to such Covered Issue(s), adjusted as necessary to conform with section 4 of this Appendix A. Accordingly, for each particular APA Tax Year and corresponding APA Covered Year, and for each such Covered Method:

- i. If the Tested Party’s financial results are tested as of such APA Covered Year and do not conform with section 4 of this Appendix A, then the tax reporting for such APA Tax Year must clearly reflect an adjustment that brings such results into conformance (an “APA Primary Adjustment”). If section 4 of this Appendix A specifies conformance to an Arm’s Length Range, then the adjustment shall be to:
- ☐ the Median.
- ☐* the near edge of the Arm’s Length Range.
- ☐* the Median for Covered Issues #SPECIFY WHICH ONES, and the near edge of the Arm’s Length Range for Covered Issues #SPECIFY WHICH ONES.
- ii. If an adjustment is not required under paragraph (i) above, then the tax reporting must clearly reflect the Tested Party’s financial results, with no adjustment. In this case there is no APA Primary Adjustment.
- iii. If both an annual test and an additional term test apply under such Covered Method, and such APA Covered Year is the Last Effective APA Covered Year, so that as of such APA Covered Year the Tested Party’s financial results are tested under both the annual test and the term test, then paragraphs (i) and (ii) above are modified by this paragraph (iii), which coordinates the application of both tests. As explained in more detail below, the annual test is applied first, followed by the term test. Specifically, the need for and amount of any APA Primary Adjustment for such APA Covered Year will be determined as follows:
- A. First apply paragraphs (i) and (ii) above under the assumption that only the annual test applies. Any required adjustment will be referred to as the “annual adjustment” rather than an “APA Primary Adjustment.” If there is no required adjustment, the annual adjustment is considered to be zero.
- B. Next, apply paragraphs (i) and (ii) above to the Tested Party’s financial results as adjusted by any nonzero annual adjustment, under the assumption that only the term test applies to those results. Any required adjustment under this application of paragraphs (i) and (ii) will be referred to as the “term adjustment” rather than an “APA Primary Adjustment.” If there is no such required adjustment, the term adjustment is considered to be zero.

- C. Add the annual adjustment and term adjustment, taking account of the magnitude and (if nonzero) direction of each. If this sum is zero, there is no APA Primary Adjustment for such APA Covered Year. If this sum is nonzero, this sum gives the magnitude and direction of the APA Primary Adjustment for such APA Covered Year. Any APA Primary Adjustment, or the lack of an APA Primary Adjustment, must be clearly reflected in the tax reporting for such APA Tax Year (see paragraphs (i) and (ii) above).

iv. If this APA is unilateral and such APA Covered Year is within the Rollback Period, then:

- ☐ Paragraphs (i)-(iii) above notwithstanding, an APA Primary Adjustment will not be made if that APA Primary Adjustment would decrease the income of U.S. Taxpayer for such APA Tax Year.

- ☐* Paragraphs (i)-(iii) above apply without modification.

If indicated, the above provisions on APA Primary Adjustments are modified as follows:

- ☐* Any APA Primary Adjustment that would be made under the above provisions for an APA Tax Year ending before #DATE will instead be made for the APA Tax Year ending #THE SAME DATE (the “Telescoping Year”). For each particular Covered Method, all APA Primary Adjustments that are made for the Telescoping Year (including any APA Primary Adjustments that are moved to the Telescoping Year as just described, as well as any APA Primary Adjustment originally made for the Telescoping Year) are netted.

- ☐ The foregoing provision applies without modification.

- ☐ The foregoing provision applies with the following modification. An APA Primary Adjustment that is thus moved from a particular APA Tax Year (the “Original Year”) to the Telescoping Year shall be increased in amount to reflect the time value of money. That increase will consist of multiplication by a factor that is an annual rate raised to a power. The annual rate is $1.\#XY$. The power is the quotient of (i) the average of the number of months by which the end of the Telescoping Year is later than the end of the Original Year, and the number of months by which the start of the Telescoping Year is later than the start of the Original Year (with any fractions of months rounded to whole months), (ii) divided by twelve.

For U.S. tax purposes, the generally applicable Code rules will apply with respect to APA Primary Adjustments, except as otherwise provided in Rev. Proc. 2015-41 or in this APA.

6. Conforming Adjustments and Repatriation of Funds

The provisions in this section 6 apply to “Repatriable Issues,” which are Covered Issues that concern transactions between associated enterprises that fall under Article 9 of the OECD Model Tax Convention. Such transactions correspond to transactions that under U.S. law are subject to application of Code section 482, as modified by any applicable treaty provision.

If the application of a Covered Method to a Repatriable Issue requires an APA Primary Adjustment under section 5 of this Appendix A for a given APA Tax Year, then for U.S. tax purposes there generally must be a corresponding conforming adjustment as specified in U.S. Treasury Regulations section 1.482-1(g)(3) as amplified by Rev. Proc. 99-32 or any successor revenue procedure. However, for this purpose, all APA Primary Adjustments for such APA Tax Year arising from the application of a Covered Method to a Repatriable Issue are first netted to yield a net APA Primary Adjustment for such APA Tax Year. Only if the net APA Primary Adjustment is nonzero is a conforming adjustment required.

For each APA Tax Year with a nonzero net APA Primary Adjustment, for U.S. tax purposes the conforming adjustment will be accomplished in the following steps:

- i. The conforming adjustment will be accomplished between #U.S. ENTITY and #NON-U.S. ENTITY, which will be referred to here as “U.S. Entity” and “Non-U.S. Entity”, respectively. An intercompany payable will be established between U.S. Entity and Non-U.S. Entity in the amount and direction of the net APA Primary Adjustment, as of the last day of such APA Tax Year. This payable will be denominated in #CURRENCY. The payable will be treated as indebtedness for all U.S. federal tax purposes; provided, however, that the payable will not be treated as indebtedness for purposes of Code section 956 if the payable is satisfied within 90 days of the close of the APA Tax Year with respect to which it is established.

- ii. ☐ The intercompany payable will bear interest at an arm's length rate.
 - ☐ Such arm's length rate is not specified in this APA and will be determined under applicable legal principles.
 - ☐ Such arm's length rate is determined as follows. #DESCRIPTION OF ARM'S LENGTH RATE (FOR EXAMPLE, FOR A U.S. DOLLAR PAYABLE, A CERTAIN APPLICABLE FEDERAL RATE UNDER U.S. TREASURY REGULATIONS SECTION 1.482-2(a)(2)(iii)(C)).
 - ☐ This APA is bilateral or multilateral. As agreed between the United States and #COUNTRY(IES), the intercompany payable will not bear interest.
- iii. The intercompany payable must be satisfied, in a manner permitted under Rev. Proc. 99-32 or any successor revenue procedure, within 90 days of the later of (1) the date for timely filing (with extensions) of the U.S. return for such APA Tax Year, and (2) the APA's U.S. Effective Date. If any amount of the intercompany payable is not otherwise so satisfied within that 90-day period, such amount, on the last day of such period, will be deemed (1) to be paid between U.S. Entity and Non-U.S. Entity in satisfaction of the payable, and (2) to be paid (directly or indirectly, as specified below) between U.S. Entity and Non-U.S. Entity in the opposite direction (that is, from the deemed recipient of the intercompany payable to the deemed payor of the intercompany payable). These two deemed payments on the same day will cancel and thus yield no net cash flow between these two entities. The second of these deemed payments will be referred to as the "reverse payment." The reverse payment will be deemed to be as follows:
 - A. If the net APA Primary Adjustment increases U.S. income:
 - ☐ The reverse payment will be deemed to be a contribution to capital from U.S. Entity to Non-U.S. Entity, either directly, or indirectly through the corporate chain, as the case may be.
 - ☐ The reverse payment will be deemed to be a distribution from U.S. Entity to Non-U.S. Entity, either directly, or indirectly through the corporate chain, as the case may be.
 - ☐ The reverse payment will be deemed to be a distribution from U.S. Entity to #COMMON PARENT, either directly, or indirectly through the corporate chain, as the case may be, followed by a contribution by #COMMON PARENT to non-U.S. Entity, either directly or indirectly through the corporate chain, as the case may be.
 - B. If the net APA Primary Adjustment decreases U.S. income:
 - ☐ The reverse payment will be deemed to be a contribution to capital from non-U.S. Entity to U.S. Entity, either directly, or indirectly through the corporate chain, as the case may be.
 - ☐ The reverse payment will be deemed to be a distribution from non-U.S. Entity to U.S. Entity, either directly, or indirectly through the corporate chain, as the case may be.
 - ☐ The reverse payment will be deemed to be a distribution from non-U.S. Entity to #COMMON PARENT, either directly, or indirectly through the corporate chain, as the case may be, followed by a contribution by #COMMON PARENT to U.S. Entity, either directly, or indirectly through the corporate chain, as the case may be.

This situation is generally described in paragraph 4.66 of the OECD Guidelines, and in U.S. Treasury Regulations section 1.482-1(g) and Rev. Proc. 99-32.

In this APA, if applicable:

- ☐* For the APA Tax Year(s) ending on or before #DATE, it is agreed that the net APA Primary Adjustment(s), if any, from the application of the Covered Methods are as follows: #FOR EACH SUCH APA TAX YEAR, DESCRIPTION OF WHETHER THERE IS A NET APA PRIMARY ADJUSTMENT, AND IF SO THE AMOUNT AND DIRECTION. IF THERE IS MORE THAN ONE COVERED METHOD FOR A REPATRIABLE ISSUE, ALSO PROVIDE A TABLE SHOWING THE DERIVATION, FOR EACH SUCH APA TAX YEAR, OF THE NET APA PRIMARY ADJUSTMENT FROM THE APA PRIMARY ADJUSTMENT (OR LACK OF ONE) FOR EACH SUCH COVERED METHOD. #FOR ANY SUCH NET

APA PRIMARY ADJUSTMENTS, DESCRIPTION OF THE MEANS BY WHICH THE CONFORMING ADJUSTMENT HAS BEEN OR WILL BE SATISFIED, WITH APPLICABLE DATES.

7. Definitions

The definitions in the table below apply to this APA.

The defined terms in this table include certain measures of profitability (e.g., operating profit, operating margin). Most of these measures are ultimately defined in terms of sales revenue, operating expenses, and operating assets (defined terms), and cogs and non-interest-bearing liabilities (undefined terms). The definitions of sales revenue, operating expenses, and operating assets contain a limitation to the relevant business activity. Similarly, each use of the terms “cogs” and “non-interest-bearing liabilities” is accompanied by a limitation to the relevant business activity. Therefore, the measures of profitability based on these five terms all are defined with a limitation to the relevant business activity. (Certain other measures of profitability in this table relate to the provision of services and are defined with reference to those services. Therefore, those measures as well contain a limitation to the relevant business activity.)

Term	Definition
Arm’s Length Range	With respect to a particular Covered Method, a numerical range that defines the values for which certain financial results of the Tested Party are considered to satisfy the arm’s length standard. (This term may be referenced in section 4 of this Appendix A.)
APA Primary Adjustment	(Defined in section 5 of this Appendix A.)
APA Covered Year	(Defined in section 2 of this Appendix A.)
APA Term	(Defined in section 2 of this Appendix A.)
APA Tax Year	(Defined in section 2 of this Appendix A.)
Applicable Accounting Standard	The Applicable Accounting Standard is #CHOOSE FROM U.S. GAAP, IFRS, ETC. for U.S. Taxpayer and #CHOOSE FROM U.S. GAAP, IFRS, ETC. for Non-U.S. Taxpayer.
Berry ratio	The ratio of gross profit to operating expenses.
Code	The U.S. Internal Revenue Code of 1986, title 26 of the United States Code, as amended.
correspond, corresponding	(With regard to APA Covered Years and APA Tax Years, defined in section 2 of this Appendix A; with regard to Covered Issues and Covered Methods, defined in section 4 of this Appendix A.)
Covered Entity(ies)	(Defined in section 1 of this Appendix A.)
Covered Issue(s)	(Defined in section 3 of this Appendix A.)
Covered Method	A method used to resolve one or more Covered Issues, as described in section 4 of this Appendix A. (In some cases, this method may be a “transfer pricing method” within the meaning of chapter II of the OECD Guidelines and U.S. Treasury Regulations section 1.482-1(b).)
Critical Assumption fails, failure of a Critical Assumption	A Critical assumption “fails” when the Critical Assumption has not been met. This situation is referred to as the “failure” of the Critical Assumption.
Early Termination	<p>A termination of this APA’s effectiveness, either in its entirety or only as applied to certain Covered Issues before the end of the APA Term. Such a termination could result from one or more of the following circumstances: (i) a Critical Assumption failure, (ii) a violation of the terms and conditions of this APA, (iii) a cancellation of the APA under Rev. Proc. 2015-41, and (iv) an amendment of the APA. If an Early Termination so terminates this APA’s effectiveness as applied to a particular Covered Issue, the Early Termination is said to “apply” to or for that Covered Issue.</p> <p>Any such termination of effectiveness would occur as of the end of an APA Tax Year (see Rev. Proc. 2015-41, section 7.06). Because such end of an APA Tax Year is before the end of the APA Term, such end of an APA Tax Year is also the end of the corresponding APA Covered Year (see the definitions of APA Tax Year and APA Covered Year in section 2 of this Appendix A). Thus, an Early Termination always would occur as of the end of an APA Covered Year. That fact is assumed in the definitions in this table of Last Effective APA Covered Year and Last Effective APA Subterm Covered Year.</p>
Gross profit	Sales revenue, less cost of goods sold for the relevant business activity.

Term	Definition
Gross profit margin	gross profit, divided by sales revenue
Gross profit markup	gross profit, divided by cost of goods sold for the relevant business activity
Gross services margin	In connection with a provision of services, the ratio of gross services profit to the price paid for the services in an uncontrolled transaction. For this purpose, gross services profit equals the amount of such price that is retained by the Tested Party.
Gross services profit markup	In connection with a provision of services, gross services profit, divided by transactional costs. For this purpose, gross services profit equals sales revenue less transactional costs. Also, for this purpose, transactional costs equal costs directly attributable to providing the services. Such costs would include, for example, all compensation attributable to employees directly involved in the performance of such services, and costs of materials and supplies consumed or made available in rendering the services.
IFRS	International Financial Reporting Standards.
Invested capital	Operating assets, less non-interest-bearing liabilities used in the relevant business activity.
IRS	The Internal Revenue Service, an agency of the U.S. government.
IFRS	International Financial Reporting Standards.
Last Effective APA Covered Year	For a particular Covered Method, the last APA Covered Year for which this APA remains effective as to the Covered Issue(s) corresponding to that Covered Method. The Last Effective APA Covered Year will be the last APA Covered Year unless an Early Termination applies to such Covered Issue(s). <i>See also</i> the definition in this table of Early Termination.
Last Effective APA Subterm Covered Year	For a particular Covered Method, and with reference to a particular set of APA Covered Years that is defined as a subterm, the last APA Covered Year in the subterm for which this APA remains effective as to the Covered Issue(s) corresponding to that Covered Method. The Last Effective APA Subterm Covered Year will be the last APA Covered Year in the subterm unless an Early Termination applies to such Covered Issue(s) and renders the APA ineffective as to such Covered Issue(s) before the end of the subterm. <i>See also</i> the definition in this table of Early Termination.
Markup on total costs	The ratio of operating profit to total costs.
Median	With respect to a particular Arm's Length Range, the median of a set of observations of market data from which that Arm's Length Range was determined.
Non-U.S. Taxpayer	(Defined in section 1 of this Appendix A.)
Non-U.S. Covered Entity(ies)	(Defined in section 1 of this Appendix A.)
OECD Guidelines	Organisation for Economic Co-operation and Development, <i>OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations</i> (July 2017).
OECD PE Report	Organisation for Economic Co-operation and Development, <i>2010 Report on Attribution of Profit to Permanent Establishments</i> (July 22, 2010).
Operating assets	The value of all assets used in the relevant business activity, including fixed assets and current assets (such as accounts receivable and inventories). The following items are excluded from operating assets: cash, cash equivalents, short-term investments, deferred tax assets, tax refunds, intangibles, investments in subsidiaries, portfolio investments.
Operating expenses	All expenses (including depreciation) not included in cost of goods sold except for interest expense, domestic and foreign income taxes, amortization of intangibles, and any other expenses not related to the operation of the relevant business activity. Operating expenses normally include, for example, expenses associated with advertising, promotion, sales, marketing, warehousing and distribution, administration, and a reasonable allowance for depreciation. For U.S. Taxpayer, foreign income taxes are defined in U.S. Treasury Regulations section 1.902-1(a) (7).
Operating margin	The ratio of operating profit to sales revenue.
Operating profit	Sales revenue, less cost of goods sold for the relevant business activity, less operating expenses.
Rev. Proc. 99-32	A revenue procedure issued by the IRS that is cited as Rev. Proc. 99-32, 1999-2 C.B. 296.
Rev. Proc. 2015-41	A revenue procedure issued by the IRS that is cited as Rev. Proc. 2015-41, 2015-35 I.R.B. 263.

Term	Definition
Repatriable Issue	(Defined in section 6 of this Appendix A.)
Relevant Financial Data	With respect to a particular Covered Method, the financial results of the Tested Party that are tested, together with any other financial data (of the Tested Party or any other party) that are considered in determining compliance with the Covered Method.
Return on invested capital	(Defined in the same way as “return on operating assets,” but with “operating assets” replaced by “invested capital” wherever it occurs in the definition.)
Return on operating assets	<p>With respect to a particular Covered Method, the Tested Party for that Covered Method, and a testing period used in that Covered Method, the operating profit over the testing period divided by the time-weighted average operating assets over the testing period.</p> <p>For this purpose, the time-weighted average operating assets over the testing period is the sum, over all APA Covered Years in the testing period, of the following product: (i) the simple average of the operating asset levels at the start and end of the APA Tax Year corresponding to such APA Covered Year, multiplied by (ii) the ratio of the number of calendar days in the APA Covered Year, to 365.</p> <p>For example, suppose that (i) the testing period consists of two consecutive APA Covered Years, the first with 183 calendar days and the second with 366 calendar days, (ii) the total operating profit over those two years is exactly 3.4, and (iii) the operating assets levels are exactly 10 at the start of the APA tax year corresponding to the first APA Covered Year, 16 at the end of the APA Tax Year corresponding to the first APA Covered Year (which is also the start of the APA Tax Year corresponding to the second APA Covered Year), and 22 at the end of the APA Tax Year corresponding to the second APA Covered Year. Then the time-weighted average operating assets over the testing period is $[(10+16)/2] \times (183/365) + [(16+22)/2] \times (366/365) = 25.5699$. The return on operating assets is then $3.4/25.5699 = 13.30\%$.</p>
Rollback Period	(This term, if applicable, is defined in section 2 of this Appendix A.)
Sales revenue	Total receipts from sale of goods and provision of services, less returns and allowances, for the relevant business activity.
Tax year	A standard or irregular year that is used for tax reporting purposes. For U.S. Taxpayer, a tax year is a “taxable year,” as defined in Code section 441.
Tested Party	(Defined in section 4 of this Appendix A with regard to a particular Covered Method.)
Testing period	The time period over which financial results are tested (see section 4 of Appendix A to this APA).
Total costs	Cost of goods sold for the relevant business activity, plus operating expenses.
U.S. Treasury Regulations	Tax regulations issued by the U.S. Treasury Department, found at title 26 of the Code of Federal Regulations.
U.S. Covered Entity(ies)	(Defined in section 1 of this Appendix A.)
U.S. Effective Date	The date, or later date of the dates, upon which the APA is executed by the IRS and by or on behalf of each U.S. Covered Entity.
U.S. GAAP	U.S. generally accepted accounting principles.
U.S. return	Any of the “Returns with respect to income taxes under subtitle A” required by Code section 6012, and any “return” for a partnership required by Code section 6031.
U.S. Taxpayer	(Defined in section 1 of this Appendix A.)

APPENDIX B
CRITICAL ASSUMPTIONS

The Critical Assumptions are:

1. The Covered Entities' business activities, functions performed, risks assumed, assets employed, contractual terms, markets, and economic conditions faced in relation to the Covered Issue(s) will remain materially the same as described in the APA Request. For this purpose, a mere change in business results will not be a material change.
2. The Covered Entities' financial accounting methods and classifications and methods of estimation in relation to the Covered Issue(s) and Covered Method(s) will remain materially the same as described or used in the APA Request.

If indicated, the effect of a critical assumption failure may be limited as follows:

- ☐ The failure of Critical Assumptions #XXX listed above will affect the effectiveness of this APA only as to Covered Issues #YYY listed in Appendix A. Thus, as to the other Covered Issues, the APA will remain in force (except to the extent some other condition affects the APA's effectiveness as to those Covered Issues).

The Covered Entities will not cause a critical assumption to fail for the purpose of rendering the APA ineffective, unless they have an independent business justification (unrelated to rendering the APA ineffective) for the action that causes the critical assumption to fail. If one or more Covered Entities do cause a critical assumption to fail for the purpose of rendering the APA ineffective, and without such independent business justification, then the Covered Entities will not withhold consent to an amendment to this APA to the effect that this APA will continue in force without regard to such failure. In this case, if a Covered Entity refuses to sign such an amendment, such an amendment may be executed without such signature and will then have the same force and effect as if the amendment had such signature.

APPENDIX C

APA RECORDS AND ANNUAL REPORT

APA RECORDS

The APA Records will consist of all documents listed below for inclusion in the Annual Report, as well as all documents, notes, work papers, records, or other writings that support the information provided in such documents.

ANNUAL REPORT

An Annual Report must be submitted for each APA Tax Year in accordance with paragraph 6(e) of the APA and section 7.02 of Rev. Proc. 2015-41.

For each APA Tax Year, the Annual Report (and each copy or version as required by paragraph 6(e) of the APA) will include:

1. Two copies of a properly completed APA Annual Report Summary in the form of Appendix D to this APA, one copy of the form bound with, and one copy provided separately from, the rest of the Annual Report. (The electronic version of the Annual Report need have only one copy of this item.)
2. A table of contents organized according to the additional required items listed below.
3. For such APA Tax Year and the corresponding APA Covered Year, statements that fully identify, describe, analyze, and explain:
 - a. All material differences between the Covered Entities' business activities, functions performed, risks assumed, assets employed, contractual terms, markets, and economic conditions faced in relation to the Covered Issues during such APA Covered Year from those same items described in the APA Request. If there have been no such material differences, the Annual Report will include a statement to that effect.
 - b. All material differences between Covered Entities' financial accounting methods and classifications and methods of estimation in relation to the Covered Issues and Covered Methods used during such APA Covered Year, from those described or used in the APA Request. If any change was made to conform to changes in the Applicable Accounting Standard, U.S. Taxpayer will specifically identify the change. If there have been no such material differences, the Annual Report will include a statement to that effect.
 - c. Regarding notices under paragraph 16 of the APA:
 - i. A current statement of how the IRS should provide such notices to U.S. Taxpayer (and, if applicable, to U.S. Taxpayer's representative).
 - ii. A copy of any such notices that were submitted by U.S. Taxpayer to the IRS after the last Annual Report was submitted (or, if there was no prior Annual Report, after the APA was executed). If there were no such notices, the Annual Report will include a statement to that effect.
 - d. Any failure of any Critical Assumption. If there has been no such failure, the Annual Report will include a statement to that effect.
 - e. Whether or not material information submitted while the APA Request was pending is discovered to be false, incorrect, or incomplete, and if so a correction or completion of that information, as applicable.
 - f. Any change to any entity classification for federal income tax purposes (including any change that causes an entity to be disregarded for federal income tax purposes) of any Worldwide Group member that is a Covered Entity or is otherwise relevant to the Covered Issue(s) or Covered Method(s).
 - g. The following regarding any APA Primary Adjustments made for such APA Tax Year under Appendix A to this APA:
 - i. The amounts of any APA Primary Adjustments;

- ii. The circumstances that led to such APA Primary Adjustments being necessary;
 - iii. A calculation of the net APA Primary Adjustment as defined in Appendix A to this APA; and
 - iv. A complete description of the means by which the conforming adjustment (see section 6 of Appendix A to this APA) is accomplished, including:
 - A. a description of any accounts payable established, including the entities involved and when the payables are established;
 - B. a description of any amounts paid or deemed paid (including amounts paid or deemed paid in satisfaction of an intercompany payable established as described in section 6 of Appendix A to this APA, and including any deemed reverse payments as described in section 6 of Appendix A to this APA), that specifies the entities involved, when the amounts are paid or deemed paid, and by what means any amounts are actually paid; and
 - C. the character (such as capital, ordinary, income, expense, dividend, contribution to capital) and country source of any payments and deemed payments, and the specific affected line item(s) of any affected U.S. return;
 - h. A detailed numerical explanation of how the result of the application of the Covered Methods is reflected on the U.S. return, with reference to particular line items on the U.S. return. This explanation shall include the amounts, description, reason for, and financial analysis of any book-tax differences, as reflected on Schedule M-1 or Schedule M-3 of the U.S. return for such APA Tax Year, that (i) are relevant to an APA Primary Adjustment, (ii) otherwise are relevant to the book and tax treatment of any income or expense item that is part of the Relevant Financial Data for, or is determined by, any Covered Method for such APA Tax Year, or (iii) otherwise are relevant to the APA. U.S. Taxpayer shall not simply attach a copy of the pertinent schedule. Rather, U.S. Taxpayer shall specifically identify the relevant items from that schedule and shall describe in appropriate detail the nature of those items, how they arose, and how they are accounted for.
 - i. Whether or not U.S. Taxpayer contemplates requesting, or has requested, to renew, modify, or cancel the APA.
4. The Financial Statements and additional statements required under paragraph 6(f) of the APA, for such APA Tax Year and for any other tax year whose financial data are relevant to compliance with the APA for such APA Tax Year;
 5. A financial analysis that includes U.S. Taxpayer's calculations to apply the Covered Method(s) to the Covered Issue(s) for such APA Covered Year and supports those calculations with additional material that ties those calculations to the Financial Statements. The intent of this requirement is that the analysis submitted should provide a clear, complete, detailed, and self-contained means by which the IRS can verify compliance with the Covered Method(s). This requirement is further explained as follows:
 - a. The additional material must support every numerical input to U.S. Taxpayer's calculations.
 - b. The additional material could include, for example, consolidating financial statements, segmented financial data, and records from the general ledger.
 - c. Where segmented data are used, U.S. Taxpayer must specify in detail how it accomplished the segmentation, including how it made allocations and apportionments, including (i) the definition and calculation of any apportionment keys used, and (ii) the calculations applying such keys. The inputs used for those various calculations must be tied to the Financial Statements.
 - d. The additional material must be annotated sufficiently to let the IRS easily trace U.S. Taxpayer's entire calculations to objective, verifiable sources of data.
 - e. Where needed for clarity, terms must be defined.
 6. The financial results pertinent to the Covered Method(s), for such APA Covered Year and all prior years, entered along with data concerning the Covered Method(s) in an electronic results template available by contacting APMA.
 7. ☐ An organizational chart for Worldwide Group, revised annually to reflect all ownership or structural changes of the Covered Entities and any other entities that are relevant to the Covered Issue(s) or are otherwise relevant to the Covered Method(s).

[]* An organizational chart for a part of Worldwide Group that includes all Covered Entities and includes any other entities relevant to the Covered Issue(s) or Covered Method(s), revised annually to reflect all ownership or structural changes of entities that are involved in the Covered Issue(s) or are otherwise relevant to the Covered Issue(s) or Covered Method(s).

8. A valid IRS Form 2848 “Power of Attorney and Declaration of Representative” for any representative to receive notices under paragraph 16 of this APA.
9. A copy of the APA and any amendment.
10. A penalty of perjury statement, executed in accordance with Rev. Proc. 2015-41, sections 7.02(8) and (9).

APPENDIX D

APA ANNUAL REPORT SUMMARY FORM

The APA Annual Report Summary on the next page is a required APA Record. APMA supplies some of the information requested on the form. U.S. Taxpayer is to supply the remaining information requested by the form and submit the form as part of its Annual Report.

Internal Revenue Service	APMA Case No.	
Large Business and International Division	Reviewer	
Treaty & Transfer Pricing Operations	Team Leader	
Advance Pricing Mutual Agreement Program	Economist	
	Other APA Team Members	

APA Information

U.S. Taxpayer's Name	
U.S. Taxpayer's EIN	
U.S. Taxpayer's NAICS	
Unilateral/Bilateral/Multilateral	
Original or Renewal	
APA Common Name, if any	
APA Request Filing Date	
Date APA Executed	
APA Term (date-to-date, inclusive)	
Foreign Countr(y)ies Involved	
Annual Report Due Dates for years ending on or before [date]:	
Annual Report Due Dates for other years: [last month of tax year] 15 following close of year	
Covered Methods Summary Description	
(e.g., CPM, operating margin 2%-5%)	
Taxpayer's Principal Representative	

APA Annual Report Information:

Year(s) covered by this Annual Report		
Issues for APMA's special attention (or "None")		
Taxpayer Notice Person	Name	
<i>If necessary, include a current Form 2848 for the Notice Person</i>	Title	
	Address	
	City/State/Zip	
	Phone/Fax	
	Email	
Current Representative, if any	Name	
<i>Include a current Form 2848 for the representative</i>	Title	
	Address	
	City/State/Zip	
	Phone/Fax	
	Email	

Date Annual Report Filed (to be filled in by APMA):

Notice of Proposed Rulemaking

Superfund Chemical Taxes

REG-105954-22

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the excise taxes imposed on certain chemicals and certain imported substances, effective July 1, 2022. Such taxes are known as the Superfund chemical taxes. The excise tax on taxable chemicals is imposed on the sale or use of taxable chemicals by manufacturers, producers, and importers of such chemicals. The excise tax on taxable substances is imposed on the sale or use of taxable substances by importers of such taxable substances. The proposed regulations affect manufacturers, producers, and importers that sell or use taxable chemicals and importers that sell or use taxable substances.

DATES: Written or electronic comments and requests for a public hearing must be received by May 30, 2023. 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. Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-105954-22) by following the online instructions for submitting comments. Comments cannot be edited or withdrawn once submitted to the Federal eRulemaking Portal. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket.

Send paper submissions to: CC:PA:LP-D:PR (REG-105954-22), room 5203, Internal Revenue Service, PO Box 7604,

Ben Franklin Station, Washington, D.C. 20044.

FOR FURTHER INFORMATION

CONTACT: Concerning the proposed regulations, Stephanie Bland or Amanda Dunlap at (202) 317-6855 (not a toll-free number); concerning the submission of comments and/or requests for a public hearing, Vivian Hayes by phone at (202) 317-5177 (not a toll-free number) or by email at publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Background

I. Overview

This document contains proposed regulations under sections 4661, 4662, 4671, and 4672 of the Internal Revenue Code (Code) to amend the Environmental Tax Regulations (26 CFR part 52). Section 4661(a) imposes an excise tax on the sale or use of “taxable chemicals” by manufacturers, producers, or importers (section 4661 tax), and section 4662 provides definitions and special rules for applying the section 4661 tax. Section 4671(a) imposes an excise tax on the sale or use of “taxable substances” by importers (section 4671 tax), and section 4672 provides definitions and special rules for applying the section 4671 tax. The section 4661 tax and the section 4671 tax are collectively referred to as the “Superfund chemical taxes” because these excise taxes fund the Hazardous Substance Response Trust Fund established by section 221 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Public Law 96-510, 94 Stat. 2767 (1980), informally referred to as “Superfund.”

The Superfund chemical taxes previously expired on December 31, 1995, but were reinstated with certain modifications, effective July 1, 2022, through December 31, 2031, by section 80201 of the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, 135 Stat. 429 (November 15, 2021). The proposed regulations provide guidance on the application of the reinstated Superfund chemical taxes. As explained later in this

Background section, the Treasury Department and the IRS have issued additional guidance on topics related to the reinstated Superfund chemical taxes that are not covered by the proposed regulations.

II. Section 4661 Tax on Taxable Chemicals

A. In General

The section 4661 tax was enacted as part of CERCLA to impose an excise tax on the sale or use of any taxable chemical by the manufacturer, producer, or importer of the taxable chemical. While section 4661(a) imposes tax on the sale of any taxable chemical, section 4662(c)(1) treats the use of a taxable chemical as a sale of the taxable chemical.

Section 4661(b) provides a table of 42 chemicals and the per-ton tax rate for each chemical. As reinstated by the IIJA, the per-ton tax rate for each of the 42 taxable chemicals in the table under section 4661(b) is double the per-ton tax rate previously imposed by section 4661 as in effect at the end of 1995.

The IIJA also amends section 4661(c), effective July 1, 2022, to provide that no section 4661 tax will be imposed after December 31, 2031.

B. Definition of Taxable Chemical and Other Terms

Under section 4662(a)(1), any chemical listed in the table under section 4661(b) is a “taxable chemical” if it is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing. Section 4662(a) also provides definitions of the terms “United States,” “importer,” and “ton,” as well as a rule that clarifies how the per-ton section 4661 tax is imposed on fractional parts of a ton.

C. Statutory Exceptions and Special Rules

Section 4662(b) provides exceptions from the definition of taxable chemical and special rules that apply to the section 4661 tax.

The following exceptions to the section 4661 tax provided by section 4662(b)(1)

through (b)(4) were first enacted as part of CERCLA. Section 4662(b)(1) provides that methane or butane is treated as a taxable chemical only if it is used otherwise than as a fuel or in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, and that the person so using the fuel is treated as the manufacturer. Under section 4662(b)(2), generally no section 4661 tax is imposed on nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia if used as a qualified fertilizer substance. Section 4662(b)(3) provides that no section 4661 tax is imposed in the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment. Finally, section 4662(b)(4) provides that the term taxable chemical does not include any substance to the extent derived from coal.

In addition to modifying the exceptions for methane and butane in section 4662(b)(1) and qualified fertilizer substances in section 4662(b)(2), section 1019 of the Tax Reform Act of 1984, enacted as Division A of the Deficit Reduction Act of 1984, Public Law 98-369, 98 Stat. 494, 1022 (July 18, 1984), added section 4662(b)(5) (providing generally that no section 4661 tax is imposed on several specified taxable chemicals used as a qualified fuel substance) and section 4662(b)(6) (providing generally that no section 4661 tax is imposed on several specified taxable chemicals by reason of the transitory presence of such chemical during any process of smelting, refining, or otherwise extracting any substance not subject to the section 4661 tax).

The Superfund Revenue Act of 1986 (Superfund Revenue Act), enacted as Title V of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613, 1760 (October 17, 1986), added the exceptions and special rules in section 4662(b)(7) through (10). Section 4662(b)(7) provides that except in the case of a substance imported into the United States or exported from the United States, the term xylene does not include any separated isomer of xylene. Section 4662(b)(8) generally provides that no section 4661 tax is imposed on any chromium, cobalt, or nickel that is diverted or recovered in the United States from any solid waste as part of a recycling process

(and not as part of the original manufacturing or production process), and section 4662(b)(9) provides generally that no tax is imposed on certain taxable chemicals used as a qualified animal feed substance. Section 4662(b)(10) provides an exception from tax for sales of organic taxable chemicals while those chemicals are part of an intermediate hydrocarbon stream and imposes a registration requirement on both parties to the sale.

The Superfund Revenue Act also added section 4662(c)(2) to the Code, which provides a special rule exempting certain inventory exchanges of taxable chemicals from the section 4661 tax and imposes a registration requirement on both parties to the exchange to qualify for the exemption.

D. Credits and Refunds

Enacted as part of CERCLA, section 4662(d)(1) through (3) provides rules authorizing the Secretary of the Treasury or her delegate (Secretary) to provide regulations regarding credits and refunds of the section 4661 tax for (i) the use of a taxable chemical in the manufacture of another substance that is a taxable chemical, (ii) the use of certain taxable chemicals in the production of fertilizer, and (iii) the use of certain taxable chemicals as qualified fuel. Section 4662(d)(4), which was added by the Superfund Revenue Act, authorizes the Secretary to provide regulations regarding credits and refunds of the section 4661 tax for the use of certain taxable chemicals in the production of animal feed.

E. Export Exemption

The Superfund Revenue Act added section 4662(e) to the Code to provide an exemption for the exportation of taxable chemicals. Section 4662(e)(1)(A) allows for the tax-free sale of taxable chemicals for export. Section 4662(e)(1)(B) imposes a proof of export requirement and provides that rules similar to the rules of section 4221(b) (relating to tax-free sales for purposes of the manufacturers excise taxes codified in chapter 32 of the Code (chapter 32)) are to apply.

Section 4662(e)(2)(A) provides a mechanism for a credit or refund of the section 4661 tax paid on a taxable chemi-

cal, or on a taxable chemical that is used in the production of a taxable substance, that is exported. Section 4662(e)(2)(B) establishes conditions to allowance for a credit or refund under such circumstances.

Section 2001 of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), Public Law 100-647, 102 Stat. 3342, 3593 (November 10, 1988), redesignated section 4662(e)(3) as section 4662(e)(4) and added a new section 4662(e)(3), which requires the Secretary to provide, by regulation, the circumstances under which a credit or refund may be allowed or made directly to the party that exported a taxable chemical or taxable substance. Section 4662(e)(4), as redesignated by TAMRA, requires the Secretary to issue regulations to carry out the purposes of section 4662(e).

III. *Section 4671 Tax on Taxable Substances*

A. In General

The section 4671 tax is imposed on any taxable substance sold or used by the importer thereof. The tax was added to the Code by section 515 of the Superfund Revenue Act. The term “taxable substance” is defined by section 4672(a), which is described in part III.B. of this Background section.

Section 4671(b) provides rules regarding how the amount of section 4671 tax is calculated. Section 4671(b)(1) provides that the amount of section 4671 tax is the amount of section 4661 tax that would have been imposed on the taxable chemicals used as materials in the manufacture or production of the taxable substance if such taxable chemicals had been sold in the United States for use in the manufacture or production of the taxable substance. If the importer does not furnish to the Secretary sufficient information to determine under section 4671(b)(1) the amount of section 4671 tax imposed on any taxable substance, section 4671(b)(2), as reinstated by the IJA, provides that the amount of section 4671 tax imposed is 10 percent (instead of 5 percent as originally enacted) of the appraised value of the substance as of the time the taxable substance was entered into the United States for consumption, use, or warehousing.

Section 4671(b)(3) provides that the Secretary may prescribe an amount of section 4671 tax for each taxable substance that will apply in lieu of the tax specified in section 4671(b)(2), equal to the amount of section 4671 tax that would be imposed with respect to a taxable substance if such substance were produced using the predominant method of production of such substance.

Section 4671(c) provides that no section 4671 tax is imposed on the sale or use of any substance if tax is imposed on such sale or use under section 4611 (imposing an excise tax on crude oil received at a United States refinery and on imported petroleum products entered into the United States for consumption, use, or warehousing). Section 4671(c) further provides that no section 4671 tax is imposed on the sale or use of any substance if such sale or use was subject to the section 4661 tax.

Section 4671(d) generally provides that rules similar to certain rules in section 4662(b) and (d) relating to exemptions for using substances as certain fuels or in the production of fertilizer or animal feed will apply with respect to taxable substances. Section 4671(d)(1) provides that rules similar to section 4662(b)(2), (5), and (9) (relating to tax-free sales of chemicals used as fuel or in the production of fertilizer or animal feed) apply with respect to taxable substances. Section 4671(d)(2) provides that rules similar to section 4662(d)(2), (3), and (4) (relating to credit or refund of tax on certain chemicals used as fuel or in the production of fertilizer or animal feed) apply with respect to taxable substances.

Section 4671(e), as amended by the IIJA effective July 1, 2022, provides that no section 4671 tax will be imposed after December 31, 2031.

B. List of Taxable Substances

For purposes of the section 4671 tax, section 4672(a)(1) provides that the term “taxable substance” means any substance that, at the time of sale or use by the importer, is listed as a taxable substance by the Secretary.

Section 4672(a) provides an initial list of taxable substances and mechanisms for adding substances to and removing substances from such list. There are two

ways that a substance can be listed as a taxable substance. The first way a substance can be listed as a taxable substance, provided by section 4672(a)(2)(A), is if the substance is included in the initial list of taxable substances under section 4672(a)(3), as enacted by the Superfund Revenue Act. The second way, provided by section 4672(a)(2)(B) as amended by the IIJA, effective July 1, 2022, is if the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency (EPA) and the Commissioner of U.S. Customs and Border Protection (CBP), that taxable chemicals constitute more than 20 percent of the weight or more than 20 percent of the value of the materials used to produce such substance, determined on the basis of the predominant method of production (more than 20-percent weight or value test). The last sentence of section 4672(a)(2) provides that if an importer or exporter of any substance requests that the Secretary determine whether such substance should be listed as a taxable substance under section 4672(a)(1) or be removed from such listing, the Secretary must make such determination within 180 days after the date the request was filed. *See* Rev. Proc. 2022-26 (2022-29 I.R.B. 90) for the exclusive process for making such requests. Further, section 4672(a)(4) provides that the Secretary must add to the list of taxable substances under section 4672(a)(3) those substances that meet the more than 20-percent weight or value test, and that the Secretary may remove from the list only substances that meet neither of such tests. The complete list of taxable substances under section 4672(a) is referred to in this preamble as the “Taxable Substances List.” The IRS will maintain the Taxable Substances List at <https://www.irs.gov/businesses/small-businesses-self-employed/superfund-chemical-excise-taxes>.

Section 4672(b)(1) and (2) provides additional definitions applicable to sections 4671 and 4672. Section 4672(b)(1) provides that the term “importer” means the person entering the taxable substance for consumption, use, or warehousing. Section 4672(b)(2) provides that the terms “taxable chemical” and “United States” have the respective meanings given such terms by section 4662(a).

IV. Procedural Rules

The Superfund chemical taxes are codified in chapter 38 of the Code (chapter 38), which pertains to environmental excise taxes.

The procedural regulations governing chapter 38 taxes are contained in 26 CFR part 40 (Excise Tax Procedural Regulations). *See* 26 CFR 52.0-1 and 40.0-1(a). Chapter 38 taxes are reported on Form 6627, *Environmental Taxes*, which is required to be attached to Form 720, *Quarterly Federal Excise Tax Return* (Form 720 return). *See* §§40.0-1(a) and 40.6011(a)-1(a)(1) of the Excise Tax Procedural Regulations.

The procedural regulations in part 40 also provide that each business unit that has, or is required to have, a separate employer identification number (EIN) is treated as a separate person. *See* §40.0-1(d). Therefore, business units (for example, a parent corporation and a subsidiary corporation, a partner and the partner’s partnership, or the various members of a consolidated group), each of which has, or is required to have, a different EIN, are separate persons for purposes of filing quarterly Form 720 returns, quarterly payments of excise tax, semimonthly deposits of excise tax, and registration for certain excise tax activities.

V. Recent Published Guidance Related to the Superfund Chemical Taxes

A. Notice 2021-66 (preliminary guidance and request for comments)

Notice 2021-66 (2021-52 I.R.B. 901) provided guidance related to the Superfund chemical taxes, including the initial list of taxable substances as required by section 80201(c)(3) of the IIJA, guidance on registration requirements, and guidance on the procedural rules that apply to the Superfund chemical taxes. Notice 2021-66 also requested comments on whether any issues related to the reinstated Superfund chemical taxes require clarification or additional guidance.

The comments can be accessed via the Federal Rulemaking Portal at <https://www.regulations.gov> (type IRS-2021-0018 or Notice 2021-66 in the search field

on the regulations.gov homepage to find the comments).

B. Notice 2022-15 (deposit penalty relief)

Under §40.6302(c)-1, taxpayers must make semimonthly deposits of the Superfund chemical excise taxes. Section 40.0-1(c) provides that a semimonthly period is the first fifteen (15) days of a calendar month or the portion of a calendar month following the 15th day of the month.

One commenter to Notice 2021-66 (commenter) requested deposit penalty relief. After considering the comment, the Treasury Department and the IRS issued Notice 2022-15 (2022-18 I.R.B. 1043) to provide transitional relief for the third and fourth calendar quarters of 2022, and the first calendar quarter of 2023, regarding the failure to deposit penalty imposed by section 6656 of the Code for failures to deposit Superfund chemical taxes through March 31, 2023, provided certain requirements are met.

C. Revenue Procedure 2022-26 (exclusive process for requesting modifications to the Taxable Substances List)

Notice 89-61 (1989-1 C.B. 717), as modified by Notice 95-39 (1995-1 C.B. 312), provided the previous process by which importers and exporters could request to add a substance to or remove a substance from the Taxable Substances List. Several commenters requested that the Treasury Department and the IRS provide an updated procedure by which importers and exporters may petition to add a substance to or remove a substance from the Taxable Substances List. Those commenters also requested that any new guidance provide notice of requests for modifications to the Taxable Substances List and an opportunity for public comment.

Rev. Proc. 2022-26 sets forth the exclusive process by which importers, exporters, and interested persons may petition to add a substance to or remove a substance from the Taxable Substances List. The process set forth in Rev. Proc. 2022-26 provides for public notice of any petition and the opportunity for public comment.

Explanation of Provisions

I. General Rules Regarding the Section 4661 Tax

Proposed §52.4661-1 sets forth general rules regarding the section 4661 tax, including rules regarding the imposition of tax, the attachment of tax, the persons liable for tax, the amount of tax, and the calculation of the amount of tax.

A. Attachment of Tax

1. General rule; foreign manufacturers

Proposed §52.4661-1(c)(1) clarifies that the section 4661 tax attaches to the first sale or use of a taxable chemical by the manufacturer, producer, or importer. This is consistent with Congressional intent that the tax apply only once to a given quantity of a taxable chemical. *See* S. Rep. No. 96-848, 96th Cong., 2d Sess. 21 (1980) (“A number of provisions are included in the fee system to assure an equitable fee which avoids unintended economic impacts, including: a provision which allows only one fee collection on any given quantity.”).

Proposed §52.4661-1(c)(2) clarifies that in situations involving a foreign manufacturer, the section 4661 tax does not attach to the foreign manufacturer’s sale of a substance listed in the table under section 4661(b) to the importer because the substance is not a taxable chemical at the time of such sale; rather, tax attaches to the importer’s first sale or use of the taxable chemical. This rule is consistent with section 4661(a) and the definition of the term “taxable chemical” in section 4662(a)(1). It is also consistent with the overall statutory scheme of excise taxes and relevant case law. *See, e.g., Indian Motorcycle Co. v. United States*, 283 U.S. 570 (1931) (excise tax is not imposed on the importation of a taxable motorcycle, but rather on the first sale by the importer).

2. Dilution of chemical mixtures

Proposed §52.4661-1(c)(1) clarifies that in the case of chemical mixtures containing one or more chemicals with respect to which tax was paid (tax-paid chemicals), no section 4661 tax attaches when the chemical mixture is diluted with a solvent to change the

concentration of the chemical mixture, provided the solvent is not a taxable chemical. The proposed regulations take this approach because the section 4661 tax has already been paid on the taxable chemicals in the chemical mixture, and the taxable chemicals in the chemical mixture do not lose their identity during the dilution process.

3. Chemical mixtures and chemical compounds

A chemical mixture is generally any substance composed of two or more physically-combined components that are not chemically bonded. Chemical mixtures include solutions, suspensions, and alloys. If a taxable chemical is a component of a chemical mixture, the taxable chemical remains a taxable chemical while it is part of the chemical mixture.

In contrast, a chemical compound is generally any substance composed of identical molecules, each of which consists of two or more atoms of the same or different elements held together by chemical bonds. A taxable chemical used to produce a chemical compound does not retain its individual properties.

With regard to domestically-produced chemical mixtures, the manufacture or production of a chemical mixture is a “use” of the taxable chemicals in the chemical mixture under proposed §52.4662-1(c)(15), and the section 4661 tax attaches at the time of such use. However, the “use” definition does not capture any taxable chemicals found in imported chemical mixtures. Therefore, the taxable chemicals found in an imported chemical mixture could completely escape the section 4661 tax unless the importer engages in a manufacturing process of separating the taxable chemicals in the mixture (such a process would make the importer the manufacturer of the taxable chemicals in the mixture) and then sells or uses those taxable chemicals. This would give foreign manufacturers of chemical mixtures a competitive advantage over domestic manufacturers of the same chemical mixtures.

To address this disparity, proposed §52.4661-1(c)(3) provides that when a taxable chemical is part of an imported chemical mixture that is not a taxable substance (as defined in section 4672(a)(1) and proposed §52.4672-1(b)(8)), tax attaches to the first sale or use of the chemical mix-

ture by the importer. Further, proposed §52.4661-1(f)(2) includes a rule regarding the calculation of the amount of tax with regard to chemical mixtures. More specifically, under proposed §52.4661-1(f)(2)(ii), when a taxable chemical is part of an imported chemical mixture that is not a taxable substance, as defined in section 4672(a)(1) and proposed §52.4672-1(b)(8), tax is imposed on the actual weight of any taxable chemicals in the chemical mixture at the time the importer first sells or uses the chemical mixture. These rules ensure that foreign and domestic manufacturers of chemical mixtures are treated the same for purposes of the section 4661 tax. The approach is supported by the fact that a taxable chemical in a chemical mixture is assumed to retain its chemical identity while part of the chemical mixture. There is also support for this position in case law. *See Murphy Oil USA, Inc. v. United States*, 81 F. Supp. 2d 942 (W.D. Ark. 1999) (section 4661 tax is imposed on the taxable chemicals in a chemical mixture).

As with chemical mixtures, the domestic manufacture or production of a chemical compound with one or more taxable chemicals is a taxable use of the taxable chemicals. Therefore, the domestic manufacturer or producer of the chemical compound is liable for the section 4661 tax. However, because a taxable chemical used to produce a chemical compound does not retain its chemical identity, the Treasury Department and the IRS lack the authority under sections 4661 and 4662 to tax the taxable chemicals used in the production of imported chemical compounds. This creates an advantage for foreign manufacturers of chemical compounds that are produced with taxable chemicals but that are not taxable substances, as defined in section 4672(a) and proposed §52.4672-1(b)(8). The Treasury Department and the IRS request comments on possible ways to mitigate the disadvantage to domestic manufacturers within the constraints of the statutory scheme.

4. Ores and metals

Several taxable chemicals, including nickel, cobalt, chromium, and phosphorus, are produced from ores. In addition, one taxable chemical, chromite, is an ore. The production of a taxable chemical from ore requires mining the ore to extract

the ore from the earth, and an extraction, smelting, or other process to remove or refine the taxable chemical from the ore.

Proposed §52.4661-1(c)(4)(i) provides, generally, that in the case of ores, the section 4661 tax attaches to the first sale or use of the taxable chemical by the manufacturer, producer, or importer after extraction of the taxable chemical from the ore, and the person that extracts the taxable chemical from the ore is the manufacturer of the taxable chemical. Proposed §52.4661-1(c)(4)(i) further provides that the term “extraction of a taxable chemical from the ore” means the first process in the United States that a person uses to separate the taxable chemical from the ore.

As noted earlier, chromite is both a taxable chemical and an ore; therefore, it is treated differently from taxable chemicals that are produced from ores. Proposed §52.4661-1(c)(4)(ii) provides that in the case of chromite, the section 4661 tax attaches to the first sale or use of chromite by the manufacturer, producer, or importer after the chromite is mined. Under the proposed regulations, the tax treatment of taxable chemicals that are metals under section 4661 is generally addressed by the rule regarding ores. The Treasury Department and the IRS request comments on whether an additional or alternative rule for metals would be appropriate or warranted.

B. Procedural Rules; Definition of Person

Proposed §52.4661-1(d) notes that the procedural rules in 26 CFR part 40 apply to the section 4661 tax. Proposed §52.4661-1(d) further notes that each business unit that has, or is required to have, a separate EIN is treated as a separate person for purposes of filing excise tax returns, making semimonthly deposits of excise tax, making payments of excise tax, and applying for the registration required under section 4662(b)(10)(C) and (c)(2)(B). *See* §40.0-1(d). Proposed §52.4671-1(d) is a similar provision related to the section 4671 tax.

C. Calculation of the Amount of Tax

1. Measurement and documentation regarding tonnage

Proposed §52.4661-1(f) provides rules regarding how to calculate the amount of

section 4661 tax. As noted earlier, the section 4661 tax applies at a specified rate per ton.

One commenter requested flexibility in how to measure and document tonnage, but did not elaborate on what type of information is generally available in the industry that could potentially be used as a metric for measuring tonnage, on whether different sectors of the industry might require different options for measuring tonnage, or on the degree of specificity that could be attained by using a metric other than the actual weight. The Treasury Department and the IRS lack sufficient information about possible ways to measure tonnage, other than by using the actual weight of the taxable chemical. The Treasury Department and the IRS are also concerned that a broad rule, such as one that would allow any reasonable method of measurement, could artificially reduce the tax base. For these reasons, proposed §52.4661-1(f)(2)(i) provides that for purposes of calculating the amount of section 4661 tax, the weight of a taxable chemical, measured in tons, is the actual weight of the taxable chemical at the time of sale or use by the manufacturer, producer, or importer.

The Treasury Department and the IRS request comments on any other appropriate methods that could be used to measure tonnage, with specificity and without artificially reducing the tax base. The Treasury Department and the IRS also request comments on the types of documentation available in the industry that could be used as records to support a weight measurement.

2. Conversion required for volumetric measurements

A taxable chemical may be measured in volumetric units. Because the section 4661 tax is imposed at a rate per ton, any volumetric units must be converted to weight units in order to calculate the amount of section 4661 tax. Proposed §52.4661-1(f)(2)(iii) requires that any volumetric measurement of a taxable chemical be converted to a weight measurement and provides a formula for volume-to-weight conversions.

II. Definitions Relating to Sections 4661 and 4662

As noted earlier, sections 4661 and 4662(c)(1) impose a tax on the sale or use of a taxable chemical by the manufacturer, producer, or importer. Several commenters requested that the Treasury Department and the IRS provide definitions of the terms “manufacturer,” “importer,” “sale,” and “use.” The definitions in proposed §52.4662-1 include those definitions requested by commenters, as well as others that are necessary to provide clarity with regard to the application of sections 4661 and 4662.

A. Taxable Chemical

As discussed in section II of the Background section, section 4662(a)(1) generally defines the term “taxable chemical” as any substance (A) that is listed in the table under section 4661(b), and (B) that is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing. The table under section 4661(b) includes only the name of each taxable chemical. The taxable chemicals listed in the table under section 4661(b) include metals, metalloids, minerals, and an ore (chromite).

The proposed regulations clarify that a substance is a taxable chemical only if it satisfies both prongs of the definition of “taxable chemical” in section 4662(a)(1). In addition, the proposed regulations provide that, except as provided in section 4662(b), a substance is listed in the table under section 4661(b) if it has the same name and molecular formula as a substance listed in the table under section 4661(b). The proposed regulations further provide that all isomeric forms of a substance listed in the table under section 4661(b) are treated as having the same name and molecular formula of the substance. Therefore, except as provided in section 4662(b)(7) with respect to xylene, an isomer of a substance listed in the table under section 4661(b) is a substance listed in the table under section 4661(b).

B. Importer

Section 4662(a)(3) defines the term “importer” as the person entering the tax-

able chemical for consumption, use, or warehousing. The proposed regulations clarify that if the person entering the taxable chemical for consumption, use, or warehousing is merely acting as an agent or a customs broker for another person, then the agent or customs broker is not the importer, and the importer is the first person in the United States to sell or use the taxable chemical after entry of the taxable chemical for consumption, use, or warehousing. The proposed regulations also address how to identify the importer with regard to sales that involve drop shipping a taxable chemical when the party shipping the taxable chemical is outside the United States.

C. Manufacturer

Neither section 4661 nor section 4662 defines the term “manufacturer.” Proposed §52.4662-1(c)(6)(i) defines the term “manufacturer” as any person that produces a taxable chemical from new or raw material, feedstocks, or other substances, or from scrap, salvage, waste, or recycled substances. Further, under the proposed regulations, a manufacturer includes any person that produces a taxable chemical from the mining process, or extracts, isolates, separates, or otherwise removes a taxable chemical from an ore or from another substance. A manufacturer also includes any person that produces a taxable chemical by processing or manipulating a substance, such as through the oxidation process. The term manufacturer does not include a person that dilutes a chemical mixture comprised of one or more tax-paid chemicals with a solvent that is not a taxable chemical.

One commenter requested that recyclers be excluded from the definition of the term “manufacturer.” Section 4662(b)(8)(A) provides that no section 4661 tax is imposed on any chromium, cobalt, or nickel which is diverted or recovered in the United States from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process). The explicit reference to recycling activities in section 4662(b)(8)(A), combined with the absence of a general exception for recycling activities in sections 4661 and 4662, suggest that Congress did not intend to exclude per-

sons engaged in recycling activities from the definition of the term “manufacturer.” Accordingly, the proposed regulations do not adopt this suggestion.

Proposed §52.4662-1(c)(6)(ii) addresses contract manufacturing. More specifically, proposed §52.4662-1(c)(6)(ii) provides that if a person manufactures or produces a taxable chemical for a second person, pursuant to a contract, order, or agreement and in accordance with the second person’s specifications, or if a person manufactures or produces a taxable chemical for a second person from materials owned by the second person, the second person (and not the first person) is treated as the manufacturer of the taxable chemical manufactured or produced by the first person.

D. Sale

Neither section 4661 nor section 4662 defines the term “sale.” Proposed §52.4662-1(c)(8) defines the term “sale” as the transfer of title or substantial incidents of ownership (whether or not delivery to, or payment by, the purchaser has been made) in a taxable chemical for a consideration, which may include, but is not limited to, money, services, or property.

One commenter requested an exclusion from the definition of the term “sale” for sales of intermediate hydrocarbon streams and inventory exchanges if both parties to the sale or exchange are taxable chemical registrants. Section 4662(b)(10) and (c)(2) provide exceptions to the section 4661 tax in the scenarios described by the commenter when both parties are registered; therefore, there is no need for a carve out from the definition of the term “sale.”

E. Ton

Section 4662(a)(4) defines the term “ton” to mean 2,000 pounds, which is a short ton. Proposed §52.4662-1(c)(13) follows the statutory definition.

F. Use

Neither section 4661 nor section 4662 defines the term “use.” Proposed §52.4662-1(c)(15) defines the term “use” broadly. More specifically, proposed §52.4662-1(c)(15) provides that a taxable

chemical is used when it is consumed, when it functions as a catalyst, when its chemical composition changes, when it is used in the manufacture or production of a chemical mixture or other substance (including by mixing or combining the taxable chemical with other substances), or when it is put into service in a trade or business for the production of income. The loss or destruction of a taxable chemical through spillage, fire, natural degradation, or other casualty is not a use. The mere manufacture or production of a taxable chemical is not a use of that chemical.

The legislative history of CERCLA notes that in determining how industrial fees should be levied, Congress “moved away from imposing fees on wastes and hazardous end-products, and instead approved a system which imposes fees on the relatively few basic building blocks used to make all hazardous products and wastes.” S. Rep. No. 96-848, 96th Cong., 2d Sess. 19 (1980) (quoted language from the Committee Report by the Senate Environment and Public Works Committee on an early draft of S.1480). The legislative history further notes that tax is to be imposed “at an early step in the industrial chain of production, distribution, consumption, and disposal.” *Id.* at 20. The definition of “use” in the proposed regulations is consistent with the legislative history.

III. Special Rules and Exceptions Relating to the Section 4661 Tax

Section 4662(b) provides a number of exceptions and special rules that apply to the section 4661 tax. Some of the provisions in section 4662(b) provide exceptions to the definition of “taxable chemical”; other provisions provide general exceptions to the section 4661 tax.

A. Methane or Butane Used as Fuel

Methane and butane are included in the list of taxable chemicals in section 4661(b). Section 4662(b)(1) provides that methane or butane is treated as a taxable chemical only if it is used otherwise than as a fuel or otherwise than in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel. In such cases, the person so using the methane or butane is treated as the manufacturer.

The section 4662(b)(1) rule impacts the timing of the imposition of the section 4661 tax. Unlike other chemicals included in the list of taxable chemicals in section 4661(b) that are taxable chemicals at the time of manufacture, production, or importation, the status of methane or butane as a taxable chemical cannot be determined until the time of use. As a result, it is possible that methane or butane will never become a taxable chemical and no section 4661 tax will attach. It is also possible that there will be intervening sales of methane or butane before the section 4661 tax is imposed.

Proposed §52.4662-2(a)(2) provides that methane or butane is used otherwise than as a fuel when it is used other than in the production of energy. Proposed §52.4662-2(a)(2) further provides that methane or butane is used as a fuel when it is used in the production of energy. It also provides examples of when methane or butane is used as a fuel. The rule in the proposed regulations regarding use as a fuel is consistent with existing guidance in other areas of excise tax. *See* section 2(f) of Notice 2006-92 (2006-43 I.R.B. 774) (providing guidance on use as a fuel relating to excise tax on alternative fuel mixtures).

B. Qualified Fertilizer, Fuel, and Animal Feed Substances

Section 4662(b)(2), (5), and (9) provide exceptions to the section 4661 tax for certain taxable chemicals that are qualified fertilizer, fuel, or animal feed substances. Proposed §52.4662-2(b) provides rules regarding the exception for qualified fertilizer substances. Proposed §52.4662-2(e) provides rules regarding the exception for qualified fuel substances. Proposed §52.4662-2(f) provides rules regarding the exception for qualified animal feed substances.

One commenter highlighted the need for guidance on tax-free sales under the fertilizer exception and requested clarification on whether tax-free sales are limited to one intervening sale. That commenter also requested guidance on how to make claims for credit and refund. Another commenter requested that the Treasury Department and the IRS provide model certificates for tax-free sales.

The proposed regulations address those issues. Proposed §52.4662-2(h) provides rules regarding tax-free sales under section 4662(b)(2), (5), and (9) and clarifies that the exception is available for multiple intervening sales. The provisions in proposed §52.4662-2(h) are similar to tax-free sale rules in other areas of excise tax and include a model exemption certificate. To lessen the burden on taxpayers, proposed §52.4662-2(h) allows for a “blanket” exemption certificate that may be used for a period of up to one (1) year.

C. Sulfuric Acid Produced as a Byproduct of Air Pollution Control Equipment

Section 4662(b)(3) provides that no section 4661 tax is imposed on sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment. The statute does not define the term “air pollution control equipment” for purposes of this exception. Further, the statute is silent with regard to whether the exception applies to sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment located outside the United States.

Proposed §52.4662-2(c) defines the term “air pollution control equipment” as any equipment used to comply with the Clean Air Act, including any amendments thereto, as codified in 42 U.S.C. chapter 85, or any similar provision under state law. This definition effectively limits the exception to domestically-produced sulfuric acid. The Treasury Department and the IRS request comments on the definition of “air pollution control equipment” in proposed §52.4662-2(c). To the extent commenters believe the definition should be modified, the Treasury Department and the IRS request comments on the type of documentation that is available to demonstrate to the IRS that sulfuric acid produced outside the United States was, in fact, produced solely as a byproduct of and on the same site as air pollution control equipment.

D. Taxable Chemicals Produced from Coal

Section 4662(b)(4) provides that the term “taxable chemical” does not include any substance derived from coal. Pro-

posed §52.4662-2(d) defines the term “coal” as bituminous coal, subbituminous coal, anthracite, and lignite.

E. Intermediate Hydrocarbon Streams

Section 4662(b)(10)(A) provides that no section 4661 tax is imposed on any organic taxable chemical while such chemical is part of an intermediate hydrocarbon stream containing one or more organic taxable chemicals. Section 4662(b)(10)(B) provides that if any organic taxable chemical on which no section 4661 tax was previously imposed by reason of section 4662(b)(10)(A) is isolated, extracted, or otherwise removed from, or ceases to be part of (collectively, isolation), an intermediate hydrocarbon stream, such isolation is treated as a use by the person causing the isolation, and such person is treated as the manufacturer of the organic taxable chemical so isolated.

1. Definition of “organic taxable chemical”

Section 4662(b)(10)(D) defines “organic taxable chemical” as any taxable chemical that is an organic substance. At the most basic level, an organic substance is a substance that contains carbon and hydrogen atoms.

The organic substances that are listed in the table under section 4661(b) are acetylene, benzene, butane, butylene, butadiene, ethylene, methane, naphthalene, propylene, toluene, and xylene. *See* H.R. Rep. No. 99-962, 99th Cong., 2d Sess., at 328 n. 6 (1986). However, neither the statute nor the legislative history addresses the interplay between section 4662(b)(1) and (10) with regard to methane and butane. Although methane and butane are organic substances that are listed in the table in section 4661(b), they are treated as taxable chemicals only when used otherwise than as a fuel or otherwise than in the production of any motor fuel, diesel fuel, aviation fuel, or jet fuel. *See* section 4662(b)(1) and proposed §52.4662-2(a). Therefore, methane and butane are not organic taxable chemicals at the time of isolation from an intermediate hydrocarbon stream. *See* section 4662(b)(1) and proposed §52.4662-2(a) and (g). Proposed §52.4662-2(g)(2)(i) clarifies that no sec-

tion 4661 tax is imposed on methane or butane at the time the methane or butane is isolated from an intermediate hydrocarbon stream and includes an example to illustrate this rule.

2. Multi-step isolation process

The rule in section 4661(b)(10) is clear with regard to organic taxable chemicals isolated from an intermediate hydrocarbon stream as part of a single-step isolation process. However, neither the statute nor the legislative history addresses what happens when isolation is a multi-step process.

In *Murphy Oil USA, Inc. v. United States*, 81 F. Supp. 2d 942 (W.D. Ark. 1999), the court considered the applicability of section 4662(b)(10) to a multi-step process of isolating propylene from a C3/C4 hydrocarbon stream. The court held that the splitting process designed to isolate and extract the propylene content from the C3/C4 stream as refinery-grade propylene was the point of isolation, even though the resulting refinery-grade propylene was a mixture of propylene and propane that could have been further processed into a purer grade of propylene. The court further held that because the weight of the propylene in the refinery-grade propylene could be determined with specificity, the section 4661 tax was imposed only on the weight of the propylene in the refinery-grade propylene.

Proposed §52.4662-2(g)(3)(ii) follows the holding in the *Murphy Oil* case and clarifies that when the isolation of an organic taxable chemical from an intermediate hydrocarbon stream is a multi-step process, the first process that a person uses to isolate, extract, or otherwise remove the organic taxable chemical from the intermediate hydrocarbon stream (even if the organic taxable chemical is, at that time, still mixed with other substances and further processing is possible, but not required) is treated as a use by the person causing the isolation, and such person is treated as the manufacturer of the organic taxable chemical so isolated. Proposed §52.4662-2(g)(3)(ii) further clarifies that if the organic taxable chemical is part of a chemical mixture at the time of isolation, the section 4661 tax is imposed on the weight of the entire chemical mixture,

unless the person causing the isolation can establish, with specificity, the weight of the organic taxable chemical or chemicals contained in the chemical mixture.

IV. Credits and Refunds of the Section 4661 Tax

Section 4662(d) provides a mechanism for a credit or refund of the section 4661 tax with regard to certain specified uses of taxable chemicals. Multiple commenters requested that the Treasury Department and the IRS provide guidance on claims for credit and refund. One commenter requested specific guidance on the use of invoices to support credit and refund claims.

Proposed §52.4662-4 provides rules regarding claims for credit and refund under section 4662(d). The provisions in proposed §52.4662-4 explain the general rules, conditions to allowance, and supporting information required for claims for credit and refund. Proposed §52.4662-4 also includes a model certificate to support a claim for credit or refund. The approach taken in the proposed regulations is consistent with other areas of excise tax law.

V. Exports

Section 4662(e)(1)(A) provides that no section 4661 tax is imposed on the sale by the manufacturer or producer of any taxable chemical for export or for resale by the purchaser to a second purchaser for export. Section 4662(e)(1)(B) provides that rules similar to section 4221(b) (relating to exports exempt from manufacturers excise taxes codified in chapter 32) apply. Proposed §52.4662-5(b) provides rules regarding how to effectuate tax-free sales for export under section 4662(e)(1). The rules in proposed §52.4662-5(b) are based on the rules in §48.4221-3 of the Manufacturers and Retailers Excise Tax Regulations, and include a model exemption certificate and a model statement of export.

Section 4662(e)(2) provides the general rule for claims for credit or refund of the section 4661 tax in the case of taxable chemicals that are exported, and taxable chemicals used as materials in the manufacture or production of a substance that is a taxable substance (that is, it is listed on

the Taxable Substances List) at the time of export. Proposed §52.4662-5(c) provides rules regarding claims for credit or refund under section 4662(e)(2).

Several commenters expressed concern about not being able to make credit or refund claims for taxable chemicals used in the manufacture of substances that meet the more than 20-percent weight or value test but have not yet been added to the Taxable Substances List. The requirement that a substance be on the Taxable Substance List at the time of export in order to make a claim for credit or refund is statutory. *See* section 4662(e)(2). The Treasury Department and the IRS request comments on possible ways to mitigate the impact of the express statutory language in section 4662(e)(2).

Section 4662(e)(3) provides a mechanism for an exporter to make claims for credit or refund. Proposed §52.4662-5(d) provides rules regarding claims for credit or refund under section 4662(e)(3).

VI. General Rules Regarding the Section 4671 Tax

General rules regarding the section 4671 tax are set forth in proposed §52.4671-1, including rules regarding the imposition of tax, the persons liable for tax, the attachment of tax, the amount of tax, and the calculation of the amount of tax. Proposed §52.4671-2 provides rules regarding tax-free sales under section 4671(d)(1) and claims for credit and refund under section 4671(d)(2).

VII. Definitions Relating to Sections 4671 and 4672

Proposed §52.4672-1 provides definitions applicable to sections 4671 and 4672. To the extent there is overlap, the definitions in proposed §52.4672-1 with respect to the section 4671 tax track the definitions in section §52.4662-1 with respect to the section 4661 tax.

VIII. Predominant Method of Production

Sections 4671(b)(3) and 4672(a)(2) use the term “predominant method of production.” However, the term is undefined by statute. The legislative history is limited

and provides only that with regard to the determination of substances on the Taxable Substances List, the determination is to be made “on the basis of the predominant method of production (with respect to imported derivatives) using stoichiometric material consumption assuming a 100-percent yield.” Conf. Rep. 962, 99th Cong., 2d Sess. (1987), 1987-1 C.B. 383, 386-7.

Proposed §52.4672-1(b)(4) defines the term “predominant method of production” to mean the method used to produce the greatest number of tons of a particular substance worldwide, relative to the total number of tons of the substance produced worldwide. The definition uses worldwide production as the metric because the term “predominant method of production” applies only in the context of the section 4671 tax, which is imposed on imported substances.

The Treasury Department and the IRS request comments on the predominant method of production, or any other relevant information (such as the weight or value of the taxable chemicals used in the manufacture or production of the taxable substance), for the following taxable substances that are included in the statutory list in section 4672(a)(3): ferronickel; formaldehyde; hydrogen peroxide; methanol; nickel powders; nickel waste and scrap; polystyrene resins and copolymers; styrene-butadiene, snpf; synthetic rubber, not containing fillers; unwrought nickel; vinyl resins; vinyl resins, nspf; and wrought nickel rods and wires.

IX. Tax-free Sales under Section 4671(d)(1)

Section 4671(d)(1) provides that rules similar to those in section 4662(b)(2), (5), and (9) apply with respect to taxable substances used or sold for use as described in such rules. Proposed §52.4671-2(b) provides rules regarding how to effectuate tax-free sales under section 4671(d)(1); the rules are similar to those in proposed §52.4662-2(h).

X. Credits and Refunds under Section 4671(d)(2)

Section 4671(d)(2) provides that rules similar to section 4662(d)(2), (3), and (4)

apply with respect to taxable substances used or sold for use as described in such rules. Proposed §52.4671-2(c) provides rules regarding claims for credit or refund under section 4671(d)(2); the rules are similar to those in proposed §52.4662-4.

XI. Types of Substances Eligible for Addition to the Taxable Substances List

When the Superfund chemical taxes were previously in effect, Notice 89-61 provided a determination process by which importers and exporters of substances could request modifications to the Taxable Substances List pursuant to the flush language of section 4672(a)(2). Notice 89-61 provided that textile fibers, yarns, and staple, and fabricated products that are molded, formed, woven, or otherwise finished into end-use products were ineligible for addition to the Taxable Substances List. Notice 95-39 modified Notice 89-61 to allow polymers extruded in fiber form to be added to the Taxable Substances List.

Proposed §52.4672-1(b) incorporates the rules from Notice 89-61 and Notice 95-39 regarding the types of substances that may be added to the Taxable Substances List if they otherwise meet the more than 20-percent weight or value test. These rules were also incorporated into the definition of the term “substance” in section 3.10 of Rev. Proc. 2022-26.

XII. Other Issues

A. Sales Between Certain Registrants

Two commenters requested that the Treasury Department and the IRS adopt a practice with respect to sales of taxable chemicals that is similar to what is in place for “S” registrants for fuel transactions. One commenter suggested an expansion of “G” registration and an allowance of tax-free sales among all “G” registrants.

In the fuel excise tax area, section 4081 of the Code establishes the bulk transfer system and the ability for “S” registrants to make tax-free sales of taxable fuel. More specifically, section 4081(a)(1)(B)(i) expressly exempts certain removals and entries of taxable fuel within the bulk transfer system and imposes registration requirements. There is no such statutory

directive with regard to the Superfund chemical taxes, and such an approach would be inconsistent with the statutory text and legislative history of the section 4661 tax. Therefore, the proposed regulations do not adopt this suggestion.

B. Modifications to the Taxable Substances List

Several commenters requested the addition of substances to or the removal of substances from the Taxable Substances List. Such comments are not considered requests to add to or remove from the Taxable Substances List and will not be processed. All requests to add substances to or remove substances from the Taxable Substances List must be submitted in accordance with the procedures set forth in Rev. Proc. 2022-26, which provides the exclusive process by which importers, exporters, and other interested persons may petition to add a substance to or remove a substance from the Taxable Substances List.

C. Delayed Implementation of Superfund Chemical Taxes

Multiple commenters requested that the Treasury Department and the IRS delay implementation of the Superfund chemical taxes until January 1, 2023. The IJA reinstates the Superfund chemical taxes as of July 1, 2022. The Treasury Department and the IRS do not have the authority to modify the effective date of the Superfund chemical taxes, which is statutory. Accordingly, the Superfund chemical taxes are effective July 1, 2022, as required by law.

D. Harmonized Tariff Schedule (HTS) and Chemical Abstract Service (CAS) Numbers

Several commenters requested that the Treasury Department and the IRS provide HTS and CAS numbers for all taxable chemicals and taxable substances to ensure uniform identification by stakeholders and the IRS.

The U.S. International Trade Commission maintains and publishes HTS numbers. The Chemical Abstract Service maintains CAS numbers. CAS is a divi-

sion of the American Chemical Society, a non-profit organization that holds a congressional charter under title 36, United States Code. The Treasury Department and the IRS are considering the request to provide HTS and CAS numbers and how those numbers can be verified with the appropriate experts. The Treasury Department and the IRS request comments on the degree of specificity that would be required for HTS and CAS numbers. Specifically, the Treasury Department and the IRS request comments on the appropriate number of decimal places for the HTS and CAS numbers that would be used to identify taxable chemicals and taxable substances.

Effect on Other Documents

The following notices of determination that were issued pursuant to Notice 89-61 are revoked: 55 FR 24023-01 (June 13, 1990); 55 FR 24023-02 (June 13, 1990); 55 FR 25768-02 (June 22, 1990); 55 FR 25770-01 (June 22, 1990); 56 FR 47985-01 (Sept. 23, 1991); 56 FR 47986-01 (Sept. 23, 1991); 56 FR 47986-02 (Sept. 23, 1991); 56 FR 47987-01 (Sept. 23, 1991); 57 FR 10947-03 (Mar. 31, 1992); 58 FR 66068-01, (Dec. 17, 1993); 58 FR 66069-01 (Dec. 17, 1993); 58 FR 66069-02 (Dec. 17, 1993); 58 FR 66071-01 (Dec. 17, 1993); 58 FR 67439-01 (Dec. 21, 1993); 59 FR 11827-01 (Mar. 14, 1994); 59 FR 11828-01 (Mar. 14, 1994); 59 FR 11831-01 (Mar. 14, 1994); 59 FR 13036-02 (Mar. 18, 1994); 59 FR 13037-01 (Mar. 18, 1994); 59 FR 13038-01 (Mar. 18, 1994); 59 FR 13039-01 (Mar. 18, 1994); 59 FR 14446-01 (Mar. 28, 1994); 59 FR 14447-01, (Mar. 28, 1994); 59 FR 27652-02 (May 27, 1994); 59 FR 27653-01 (May 27, 1994); 59 FR 27653-02 (May 27, 1994); 59 FR 31297-03 (June 17, 1994); 59 FR 31298-01 (June 17, 1994); 59 FR 31299-01 (June 17, 1994); 59 FR 35170-02 (July 8, 1994); 59 FR 35171-01 (July 8, 1994); 59 FR 35171-02 (July 8, 1994); 59 FR 37131-01 (July 20, 1994); 59 FR 45322-01 (Sept. 1, 1994); 59 FR 51663-03, (Oct. 12, 1994); 59 FR 52028-01 (Oct. 13, 1994); 60 FR 10142-03 (Feb. 23, 1995); 60 FR 19112-02 (Apr. 14, 1995); 60 FR 19113-01 (Apr. 14, 1995); 60 FR 26478-02 (May 17, 1995); 60 FR

27594-01 (May 24, 1995); 60 FR 36458-01 (July 17, 1995); 60 FR 36459-01 (July 17, 1995); 60 FR 54100-01 (Oct. 19, 1995); 60 FR 54101-01 (Oct. 19, 1995); 61 FR 13919-03 (Mar. 28, 1996); 62 FR 10310-01 (Mar. 6, 1997); 65 FR 46046-01 (July 26, 2000); 72 F.R. 62730-01 (Nov. 6, 2007).

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The proposed regulations have been designated by the Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (MOA, April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. OIRA has determined that the proposed rulemaking is significant and subject to review under Executive Order 12866 and section 1(b) of the Memorandum of Agreement. Accordingly, the proposed regulations have been reviewed by OMB.

A. Background

As noted earlier, CERCLA, known colloquially as “Superfund,” was enacted, in part, to create a hazardous substance cleanup program. Section 221 of CERCLA established the “Hazardous Substance Response Trust Fund,” which was funded, in part, by the Superfund chemical taxes. The Superfund chemical taxes expired on December 31, 1995.

Effective July 1, 2022, section 80201 of the IJA reinstates the Superfund chemical taxes with certain modifications. Pursuant to section 80201(c)(3) of the IJA, Notice

2021-66 provided initial guidance related to the Superfund chemical taxes.

B. Need for Proposed Regulations

The proposed regulations generally provide structure and clarity for the implementation of the Superfund chemical taxes as reinstated by IJJA. However, the Treasury Department and the IRS determined that there remained outstanding issues requiring clarification that should be subject to notice and comment. In addition to clarifying statutory rules in sections 4661 and 4671 regarding the Superfund chemical tax procedural rules and computation of tax, these proposed regulations provide definitions that track the statutory language and otherwise borrow from existing excise tax rules, including regulations relating to ozone-depleting chemicals and manufacturers excise taxes. The proposed regulations provide procedural guidance regarding tax-free sales of certain taxable chemicals and taxable substances. Finally, the proposed regulations provide procedures for taxpayers to claim credits and refunds of Superfund chemical taxes paid with respect to taxable chemicals or taxable substances sold for use or used for certain purposes.

C. Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulation relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of this regulation.

D. Affected Entities

The Superfund chemical taxes are excise taxes imposed on any manufacturer, producer, or importer that sells or uses taxable chemicals or taxable substances. The taxes are reported on excise tax forms, separate from corporate or individual income tax forms. The Superfund chemical taxes are expected to be paid by industrial chemical companies, which include various manufacturing, refining, and wholesaler firms. The extent to which the cost of the Superfund chemical taxes will be passed down to the eventual consumers of products containing the taxable

chemicals or taxable substances is variable across a wide array of products.

After the expiration of the Superfund chemical taxes on December 31, 1995, the number of quarterly excise tax filers fell by approximately 5,500 taxpayers. This number is a reasonable estimate of the number of Superfund chemical tax filers in 1995, as the Superfund chemical taxes were the only excise taxes to have expired at that time and the Superfund petroleum tax filers would still be paying the Oil Spill Liability excise taxes, and therefore had not stopped filing quarterly excise forms. However, the make-up of the chemical and manufacturing industries is expected to have changed since the previous imposition of the Superfund chemical taxes. In addition, section 80201(c)(1) of the IJJA modifies the method under section 4672(a)(2)(B) of the Code for determining whether a substance is a taxable substance by lowering the required percentage of taxable chemicals used to produce the substance from 50 percent to 20 percent of the weight (or the value) of the materials used to produce such substance. Given the changes in the application of the Superfund chemical taxes, the Treasury Department and the IRS do not have readily available data to quantify the impact of the excise taxes. The Treasury Department and the IRS invite comments, especially data sets or analyses, on the number of affected taxpayers.

E. Economic Analysis of the Proposed Regulations

The proposed regulations provide certainty and consistency in the application of Superfund chemical taxes by providing definitions and clarifications regarding the statutes' terms and rules. In addition, the proposed regulations provide model certificates and examples for the taxpayer to follow. An economically efficient tax system generally aims to treat income and expense derived from similar economic decisions consistently across taxpayers and activities in order to reduce incentives for individuals and businesses to make choices based on tax rather than market incentives. In the absence of the guidance provided in these proposed regulations, taxpayers would bear the burden of interpreting the statute and the chances that

different taxpayers might interpret the statute differently would be exacerbated. For example, two similarly-situated taxpayers might interpret the statutory provisions pertaining to the calculation of tax differently or reach different conclusions regarding eligibility for exemptions from the Superfund chemical taxes. Thus, lack of certainty may lead to very different tax liabilities for taxpayers undertaking similar activities. The Treasury Department and the IRS invite comments, especially data sets or analyses, of the impact of the proposed regulations.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) ("Paperwork Reduction Act") requires that a federal agency obtain the approval of the OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

Overview

The collections of information in these proposed regulations are in: Proposed §§2.4662-2(g)(5) (notification certificate for intermediate hydrocarbon streams under section 4662(b)(10)); 52.4662-2(h)(2) (exemption certificate for tax-free sales for fertilizer, motor fuel, and animal feed substances under section 4662(b)); 52.4662-3(c) (notification certificate for inventory exchanges under section 4662(c)); 52.4662-4(a)(4) (supporting information required for claims for credit and refund under section 4662(d)(1)); 52.4662-4(b)(3) (supporting information required for claims for credit and refund under section 4662(d)(2)); 52.4662-4(c)(3) (supporting information required for claims for credit and refund under section 4662(d)(3)); 52.4662-4(d)(3) (supporting information required for claims for credit and refund under section 4662(d)(4)); 52.4662-4(e)(2) (certificate to support claims for credit and refund under section 4662(d)); 52.4662-5(b)(5) (exemption certificate for tax-free sales for export under section 4662(e)(1)); 52.4662-5(c)(3) (supporting information required for claims for credit and refund under section 4662(e)(2)); 52.4662-5(d)(3) (supporting

information required for claims for credit and refund by the exporter under section 4662(e)(3)); 52.4671-2(b)(3) (exemption certificate for tax-free sales for fertilizer, motor fuel, and animal feed substances under section 4672(d)(1)); 52.4671-2(c)(3) (supporting information required for claims for credit or refund under section 4671(d)(2)); and 52.4672-2(c)(4) (certificate to support claims for credit or refund under section 4671(d)(2)).

Estimated burden

The IRS Taxpayer Burden Model cannot be used to calculate reporting burden not associated with economic activity, as is the case with the required reporting in these proposed regulations. Therefore, the IRS is providing off-model estimates of the burden associated with these proposed regulations. The estimated time to complete a notification certificate is 15 to 30 minutes. It is estimated that 100 to 1,000 taxpayers will complete a notification certificate. The estimated minimum burden imposed by the notification certificate is 25 hours (100 taxpayers x .25 hours), and the estimated maximum burden imposed is 250 hours (1,000 taxpayers x .25 hours). Using a monetization rate of \$98.50 (2020 dollars), the total monetized burden for the notification certificate requirement is estimated to be between \$2,462.50 (25 hours x \$98.50) and \$24,625 (250 hours x \$98.50).

The time to complete a single exemption certificate to support a tax-free sale, a certificate to support a claim for credit or refund of tax, or a statement of export is estimated to be 30 to 60 minutes, and the IRS expects that between 6,000 and 30,000 taxpayers will submit one of these documents. The estimated minimum burden imposed by these reporting requirements is 3,000 hours (6,000 taxpayers x .5 hour) and the estimated maximum burden imposed is 30,000 hours (30,000 taxpayers x 1 hour). Using a monetization rate of \$98.50 (2020 dollars), total monetized burden is estimated to be between \$295,500 (3,000 hours x \$98.50) and \$2,955,000 (30,000 hours x \$98.50).

The total estimated burden for these proposed regulations is between 3,025 hours (25 hours + 3,000 hours) and 30,250

hours (250 hours + 30,000 hours). The total monetized burden under these proposed regulations is estimated to be between \$297,962.50 (\$2,462.50 + \$295,500) and \$2,979,625 (\$24,625 + \$2,955,000).

The collections of information contained in this notice of proposed rulemaking have been submitted to OMB for review in accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3507(d)) under control number 1545-2304. Written comments and recommendations for the proposed information collection can be submitted by visiting <https://www.reginfo.gov/public/do/PRA-Main>. Information collection requests may be found by selecting “Currently Under Review—Open for Public Comments” or by using the search function. Comments on the information collections may also be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W-CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collections of information should be received by May 30, 2023. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

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 OMB.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal

revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Code.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act.

The proposed regulations provide clarity for manufacturers, producers, and importers that sell or use taxable chemicals and for importers that sell or use taxable substances. The proposed regulations provide general rules related to the Superfund chemical taxes, including the attachment of tax, how to calculate the tax, the taxation of chemical mixtures, and supporting information required for credit or refund claims. The proposed regulations provide rules and model certificates for the statutory exceptions and special rules related to the section 4661 tax, such as for methane or butane used otherwise than as a fuel, qualified fertilizer, fuel, and animal feed substances, and tax-free sales for organic taxable chemicals are part of an intermediate hydrocarbon stream. The proposed regulations also provide rules and model certificates for the statutory exceptions to the section 4671 tax for qualified fertilizer, fuel, and animal feed substances. Accordingly, the Treasury Department and the IRS intend that the proposed rules provide clarity for manufacturers, producers, and importers and consistent application of the Superfund chemical taxes.

The Treasury Department and the IRS do not have readily available data to assess how many entities may be affected by the proposed regulations. Even if a substantial number of small entities are affected, the economic impact of these regulations on small entities is not likely to be significant. The proposed regulations provide taxpayers with definitional and computational guidance regarding the Superfund chemical taxes as well as rules and model certificates for statutory exceptions to the Superfund chemical taxes. As explained in the PRA section, the record keeping

obligations imposed by these proposed regulations are certificates for the statutory exceptions to Superfund chemical taxes and credit and refund claims. It is estimated that between 6,000 and 30,000 taxpayers will prepare one of such certificates annually and it will take no more than one hour to complete.

Accordingly, the Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS specifically invite comments from any party, particularly affected small entities, on the accuracy of this certification.

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 its impact on small business.

Proposed Applicability Dates

These proposed regulations are proposed to apply to sales or uses in calendar quarters beginning on or after the date the Treasury Decision adopting these rules as final regulations is published in the **Federal Register**. Taxpayers and their related parties, within the meaning of sections 267(b) and 707(b)(1) of the Code, may rely on the provisions of these proposed regulations prior to that date provided that they follow the proposed regulations in their entirety (as applicable) and in a consistent manner until the date the Treasury Decision adopting these rules as final regulations is published in the **Federal Register**.

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 encouraged to be made electronically. If a public hearing is scheduled, a notice of the date and time for the public hearing will be published in the Federal Register. Announcement 2020-4 (2020-17 I.R.B. 1) provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these proposed regulations is Stephanie Bland of the 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 52

Chemicals, Environmental protection, Excise taxes, Hazardous waste, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 52 is proposed to be amended as follows:

PART 52 – ENVIRONMENTAL TAXES.

Paragraph 1. The authority citation for part 52 is amended by adding entries for §§52.4661-1, 52.4662-1 through 52.4662-5, 52.4671-1, 52.4671-2, 52.4672-1, and 52.4672-2 in numerical order and revising the entry for §52.4682-3 to read in part as follows:

Authority: 26 U.S.C. 7805.

Section 52.4661-1 also issued under 26 U.S.C. 4661.

Section 52.4662-1 also issued under 26 U.S.C. 4662.

Section 52.4662-2 also issued under 26 U.S.C. 4662.

Section 52.4662-3 also issued under 26 U.S.C. 4662.

Section 52.4662-4 also issued under 26 U.S.C. 4662.

Section 52.4662-5 also issued under 26 U.S.C. 4662.

Section 52.4671-1 also issued under 26 U.S.C. 4671.

Section 52.4671-2 also issued under 26 U.S.C. 4671.

Section 52.4672-1 also issued under 26 U.S.C. 4672.

Section 52.4672-2 also issued under 26 U.S.C. 4672.

Section 52.4682-3 also issued under 26 U.S.C. 4682(c)(2).

* * * * *

Par. 2. Section 52.4661-1 is added to read as follows:

§52.4661-1 Imposition of tax.

(a) *In general.* Section 4661(a) of the Internal Revenue Code (Code) imposes an excise tax on any taxable chemical sold or used by the manufacturer, producer, or importer of the taxable chemical. *See* sections 4661(a)(1) and 4662(c)(1) of the Code.

(b) *Person liable for tax.* The manufacturer, producer, or importer of a taxable chemical is liable for the section 4661 tax.

(c) *Attachment of tax—(1) In general.* The section 4661 tax attaches when the manufacturer, producer, or importer of a taxable chemical first sells or uses the taxable chemical. No section 4661 tax attaches when the manufacturer, producer, or importer of a chemical mixture (as defined in §52.4662-1(c)(1)) containing one or more tax-paid chemicals (as defined in §52.4662-1(c)(12)), or a subsequent purchaser of such chemical mixture, dilutes the chemical mixture with a solvent to change the concentration of the tax-paid chemical or chemicals in the chemical mixture, provided the solvent is not a taxable chemical.

(2) *Foreign manufacturers.* No section 4661 tax attaches to a foreign manufacturer's sale of a substance listed in the table under section 4661(b) to an importer because the substance is not a taxable chemical at the time of sale. *See* section 4662(a)(1). Instead, the section 4661 tax

attaches to the importer's first sale or use of the taxable chemical.

(3) *Taxable chemical that is part of an imported chemical mixture.* In the case of a taxable chemical that is part of an imported chemical mixture that is not a taxable substance (as defined in section 4672(a) and §52.4672-1(b)(8)), the section 4661 tax attaches to the importer's first sale or use of the chemical mixture.

(4) *Ores*—(i) *In general.* In the case of a taxable chemical that is derived from an ore, neither the mining of the ore nor the extraction of the taxable chemical from the ore is a taxable event. Instead, the section 4661 tax attaches to the first sale or use of the taxable chemical by the manufacturer, producer, or importer after extraction of the taxable chemical from the ore, and the person that extracts the taxable chemical from the ore is the manufacturer of the taxable chemical. For purposes of this paragraph (c)(4)(i), the term *extraction of a taxable chemical from the ore* means the first process that a person uses in the United States to separate the taxable chemical from the ore. See paragraph (c)(4)(ii) of this section for the special rule regarding chromite.

(ii) *Chromite.* The mining of chromite, which is an ore, is not a taxable event. Instead, tax attaches to the first sale or use of chromite by the manufacturer, producer, or importer after the chromite is mined. For domestically-mined chromite, the person that mines the chromite is the manufacturer.

(d) *Procedural rules.* Part 40 of this chapter provides rules related to filing excise tax returns, making semimonthly deposits of excise tax, making payments of excise tax, and other procedural rules. See §§52.0-1 and 40.0-1(a) of this chapter. Each business unit that has, or is required to have, a separate employer identification number is treated as a separate person for purposes of filing excise tax returns, making semimonthly deposits of excise tax, making payments of excise tax, and the registration requirements under section 4662(b)(10)(C) and (c)(2)(B). See §40.0-1(d) of this chapter.

(e) *Amount of tax.* The section 4661 tax is imposed as a rate per ton of taxable chemical sold or used by the manufacturer, producer, or importer. See section

4661(b) for the rate of tax per ton of each taxable chemical.

(f) *Calculation of tax*—(1) *Overview.* The section 4661 tax is calculated by multiplying the number of tons of the taxable chemical sold or used by the manufacturer, producer, or importer by the tax rate applicable to the taxable chemical under section 4661(b). In the case of a fraction of a ton, the tax is calculated by adding the number of whole tons (if any) and the number of fractional tons of the taxable chemical, and then multiplying the sum of those numbers by the tax rate applicable to the taxable chemical. See section 4662(a) (5).

(2) *Determination of weight*—(i) *In general.* The weight of a taxable chemical is the actual weight of the taxable chemical at the time of sale or use by the manufacturer, producer, or importer, measured in tons.

(ii) *Imported chemical mixtures.* In the case of a taxable chemical that is part of an imported chemical mixture that is not a taxable substance, the section 4661 tax is imposed on the actual weight of each taxable chemical in the chemical mixture at the time of sale or use of the chemical mixture by the importer. If there are multiple taxable chemicals in the chemical mixture, the amount of tax is calculated separately for each taxable chemical in the chemical mixture.

(iii) *Conversion required for volumetric measurements.* Any volumetric measurement of a taxable chemical must be converted to a weight measurement. To calculate the weight (in pounds) of a taxable chemical from a volumetric measurement (in cubic feet), the volume of the taxable chemical (in cubic feet) is multiplied by the density of the taxable chemical (in pounds per cubic foot). To convert a volumetric measurement to a weight measurement for purposes of the section 4661 tax, the pressure and temperature used to determine density must be the same as the pressure and temperature used to determine volume.

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

(1) *Example 1.* X, a foreign manufacturer of potassium hydroxide, sells 10 tons of potassium hydroxide to Y, a domestic corporation. Y enters the 10 tons of potassium hydroxide into the United States for consumption, use, or warehousing, and then sells it to Z, a domestic corporation. Under

these facts, Y is the importer of the potassium hydroxide. The section 4661 tax attaches when Y sells the potassium hydroxide to Z. Y is liable for the section 4661 tax. The section 4661 tax is calculated by multiplying 10 tons (the weight of the potassium hydroxide) by \$0.44 (the rate of tax per ton of potassium hydroxide). The amount of section 4661 tax is \$4.40.

(2) *Example 2.* X, a foreign corporation, sells nickel ore to Y, a domestic corporation. Y enters the nickel ore into the United States for consumption, use, or warehousing, and then extracts nickel from the ore. Y sells 10 tons of the nickel to Z, a domestic corporation. Z further processes the nickel to remove impurities and then uses the nickel to create an alloy. Under these facts, Y is the manufacturer of the nickel. The section 4661 tax attaches when Y sells the nickel to Z. Y is liable for the section 4661 tax. The section 4661 tax is calculated by multiplying 10 tons (the weight of the nickel) by \$8.90 (the rate of tax per ton of nickel). The amount of section 4661 tax is \$89.00.

(3) *Example 3.* X, a domestic producer of chromite, sells 3,500 pounds of chromite to Y, a domestic corporation. The section 4661 tax attaches when X sells the chromite to Y. X is liable for the section 4661 tax. The section 4661 tax is calculated by adding the number of whole and fractional tons of chromite (1 ton + .75 ton = 1.75 tons), and then multiplying 1.75 tons by \$3.04 (the rate of tax per ton of chromite). The amount of section 4661 tax is \$5.32.

(4) *Example 4.* X, an importer, enters 1.2 tons of a chemical mixture comprised of 98.3 percent sulfuric acid and 1.7 percent water for consumption, use, or warehousing. X sells the chemical mixture to Y, a domestic corporation. The section 4661 tax attaches when X sells the chemical mixture to Y. X is liable for the section 4661 tax. The section 4661 tax is calculated based on the weight of the sulfuric acid in the chemical mixture (98.3% x 1.2 tons = 1.18 tons), and then multiplying 1.18 tons by \$0.52 (the rate of tax per ton of sulfuric acid). The amount of section 4661 tax is \$0.61.

(5) *Example 5.* X, an importer, enters 1.2 tons of a chemical mixture comprised of 98.3 percent sulfuric acid and 1.7 percent water for consumption, use, or warehousing. X sells the chemical mixture to Y, a domestic corporation. Y adds water to the chemical mixture, resulting in a chemical mixture of 93 percent sulfuric acid and 7 percent water, and sells the chemical mixture to Z, a domestic corporation. The section 4661 tax attaches when X sells the chemical mixture to Y. X is liable for the section 4661 tax. The section 4661 tax is calculated based on the weight of the sulfuric acid in the chemical mixture (98.3% x 1.2 tons = 1.18 tons), and then multiplying 1.18 tons by \$0.52 (the rate of tax per ton of sulfuric acid). The amount of section 4661 tax is \$0.61. No additional section 4661 tax is imposed when Y dilutes the chemical mixture by adding water or when Y sells the diluted chemical mixture to Z.

(h) *Cross references*—(1) *Definitions.* For definitions that relate to sections 4661 and 4662, see section 4662(a) and §52.4662-1.

(2) *Exceptions and special rules.* For exceptions and special rules applicable to

the section 4661 tax, see section 4662(b) and §52.4662-2.

(3) *Inventory exchanges*. For special rules related to inventory exchanges, see section 4662(c)(2) and §52.4662-3.

(4) *Credit or refund of tax*. For rules related to credits and refunds of the section 4661 tax, see section 4662(d) and §52.4662-4.

(5) *Exports*. For rules related to exports, see section 4662(e) and §52.4662-5.

(i) *Applicability date*. This section applies to sales or uses in calendar quarters beginning on or after [date of publication of final regulations in the **Federal Register**].

Par. 3. Section 52.4662-1 is added to read as follows:

§52.4662-1 Taxable chemical; other definitions.

(a) *Overview*. This section provides definitions for purposes of sections 4661

and 4662 of the Internal Revenue Code (Code), §52.4661-1, this section, and §§52.4662-2 through 52.4662-5.

(b) *Taxable chemical*—(1) *In general*. (i) Except as provided in section 4662(b), the term *taxable chemical* means any substance that is:

(A) Listed in the table under section 4661(b); and

(B) Manufactured or produced in the United States, or entered into the United States for consumption, use, or warehousing. *See* section 4662(a)(1).

(ii) A substance is a taxable chemical only if it satisfies both paragraphs (b)(1) (i) and (ii) of this section. For rules regarding paragraph (b)(1)(i) of this section, see paragraph (b)(2) of this section. For the definition of *entered into the United States for consumption, use, or warehousing* as it relates to the second prong of the definition, see paragraph (c)(2) of this section.

(2) *Substances listed in the table under section 4661(b)*. A substance is listed in

the table under section 4661(b), and therefore satisfies paragraph (b)(1)(i) of this section, if it has the same name and molecular formula as a substance listed in the table under section 4661(b). All isomeric forms of a substance listed in the table under section 4661(b) are treated as having the same name and molecular formula of the substance. Therefore, except as provided in section 4662(b)(7) with respect to xylene, an isomer of a substance listed in the table under section 4661(b) is a substance listed in the table under section 4661(b). The physical state of a substance (that is, solid, liquid, or gas) is immaterial. See paragraph (b)(3) of this section for the name and the molecular formula, or chemical symbol, of each substance listed in the table under section 4661(b).

(3) *Molecular formulas and chemical symbols*. The following table provides the name and molecular formula or chemical symbol for each substance listed in the table under section 4661(b):

Table 1 to Paragraph (b)(3)

Name	Molecular formula or chemical symbol
Acetylene	C ₂ H ₂
Benzene	C ₆ H ₆
Butane	C ₄ H ₁₀
Butylene	C ₄ H ₈
Butadiene	C ₄ H ₆
Ethylene	C ₂ H ₄
Methane	CH ₄
Naphthalene	C ₁₀ H ₈
Propylene	C ₃ H ₆
Toluene	C ₇ H ₈
Xylene	C ₈ H ₁₀
Ammonia	NH ₃
Antimony	Sb
Antimony trioxide	SbO ₃
Arsenic	As
Arsenic trioxide	AsO ₃
Barium sulfide	BaS
Bromine	Br
Cadmium	Cd
Chlorine	Cl
Chromium	Cr
Chromite	FeCr ₂ O ₄ and MgCr ₂ O ₄

Name	Molecular formula or chemical symbol
Potassium dichromate	K ₂ Cr ₂ O ₇
Sodium dichromate	NaCr ₂ O ₇
Cobalt	Co
Cupric sulfate	CuSO ₄
Cupric oxide	CuO
Cuprous oxide	Cu ₂ O
Hydrochloric acid	HCl
Hydrogen fluoride	HF
Lead oxide	PbO
Mercury	Hg
Nickel	Ni
Phosphorus	P
Stannous chloride	SnCl ₂
Stannic chloride	SnCl ₄
Zinc chloride	ZnCl ₂
Zinc sulfate	ZnSO ₄
Potassium hydroxide	KOH
Sodium hydroxide	NaOH
Sulfuric acid	H ₂ SO ₄
Nitric acid	HNO ₃

(4) *Special rule for ores.* Except for chromite, an ore is not a taxable chemical.

(5) *Special rule for methane and butane.* For rules regarding the treatment of methane and butane as taxable chemicals, see section 4662(b)(1) and §52.4662-2(a).

(6) *Special rule for substances derived from coal.* For rules regarding the exclusion from the definition of taxable chemical for substances derived from coal, see section 4662(b)(4) and §52.4662-2(d).

(7) *Special rule for xylene.* For a special rule regarding separated isomers of xylene, see section 4662(b)(7).

(8) *Example.* X, a domestic corporation, produces isobutylene in the United States. Isobutylene is an isomer of butylene and has the molecular formula C₄H₈. The isobutylene is a taxable chemical because it is a substance listed in the table under section 4661(b) as required by section 4662(a)(1)(A), and it is produced in the United States as required by section 4662(a)(1)(B).

(c) *Other definitions*—(1) *Chemical mixture.* The term *chemical mixture* means a substance composed of two or

more physically-combined components that are not chemically bonded. Chemical mixtures include alloys, solutions, suspensions, and colloids.

(2) *Entry for consumption, use, or warehousing*—(i) *In general.* Except as otherwise provided in this paragraph (c) (2), the term *entry for consumption, use, or warehousing*, when used with respect to any goods, means:

(A) Brought into the customs territory of the United States (customs territory) if applicable customs law requires that the goods be entered into the customs territory for consumption, use, or warehousing;

(B) Admitted into a foreign trade zone for any purpose if like goods brought into the customs territory would be entered into the customs territory for consumption, use, or warehousing; or

(C) Imported into any other part of the United States for any purpose if like goods brought into the customs territory would be entered into the customs territory for consumption, use, or warehousing.

(ii) *Entry for transportation and exportation.* Goods entered into a customs territory for transportation and exportation

are not goods entered into the customs territory for consumption, use, or warehousing.

(iii) *Multiple entries.* In the case of multiple entries described in paragraph (c) (2)(i) of this section, only the first entry is taken into account.

(3) *Exportation.* The term *exportation* means the severance of a taxable chemical from the mass of things belonging within the United States with the intention of uniting it with the mass of things belonging within a foreign country.

(4) *Exporter.* The term *exporter* means the person named as shipper or consignee in the export bill of lading.

(5) *Importer*—(i) *In general.* The term *importer* means the person entering the taxable chemical for consumption, use, or warehousing. See section 4662(a) (3). If the person entering the taxable chemical for consumption, use, or warehousing is merely acting as an agent or a customs broker for another person, then the agent or customs broker is not the importer and the importer is the first person in the United States to sell or use the taxable chemical after entry of the tax-

able chemical for consumption, use, or warehousing.

(ii) *Drop ship businesses.* If a drop ship business in the United States purchases or otherwise arranges for a person outside the United States to ship a chemical listed in the table under section 4661(b) directly to a purchaser in the United States, the drop ship business is the importer of the chemical. If a drop ship business outside the United States purchases or otherwise arranges for a person outside the United States to ship a chemical listed in the table under section 4661(b) directly to a purchaser in the United States, the purchaser in the United States is the importer of the chemical. For purposes of this paragraph (c)(5)(ii), the term *drop ship business* means a person that sells the chemical or arranges for purchasers to purchase the chemical, and uses a third party to fill the order by shipping the chemical directly to the purchaser. The determination of whether a person is a drop ship business is made on a sale-by-sale basis.

(6) *Manufacturer*—(i) *In general.* The term *manufacturer* includes a producer. A manufacturer is any person that produces a taxable chemical from new or raw material, feedstocks, or other substances, or from scrap, salvage, waste, or recycled substances. A manufacturer includes any person that produces a taxable chemical from the mining process, or extracts, isolates, separates, or otherwise removes a taxable chemical from an ore or from another substance. A manufacturer also includes any person that produces a taxable chemical by processing or manipulating a substance, such as through the oxidation process. The term *manufacturer* does not include a person that dilutes a chemical mixture comprised of one or more tax-paid chemicals with a solvent that is not a taxable chemical.

(ii) *Contract manufacturing.* If a person manufactures or produces a taxable chemical for a second person, pursuant to a contract, order, or agreement and in accordance with the second person's specifications, or if a person manufactures or produces a taxable chemical for a second person from materials owned by the second person, the second person is treated as the manufacturer of the taxable chemical manufactured by the first person.

(7) *Molecular formula.* The term *molecular formula* means a chemical formula that shows the number and kinds of atoms in the substance.

(8) *Sale.* The term *sale* means the transfer of title or substantial incidents of ownership (whether or not delivery to, or payment by, the purchaser has been made) in a taxable chemical for a consideration, which may include, but is not limited to, money, services, or property.

(9) *Section 4661 tax.* The term *section 4661 tax* means the excise tax imposed by section 4661(a) of the Code on any taxable chemical sold or used by the manufacturer, producer, or importer of the taxable chemical.

(10) *Taxable substance.* The term *taxable substance* has the meaning given to such term by section 4671(a) of the Code and §52.4672-1(b)(8).

(11) *Taxable chemical registrant.* The term *taxable chemical registrant* means a person that is registered by the Internal Revenue Service (IRS) under Activity Letter "G." A person may apply for "G" registration by completing Form 637, *Application for Registration for Certain Excise Tax Activities*, and submitting the completed form to the IRS.

(12) *Tax-paid chemical.* The term *tax-paid chemical* means a taxable chemical on which the section 4661 tax has been paid.

(13) *Ton.* The term *ton* means 2,000 pounds. In the case of any taxable chemical measured by volume, the term *ton* means the amount of such taxable chemical, in cubic feet, that is the equivalent of 2,000 pounds on a molecular weight basis. See section 4662(a)(4) and §52.4661-1(f)(2)(iii).

(14) *United States.* The term *United States* has the meaning given to such term by section 4612(a)(4) of the Code. See section 4662(a)(2).

(15) *Use.* Except as otherwise provided in section 4662 and §52.4662-2, a taxable chemical is used when it is consumed, when it functions as a catalyst, when its chemical composition changes, when it is used in the manufacture or production of a chemical mixture or other substance (including by mixing or combining the taxable chemical with other substances), or when it is put into service in a trade or business for the production of income. The

loss or destruction of a taxable chemical through spillage, fire, natural degradation, or other casualty is not a use of the chemical. The mere manufacture or production of a taxable chemical is not a use of that chemical.

(d) *Applicability date.* This section applies to sales or uses in calendar quarters beginning on or after [date of publication of final regulations in the **Federal Register**].

Par. 4. Section 52.4662-2 is added to read as follows:

§52.4662-2 Exceptions and special rules.

(a) *Methane or butane used as a fuel*—(1) *In general.* Methane or butane is treated as a taxable chemical only if it is used otherwise than as a fuel, or otherwise than in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel. Any person using methane or butane otherwise than as a fuel, or otherwise than in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, is treated as the manufacturer of the methane or butane and the tax imposed by section 4661(a) of the Code attaches at the time such person so uses the methane or butane. See section 4662(b)(1) of the Code. See section 4662(b)(10) and paragraph (g) of this section regarding the exception for hydrocarbon streams containing mixtures of organic taxable chemicals.

(2) *Use otherwise than as a fuel.* Methane or butane is used otherwise than as a fuel when it is used other than in the production of energy. For example, methane or butane is used otherwise than as a fuel when it is used as a coolant. Conversely, methane or butane is used as a fuel when it is consumed in the production of energy. For example, methane or butane is used as a fuel when it is consumed in an internal combustion engine to power a vehicle, when it is consumed in an engine to power an aircraft, or when it is consumed in a furnace, cooking appliance, or lighter to produce heat.

(3) *Examples.* The following examples illustrate the rules in paragraph (a)(2) of this section.

(i) *Example 1.* X, a domestic corporation, produces methane in the United States and uses it to

fire the furnaces at X's refinery. The methane is not treated as a taxable chemical because it is used as a fuel by X.

(ii) *Example 2.* X, a domestic corporation, produces methane in the United States and sells it to Y, a domestic corporation. Y uses the methane in the production of antifreeze. The methane is not treated as a taxable chemical until Y uses the methane in the production of antifreeze. Y is treated as the manufacturer of the methane and the section 4661 tax attaches at the time Y uses the methane in the production of antifreeze. Y is liable for the section 4661 tax.

(b) *Substances used in the production of fertilizer*—(1) *In general.* No section 4661 tax is imposed in the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia (collectively, fertilizer chemicals, or individually, fertilizer chemical) that is a qualified fertilizer substance. See section 4662(b)(2)(A). Although taxable chemicals other than fertilizer chemicals may be qualified fertilizer substances, the section 4662(b)(2) exception does not apply to such other taxable chemicals. For example, zinc sulfate used by the manufacturer to produce a qualified fertilizer substance does not qualify for the exception in section 4662(b)(2).

(2) *Definitions*—(i) *Qualified fertilizer substance.* Under section 4662(b)(2)(B), the term *qualified fertilizer substance* means:

(A) Any substance used by the manufacturer, producer, or importer in a qualified fertilizer use;

(B) Any substance sold for use by any purchaser in a qualified fertilizer use; or

(C) Any substance sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fertilizer use.

(ii) *Qualified fertilizer use.* The term *qualified fertilizer use* means any use in the manufacture or production of fertilizer or for direct application as a fertilizer. See section 4662(b)(2)(C). The term *qualified fertilizer use* includes the act of putting fertilizer on crops or croplands.

(iii) *Fertilizer.* The term *fertilizer* means a substance used to improve the growth of plants. The term *fertilizer* does not include pesticides, insecticides, herbicides or fungicides.

(3) *Taxation of nonqualified sale or use.* If no section 4661 tax was imposed on the sale or use of fertilizer chemicals by reason of the exception in section 4662(b)(2), the first person that sells or uses any such chemical other than as a qualified

fertilizer substance is treated as the manufacturer of such chemical. See section 4662(b)(2)(D). When a fertilizer chemical is sold or used to produce both a qualified fertilizer substance and a substance that is not a qualified fertilizer substance (derivative substance), the section 4661 tax is imposed on the fertilizer chemical used to produce the derivative substance at the time the manufacturer, producer, or importer sells or uses the fertilizer chemical. The amount of the section 4661 tax is calculated based on the weight of the fertilizer chemical sold or used to produce the derivative substance.

(4) *Tax-free sales.* See paragraph (h) of this section for rules related to tax-free sales.

(5) *Credit or refund of tax.* See section 4662(d)(2) and §52.4662-4(b) for rules related to credits and refunds of the section 4661 tax.

(c) *Sulfuric acid produced as a byproduct of air pollution control.* No section 4661 tax is imposed on sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment. See section 4662(b)(3). As used in section 4662(b)(3), the term *air pollution control equipment* means any equipment used to comply with the Clean Air Act, including any amendments thereto, as codified in 42 U.S.C. chapter 85, or any similar provision under state law.

(d) *Substances derived from coal*—(1) *In general.* Under section 4662(b)(4), the term *taxable chemical* does not include any substance to the extent derived from coal. As used in section 4662(b)(4), the term *coal* means bituminous coal, subbituminous coal, anthracite, and lignite. A substance is not derived from coal merely because coal served as a source of energy in the production of the substance.

(2) *Example.* X, a domestic corporation, uses a high-temperature carbonization process to convert coal to coke and coal tar. X then cracks the coal tar to produce naphthalene. The naphthalene is derived from coal and the exception in section 4662(b)(4) applies. Therefore, the naphthalene is not a taxable chemical.

(e) *Substances used in the production of motor fuel*—(1) *In general.* No section 4661 tax is imposed in the case of acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene,

or xylene (collectively, fuel chemicals, or individually, a fuel chemical) that is a qualified fuel substance. See section 4662(b)(5)(A). Although taxable chemicals other than fuel chemicals may be qualified fuel substances, the section 4662(b)(5) exception does not apply to such other taxable chemicals.

(2) *Definitions*—(i) *Qualified fuel substance.* Under section 4662(b)(5)(B), the term *qualified fuel substance* means:

(A) Any substance used by the manufacturer, producer, or importer thereof in a qualified fuel use;

(B) Any substance sold for use by any purchaser in a qualified fuel use; or

(C) Any substance sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fuel use.

(ii) *Qualified fuel use.* A *qualified fuel use* means any use in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, or any use of a fuel chemical as such a fuel. See section 4662(b)(5)(C).

(3) *Taxation of nonqualified sale or use.* If no section 4661 tax was imposed on the sale or use of a fuel chemical by reason of the exception in section 4662(b)(5), the first person that sells or uses such fuel chemical other than as a qualified fuel substance is treated as the manufacturer of such fuel chemical. See section 4662(b)(5)(E). When a fuel chemical is sold or used to produce both a qualified fuel substance and a substance that is not a qualified fuel substance (derivative substance), the section 4661 tax is imposed on the fuel chemical sold or used as the derivative substance at the time the manufacturer, producer, or importer sells or uses the fuel chemical. The amount of the section 4661 tax is calculated based on the weight of the fuel chemical sold or used to produce the derivative substance.

(4) *Tax-free sales.* See paragraph (h) of this section for rules related to tax-free sales.

(5) *Credit or refund of tax.* See section 4662(d)(3) and §52.4662-4(c) for rules related to credits and refunds of the section 4661 tax.

(f) *Substances used in the production of animal feed*—(1) *In general.* No section 4661 tax is imposed in the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia (each, an

animal feed chemical, and collectively, animal feed chemicals) that is a qualified animal feed substance. See section 4662(b)(9). Although taxable chemicals other than animal feed chemicals may be qualified animal feed substances, the section 4662(b)(9) exception does not apply to such other taxable chemicals.

(2) *Definitions*—(i) *Qualified animal feed substance*. Under section 4662(b)(9)(B), the term *qualified animal feed substance* means:

(A) Any substance used by the manufacturer, producer, or importer in a qualified animal feed use;

(B) Any substance sold for use by any purchaser in a qualified animal feed use; or

(C) Any substance sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

(ii) *Qualified animal feed use*. The term *qualified animal feed use* means any use in the manufacture or production of animal feed, animal feed supplements, or ingredients used in animal feed or animal feed supplements. See section 4662(b)(9)(C).

(3) *Taxation of nonqualified sale or use*. If no section 4661 tax was imposed on the sale or use of animal feed chemicals by reason of the exception in section 4662(b)(9), the first person that sells or uses any such chemical other than as a qualified animal feed substance is treated as the manufacturer of the chemical. See section 4662(b)(9)(D). When an animal feed chemical is sold or used to produce both a qualified animal feed substance and a substance that is not a qualified animal feed substance (derivative substance), the section 4661 tax is imposed on the animal feed chemical sold or used to produce the derivative substance at the time the manufacturer, producer, or importer sells or uses the animal feed chemical. The amount of the section 4661 tax is calculated based on the weight of the animal feed chemical sold or used to produce the derivative substance.

(4) *Tax-free sales*. See paragraph (h) of this section for rules related to tax-free sales.

(5) *Credit or refund of tax*. See section 4662(d)(4) and §52.4662-4(d) for rules related to credits and refunds of the section 4661 tax.

(g) *Hydrocarbon streams containing mixtures of organic taxable chemicals*—

(1) *In general*. No section 4661 tax is imposed on any organic taxable chemical while such chemical is part of an intermediate hydrocarbon stream containing one or more organic taxable chemicals, if the requirements in paragraph (g)(4) of this section are satisfied. See section 4662(b)(10)(A). For purposes of section 4662(b)(10), the term *intermediate hydrocarbon stream* means a mixture of organic chemicals that requires further distillation or processing to manufacture or produce a taxable chemical.

(2) *Organic taxable chemical*—(i) *In general*. For purposes of section 4662(b)(10), the term *organic taxable chemical* means any taxable chemical that is an organic substance. See section 4662(b)(10)(D). The organic substances that are listed in the table in section 4661(b) are acetylene, benzene, butane, butylene, butadiene, ethylene, methane, naphthalene, propylene, toluene, and xylene. However, only acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene are organic taxable chemicals (provided they also satisfy the requirements of section 4662(a)(1)(B)). Although methane and butane are organic substances that are listed in the table in section 4661(b), they are treated as organic taxable chemicals only when used otherwise than as a fuel or otherwise than in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel (provided they also satisfy the requirements of section 4662(a)(1)(B)). See section 4662(b)(1) and paragraph (a) of this section. Therefore, methane and butane are not organic taxable chemicals at the time of isolation from an intermediate hydrocarbon stream. See section 4662(b)(1) and paragraph (a) of this section. As a result, no section 4661 tax is imposed on methane or butane at the time of isolation from an intermediate hydrocarbon stream.

(ii) *Example*. X, a domestic corporation, is a refiner of petroleum products. X uses a fluid catalytic cracking process to crack gas oil and the fluid catalyst into other chemicals, including liquefied petroleum gas (LPG). X next uses a fractionating process to separate a stream of C3/C4 (which contains propane, propylene, butane, and other chemicals) from the other chemical components of LPG. After fractionation, X uses a splitting pro-

cess to separate the butane from the other chemicals contained in the C3/C4 stream. X sells the butane to Y, a domestic corporation, which blends the butane into gasoline. In this scenario, no section 4661 tax is imposed when X isolates the butane through the splitting process, because the butane is not an organic taxable chemical at the time the splitting process occurs. Further, no section 4661 tax is imposed on X's sale of the butane to Y because the butane is not a taxable chemical at the time of the sale. Additionally, no section 4661 tax is imposed on Y's use of the butane because Y does not use the butane otherwise than as a fuel or otherwise than in the manufacture or production of any motor fuel, diesel fuel, aviation fuel or jet fuel.

(3) *Isolation of organic taxable chemical from intermediate hydrocarbon stream*—(i) *One-step isolation process*. If any organic taxable chemical on which no section 4661 tax was previously imposed by reason of section 4662(b)(10)(A) is isolated, extracted, or otherwise removed from, or ceases to be part of (collectively, isolation), an intermediate hydrocarbon stream, such isolation is treated as a use by the person causing the isolation, and such person is treated as the manufacturer of the organic taxable chemical so isolated. See 4662(b)(10)(B).

(ii) *Multi-step isolation process*. When the isolation of an organic taxable chemical from an intermediate hydrocarbon stream is a multi-step process, the first process that a person uses to isolate, extract, or otherwise remove the organic taxable chemical from the intermediate hydrocarbon stream (even if the organic taxable chemical is, at that time, still mixed with other substances and further processing is possible, but not required) is treated as a use by the person causing the isolation, and such person is treated as the manufacturer of the organic taxable chemical so isolated. If the taxable chemical is part of a chemical mixture at the time of isolation, the section 4661 tax is imposed on the weight of the entire chemical mixture, unless the person causing the isolation can establish, with specificity, the weight of the taxable chemical contained in the chemical mixture.

(iii) *Example*. X, a domestic corporation, is a refiner of petroleum products. X uses a fluid catalytic cracking process

to crack gas oil and the fluid catalyst into lighter chemicals, including liquefied petroleum gas (LPG). X next uses a fractionating process to separate a stream of C3/C4 (which contains propane, propylene, butane, and other chemicals) from the other chemical components of LPG. After fractionation, X uses a splitting process to separate the propylene from the other chemicals contained in the C3/C4 stream, resulting in a propane and propylene mixture commonly referred to as refinery grade propylene. X sells the refinery grade propylene to Y, a domestic corporation, which further refines the refinery grade propylene to remove most of the propane and other contaminants. In this scenario, X's splitting process is a use of the propylene by X, and X is treated as the manufacturer of the propylene. Therefore, X is liable for the section 4661 tax. If X can establish, with specificity,

the weight of the propylene in the mixture, the amount of the section 4661 tax is calculated based only on the weight of the propylene in the mixture. If X cannot establish, with specificity, the weight of the propylene in the mixture, the amount of the section 4661 tax is calculated based on the weight of the mixture.

(4) *Requirements.* The exception in section 4662(b)(10) applies only if, at the time of the sale of any intermediate hydrocarbon stream containing one or more organic taxable chemicals, all of the following requirements are satisfied:

- (i) Both parties are taxable chemical registrants;
- (ii) The seller has an unexpired notification certificate from the purchaser; and
- (iii) The seller has no reason to believe that any information in the notification certificate is false.

(5) *Notification certificate*—(i) *Overview.* The certificate to be provided by the purchaser of an intermediate hydrocarbon stream to the seller consists of a statement that is signed under penalties of perjury by a person with authority to bind the purchaser, is in substantially the same form as the model certificate in paragraph (g)(5)(ii) of this section, and contains all of the information necessary to complete such model certificate. A new certificate must be given if any information in the certificate changes or the purchaser informs the seller that the certificate is no longer accurate. The certificate expires on the earlier of the date the purchaser provides a new certificate or the date the purchaser is notified by the Internal Revenue Service (IRS) that the purchaser's registration has been revoked or suspended.

(ii) *Model certificate.*

NOTIFICATION CERTIFICATE OF TAXABLE CHEMICAL REGISTRANT

Name, address, and employer identification number of person receiving certificate

The undersigned taxable chemical registrant (Registrant) hereby certifies under penalties of perjury that Registrant is registered by the Internal Revenue Service (IRS) under activity letter "G" with registration number _____, and that Registrant's registration has not been revoked or suspended by the IRS.

Registrant understands that the fraudulent use of this certificate may subject Registrant and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Signature and date signed

Printed or typed name of person signing

Title of person signing

Name of Registrant

Employer identification number

Address of Registrant

(iii) *Use of letter of registration as notification certificate prohibited.* A copy of the letter of registration issued to a taxable chemical registrant by the IRS is not a notification certificate described in paragraph (g)(5) of this section and cannot be used as a substitute for a notification certificate.

(h) *Tax-free sales of taxable chemicals—(1) In general.* To make a tax-free sale pursuant to section 4662(b)(2), (5), or (9), the manufacturer, producer, or importer (or, in the case of resales, the reseller) of the taxable chemical must obtain an unexpired exemption certificate from the purchaser, in the form prescribed in paragraph (h)(2) of this section, prior to or at the time of sale, and the manufacturer, producer, importer, or reseller must have no reason to believe that any

information in the certificate regarding the use of the taxable chemical is false. If the manufacturer, producer, importer, or reseller does not obtain an unexpired exemption certificate by the time of the sale, or if the manufacturer, producer, importer, or reseller has reason to believe that any information in the certificate regarding the use of the taxable chemical is false, the manufacturer, producer, importer, or reseller is liable for the section 4661 tax. However, if the purchaser subsequently uses the taxable chemical in the manner described in section 4662(b)(2), (5), or (9), the purchaser may file a claim for credit or refund pursuant to section 4662(d) and §52.4662-4.

(2) *Exemption certificate—(i) Overview.* The exemption certificate consists of a statement that is signed under penalties of

perjury by a person with authority to bind the purchaser, is in substantially the same form as the model certificate in paragraph (h)(2)(ii) of this section, and contains all of the information necessary to complete such model certificate. A new certificate must be given if any information in the certificate changes. The certificate expires no later than one year from the effective date specified in the certificate. The certificate may be included as part of any business records normally used to document a sale. The IRS may withdraw the right of a purchaser of taxable chemicals to provide a certificate under this section if the purchaser uses the taxable chemicals to which a certificate relates other than as stated in the certificate.

(ii) *Model certificate.*

EXEMPTION CERTIFICATE

(To support tax-free sales of taxable chemicals under section 4662(b) of the Internal Revenue Code (Code).)

Name, address, and employer identification number of seller

(Purchaser) certifies the following under penalties of perjury:

Name of purchaser

The sale(s) to which this certificate applies are for (mark below):

_____ Sold for use by Purchaser as described in section 4662(b)(2) (qualified fertilizer use), section 4662(b)(5) (qualified fuel use), or section 4662(b)(9) (qualified animal feed use) of the Code

_____ Sold for resale by Purchaser for use, or resale for ultimate use, in a qualified use

The taxable chemical to which this certificate applies will be used (mark below):

_____ Qualified fertilizer use

_____ Qualified fuel use

_____ Qualified animal feed use

Name of taxable chemical(s) to be purchased by Purchaser

This certificate applies to:

1. Percentage of purchaser's purchases _____ between _____ (effective date) and _____ (expiration date) (period not to exceed one year after the effective date) under account or order number(s) _____; or
2. A single purchase invoice or delivery ticket number _____.

If Purchaser sells or uses the taxable chemical to which this certificate relates for a nonqualified sale or use, Purchaser will be treated as the manufacturer of the taxable chemical and will be liable for the tax imposed by section 4661(a) of the Code.

Purchaser will provide a new certificate to the seller if any information in this certificate changes.

Purchaser understands that Purchaser may be liable for the penalty under section 6701 of the Code (relating to aiding and abetting an understatement of tax liability) if this is an erroneous certification.

Purchaser understands that the fraudulent use of this certificate may subject Purchaser and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Printed or typed name of person signing

Title of person signing

Employer identification number

Address of Purchaser

Signature and date signed

(i) *Applicability date.* This section applies to sales or uses in calendar quarters beginning on or after [date of publication of final regulations in the **Federal Register**].

Par. 5. Section 52.4662-3 is added to read as follows:

§52.4662-3 Inventory exchanges.

(a) *In general.* Except as otherwise provided in section 4662(c)(2) of the Internal Revenue Code (Code), in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person, the exchange is not treated as a sale, and the other person is treated as the manufacturer, producer, or importer of the chemical, if the requirements in paragraph (b) of this section are satisfied. *See* section 4662(c)(2). For purposes of sec-

tion 4662(c), the term *inventory exchange* means any exchange in which two persons exchange property that is, in the hands of each person, property described in section 1221(a)(1) of the Code. *See* section 4662(c)(2)(C).

(b) *Requirements.* The section 4662(c) exception applies only if, at the time of the exchange, all of the following requirements are satisfied:

(1) Both parties are taxable chemical registrants;

(2) The manufacturer, producer, or importer has an unexpired notification certificate from the person receiving the taxable chemical; and

(3) The manufacturer, producer, or importer has no reason to believe that any information in the notification certificate is false.

(c) *Notification certificate*—(1) *Overview.* The certificate to be provided by

the person receiving the taxable chemical consists of a statement that is signed under penalties of perjury by someone with authority to bind the person receiving the taxable chemical, is in substantially the same form as the model certificate provided in paragraph (c)(2) of this section, and contains all of the information necessary to complete such model certificate. A new certificate must be given if any information in the certificate changes or if the person receiving the taxable chemical informs the manufacturer, producer, or importer that the certificate is no longer accurate. The certificate expires on the earlier of the date the person provides a new certificate or the date the person is notified by the Internal Revenue Service (IRS) that the person's registration has been revoked or suspended.

(2) *Model certificate.*

NOTIFICATION CERTIFICATE OF TAXABLE CHEMICAL REGISTRANT

Name, address, and employer identification number of person receiving certificate

The undersigned taxable chemical registrant (Registrant) hereby certifies under penalties of perjury that Registrant is registered by the Internal Revenue Service (IRS) under activity letter “G” with registration number _____, and that Registrant’s registration has not been revoked or suspended by the IRS.

Registrant understands that the fraudulent use of this certificate may subject Registrant and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Signature and date signed

Printed or typed name of person signing

Title of person signing

Name of Registrant

Employer identification number

Address of Registrant

(3) *Use of letter of registration as notification certificate prohibited.* A copy of the letter of registration issued to a taxable chemical registrant by the IRS is not a notification certificate described in paragraph (c) of this section and cannot be used as a substitute for a notification certificate.

(d) *Applicability date.* This section applies to sales or uses in calendar quarters beginning on or after [date of publication of final regulations in the **Federal Register**].

Par. 6. Section 52.4662-4 is added to read as follows:

§52.4662-4 Credit or refund of tax under section 4662(d).

(a) *Tax-paid chemicals used to make taxable chemicals—(1) In general.* Any section 4661 tax paid by the manufacturer, producer, or importer (initial

manufacturer) with respect to a tax-paid chemical that is subsequently used by any person (subsequent manufacturer) in the manufacture or production of any other substance that is a taxable chemical (subsequent taxable chemical) will be allowed as a credit or refund to the subsequent manufacturer in the same manner as if it were an overpayment of the section 4661 tax. *See* section 4662(d)(1) of the Code. The subsequent manufacturer may file a claim for credit or refund (without interest) for the amount of the overpayment, provided the conditions to allowance set forth in paragraph (a)(3) of this section are satisfied. *See* paragraph (a)(4) of this section for the supporting information that a subsequent manufacturer must include with a claim for credit or refund. The subsequent manufacturer’s claim for credit or refund of the overpayment cannot exceed the amount of section 4661 tax imposed on the subsequent taxable chemical, or

that would have been imposed but for the application of section 4662(b) or (e) of the Code. *See* section 4662(d)(1).

(2) *Allocation required in certain situations.* If a subsequent manufacturer uses a tax-paid chemical to manufacture or produce multiple subsequent taxable chemicals, a subsequent taxable chemical and another substance, or one or more subsequent taxable chemicals and one or more other substances, the subsequent manufacturer must allocate the overpayment of the section 4661 tax paid on the tax-paid chemical (first tax) among all subsequent taxable chemicals and other substances manufactured or produced with the tax-paid chemical and apply the allocation to the claim for credit or refund. The subsequent manufacturer must calculate the amount of the first tax to be allocated to each subsequent taxable chemical and other substance by multiplying the amount of the first tax by a fraction,

the numerator of which is the weight (in tons) of the portion of the tax-paid chemical the subsequent manufacturer used to manufacture or produce the subsequent taxable chemical or other substance, and the denominator of which is the total weight (in tons) of the tax-paid chemical for which the subsequent manufacturer has a certificate described in paragraph (e) of this section. The subsequent manufacturer's claim for credit or refund of an overpayment cannot exceed the amount of section 4661 tax imposed on the subsequent taxable chemical to which the claim relates, or that would have been imposed but for the application of section 4662(b) or (e) of the Code. See paragraph (a)(4) of this section for the supporting information regarding the allocation that a subsequent manufacturer must include with a claim for credit or refund. See paragraph (a)(5) of this section for examples that illustrate the allocation rule.

(3) *Conditions to allowance of a claim for credit or refund.* A claim for credit or refund of section 4661 tax is allowed under section 4662(d)(1) and this paragraph (a) only if:

(i) The first tax was paid to the Internal Revenue Service (IRS) and not credited or refunded;

(ii) After payment of the first tax, the subsequent manufacturer used the tax-paid chemical to manufacture or produce a subsequent taxable chemical, multiple subsequent taxable chemicals, a subsequent taxable chemical and another substance, or one or more subsequent taxable chemicals and one or more other substances;

(iii) The subsequent manufacturer sold or used the subsequent taxable chemical for which a credit or refund is sought and section 4661 tax was imposed (or would have been imposed but for section 4662(b) or (e)) on such sale or use;

(iv) The subsequent manufacturer has filed a timely claim for credit or refund that contains the supporting information required under paragraph (a)(4) of this section; and

(v) The subsequent manufacturer has a certificate, in the form prescribed in paragraph (e) of this section, from the initial manufacturer.

(4) *Supporting information required.* A subsequent manufacturer's claim for credit

or refund with respect to the subsequent manufacturer's use of a tax-paid chemical to manufacture or produce a subsequent taxable chemical, multiple subsequent taxable chemicals, a subsequent taxable chemical and another substance, or one or more subsequent taxable chemicals and one or more other substances, must include the following information:

(i) The name of the tax-paid chemical, the total number of tons of the tax-paid chemical purchased from the initial manufacturer, producer, or importer, and the total number of tons of the tax-paid chemical used to manufacture or produce each subsequent taxable chemical or other substance during the period covered by the claim;

(ii) The name of each subsequent taxable chemical or other substance and the total number of tons of each subsequent taxable chemical or other substance so manufactured or produced during the period covered by the claim;

(iii) The amount of section 4661 tax paid with respect to the tax-paid chemical and the amount of section 4661 tax imposed (or that would have been imposed but for section 4662(b) or (e)) on the sale or use of each subsequent taxable chemical manufactured or produced with the tax-paid chemical;

(iv) If allocation is required, the amount of the first tax allocated to each subsequent taxable chemical to which the claim relates, and the allocation calculation; and

(v) The certificate described in paragraph (e) of this section, or a copy of such certificate.

(5) *Examples.* The following examples illustrate the allocation rule in paragraph (a)(2) of this section.

(i) *Example 1—(A) Facts.* X, a domestic manufacturer, sells 5 tons of Taxable Chemical 1 to Y, a domestic corporation. Section 4661 tax is imposed on X's sale of Taxable Chemical 1 at a rate of \$8.90 per ton. X pays the section 4661 tax in the amount of \$44.50. Y uses 3 tons of Taxable Chemical 1 to produce 4 tons of Taxable Chemical 2. Y uses 2 tons of Taxable Chemical 1 to produce 3 tons of Taxable Chemical 3. Y then sells the 4 tons of Taxable Chemical 2 and 3 tons of Taxable Chemical 3, to Z, a domestic corporation. Section 4661 tax is imposed on Y's sale of Taxable Chemical 2 at a rate of \$9.74 per ton, for a tax of \$38.96. Section 4661 tax is imposed on Y's sale of Taxable Chemical 3 at a rate of \$5.40 per ton, for a tax of \$16.20. The total amount of section 4661 tax imposed on Y's sales of Taxable Chemical 2 and Taxable Chemical

3 is \$55.16. Y files a claim for refund of the section 4661 tax X paid with respect to Taxable Chemical 1 (first tax).

(B) *Analysis.* Y must allocate the first tax between Taxable Chemical 2 and Taxable Chemical 3 as follows: 3/5 (\$26.70) to Taxable Chemical 2, and 2/5 (\$17.80) to Taxable Chemical 3. The section 4661 tax imposed on Y's sale of Taxable Chemical 2 to Z (\$38.96), exceeds the amount of the first tax allocated to Taxable Chemical 2 (\$26.70). Therefore, Y's claim for refund with respect to Taxable Chemical 2 is limited to \$26.70, the amount of the first tax allocated to Taxable Chemical 2. The section 4661 tax imposed on Y's sale of Taxable Chemical 3 to Z (\$16.20), is less than the amount of the first tax allocated to Taxable Chemical 3 (\$17.80). Therefore, Y's claim for refund with respect to Taxable Chemical 3 is limited to \$16.20, the amount of section 4661 tax imposed on Taxable Chemical 3. Y's total claim for refund is limited to \$42.90 (\$26.70 + \$16.20) due to the required allocation.

(ii) *Example 2—(A) Facts.* X, a domestic manufacturer, sells 3 tons of Taxable Chemical 1 to Y, a domestic corporation. Section 4661 tax is imposed on X's sale of Taxable Chemical 1 at a rate of \$9.74 per ton. X pays the tax in the amount of \$29.22. Y uses 2 tons of Taxable Chemical 1 to produce 3 tons of Taxable Chemical 2. Y uses 1 ton of Taxable Chemical 1 to produce 2 tons of another substance. Y then sells 3 tons of Taxable Chemical 2 to Z, a domestic corporation. Tax is imposed on Y's sale of Taxable Chemical 2 at a rate of \$5.40 per ton, for a tax of \$16.20. Y files a claim for refund of the first tax paid with respect to Taxable Chemical 1 (first tax).

(B) *Analysis.* Y must allocate the first tax between Taxable Chemical 2 and the other substance as follows: 2/3 (\$19.48) to Taxable Chemical 2, and 1/3 (\$9.74) to the other substance. Y may claim a refund of the first tax in the amount of \$16.20 (the full amount of tax imposed on Y's sale of Taxable Chemical 2 to Z), because the tax imposed on Taxable Chemical 2 does not exceed the amount of the first tax that was allocated to Taxable Chemical 2.

(b) *Use as a fertilizer—(1) In general.* Any section 4661 tax paid that exceeds the amount of section 4661 tax determined with regard to section 4662(b)(2) with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia (each, a fertilizer chemical) that any person uses as a qualified fertilizer substance will be allowed as a credit or refund (without interest) to the person using the fertilizer chemical as a qualified fertilizer substance in the same manner as if it were an overpayment of section 4661 tax. See section 4662(d)(2). Such person may file a claim for credit or refund of the amount of the overpayment, provided the conditions to allowance set forth in paragraph (b)(2) of this section are satisfied. See paragraph (b)(3) of this section for the supporting information that must be included with a

claim for credit or refund pursuant to section 4662(d)(2).

(2) *Conditions to allowance of a claim for credit or refund.* A claim for credit or refund of section 4661 tax with respect to a tax-paid fertilizer chemical that is used as a qualified fertilizer substance is allowed under section 4662(d)(2) and this section only if:

(i) A section 4661 tax with respect to the fertilizer chemical was paid to the IRS and not credited or refunded;

(ii) After payment of the section 4661 tax, a person used the fertilizer chemical as a qualified fertilizer substance;

(iii) The person using the fertilizer chemical as a qualified fertilizer substance has filed a timely claim for credit or refund that includes the information required under paragraph (b)(3) of this section; and

(iv) The person using the fertilizer chemical as a qualified fertilizer substance has a certificate, in the form prescribed in paragraph (e) of this section, from the person that paid the section 4661 tax.

(3) *Supporting information required.* Each claim for credit or refund with respect to a tax-paid fertilizer chemical used as a qualified fertilizer substance must include the following information:

(i) The name of the tax-paid fertilizer chemical to which the claim relates and the total number of tons of the tax-paid fertilizer chemical used as a qualified fertilizer substance during the period covered by the claim;

(ii) The manner in which the claimant used the qualified fertilizer substance;

(iii) The amount of section 4661 tax paid with respect to the tax-paid fertilizer chemical; and

(iv) The certificate described in paragraph (e) of this section, or a copy of such certificate, that relates to the tax-paid fertilizer chemical for which the claim is being made.

(c) *Use as qualified fuel*—(1) *In general.* Any section 4661 tax paid that exceeds the amount of section 4661 tax determined with regard to section 4662(b)(5) with respect to acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, or xylene (collectively, fuel chemicals, or individually, a fuel chemical) that any person uses as a qualified fuel substance will be allowed as a credit or refund (without interest) to the person

using the fuel chemical as a qualified fuel substance in the same manner as if it were an overpayment of section 4661 tax. *See* section 4662(d)(3). Such person may file a claim for credit or refund of the amount of the overpayment, provided the conditions to allowance set forth in paragraph (c)(2) of this section are satisfied. *See* paragraph (c)(3) of this section for the supporting information that must be included in a claim for credit or refund pursuant to section 4662(d)(3).

(2) *Conditions to allowance of a claim for credit or refund.* A claim for credit or refund of section 4661 tax with respect to a tax-paid fuel chemical that is used as a qualified fuel substance is allowed under section 4662(d)(3) and this section only if:

(i) A section 4661 tax with respect to the fuel chemical was paid to the IRS and not credited or refunded;

(ii) After payment of the section 4661 tax, a person used the fuel chemical as a qualified fuel substance;

(iii) The person using the fuel chemical as a qualified fuel substance has filed a timely claim for credit or refund that includes the supporting information required under paragraph (c)(3) of this section; and

(iv) The person using the fuel chemical as a qualified fuel substance has a certificate, in the form prescribed in paragraph (e) of this section, from the person that paid the section 4661 tax.

(3) *Supporting information required.* Each claim for credit or refund with respect to a tax-paid fuel chemical used as a qualified fuel substance must include the following information:

(i) The name of the fuel chemical to which the claim relates and the total number of tons of the tax-paid fuel chemical used as a qualified fuel substance during the period covered by the claim;

(ii) The manner in which the claimant used the qualified fuel substance;

(iii) The amount of section 4661 tax paid with respect to the fuel chemical; and

(iv) The certificate described in paragraph (e) of this section, or a copy of such certificate, that relates to the tax-paid fuel chemical for which the claim is being made.

(d) *Use in the production of animal feed*—(1) *In general.* Any section 4661 tax paid that exceeds the amount of tax

determined with regard to section 4662(b)(9) with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia (each, an animal feed chemical) that any person uses as a qualified animal feed substance will be allowed as a credit or refund (without interest) to the person using the animal feed chemical as a qualified animal feed substance in the same manner as if it were an overpayment of section 4661 tax. *See* section 4662(d)(4). Such person may file a claim for credit or refund of the amount of the overpayment, provided the conditions to allowance set forth in paragraph (d)(2) of this section are satisfied. *See* paragraph (d)(3) of this section for the supporting information that must be included in a claim for credit or refund pursuant to section 4662(d)(4).

(2) *Conditions to allowance of a claim for credit or refund.* A claim for credit or refund of section 4661 tax with respect to a tax-paid animal feed chemical that is used as a qualified animal feed substance is allowed under section 4662(d)(4) and this section only if:

(i) A section 4661 tax with respect to the animal feed chemical was paid to the IRS and not credited or refunded;

(ii) After payment of the section 4661 tax, a person used the animal feed chemical as a qualified animal feed substance;

(iii) The person using the animal feed chemical as a qualified animal feed substance has filed a timely claim for credit or refund that includes the supporting information required under paragraph (d)(3) of this section; and

(iv) The person using the animal feed chemical as a qualified animal feed substance has a certificate, in the form prescribed in paragraph (e) of this section, from the person that paid the section 4661 tax.

(3) *Supporting information required.* Each claim for credit or refund with respect to a tax-paid animal feed chemical used as a qualified animal feed substance must include the following information:

(i) The name of the animal feed chemical to which the claim relates and the total number of tons of the tax-paid animal feed chemical used as a qualified animal feed substance during the period covered by the claim;

(ii) The manner in which the claimant used the qualified animal feed substance;

(iii) The amount of section 4661 tax paid with respect to the animal feed chemical; and

(iv) A certificate described in paragraph (e) of this section, or a copy of such certificate, that relates to the tax-paid animal feed chemical for which the claim is being made.

(e) *Certificate*—(1) *Overview*. The certificate to be provided with any claim for credit or refund under paragraphs (a) through (d) of this section consists of a statement that is signed under penalties of perjury by a person with authority to bind the person that paid the section 4661 tax, is in substantially the same form as the

model certificate provided in paragraph (e)(2) of this section, and contains all of the information necessary to complete the model certificate.

(2) *Model certificate*.

CERTIFICATE TO SUPPORT A CLAIM FOR CREDIT OR REFUND

(To support claims for credit or refund under section 4662(d) of the Internal Revenue Code (Code).)

Name, address, and employer identification number of person that paid the tax imposed by section 4661 of the Code (section 4661 tax)

The undersigned taxpayer hereby certifies the following under penalties of perjury:

The undersigned taxpayer reported and paid the section 4661 tax on the following taxable chemicals (include lot numbers (if applicable), quantities (in tons), and dates of sale or use):

Amount of section 4661 tax the undersigned taxpayer paid with respect to the taxable chemicals listed above: _____

Tax quarter(s) during which tax payment(s) was made: _____

The undersigned taxpayer has not received a credit or a refund, and will not claim a credit or a refund, with regard to the tax paid on the taxable chemical(s) to which this certificate relates.

The undersigned taxpayer understands that it may be liable for the penalty under section 6701 of the Code (relating to aiding and abetting an understatement of tax liability) if this is an erroneous certification.

The undersigned taxpayer understands that the fraudulent use of this certificate may subject the undersigned taxpayer and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Signature and date signed

Printed or typed name of person signing

Title of person signing

(f) *Applicability date.* This section applies to sales or uses in calendar quarters beginning on or after the [date of publication of final regulations in the **Federal Register**].

Par. 7. Section 52.4662-5 is added to read as follows:

§52.4662-5 Exports.

(a) *Overview.* Section 4662(e) of the Internal Revenue Code (Code) provides rules regarding taxable chemicals that are exported. Paragraph (b) of this section provides the circumstances under which a manufacturer or producer may make a tax-free sale for export. Paragraph (c) of this section provides the circumstances under which a credit or refund (without interest) of the section 4661 tax is allowed to the person that paid the section 4661 tax. Paragraph (d) of this section provides the circumstances under which a credit or refund (without interest) of the section 4661 tax is allowed to the exporter.

(b) *Tax-free sales for export—(1) In general.* A manufacturer or producer of a taxable chemical may sell a taxable chemical tax free under section 4662(e) (1) only if the person that purchases the taxable chemical from the manufacturer or producer (first purchaser) intends to export the taxable chemical or resell it to a second purchaser that intends to export the taxable chemical. A manufacturer or producer may not sell a taxable chemical tax free to a first purchaser for resale to a second purchaser if the second purchaser does not intend to export the taxable chemical itself but instead plans to sell it to a third purchaser that will resell the taxable chemical or export it. See paragraph (b)(5)(i) of this section for the proof required when the manufacturer or producer is the exporter. See paragraph (b)(5)(ii) of this section for the proof required when the manufacturer or producer is not the exporter.

(2) *Exported taxable chemical returned to the United States.* If a taxable chemical is sold tax free by the manufacturer or producer pursuant to section 4662(e)(1) and paragraph (b) of this section and the

taxable chemical is subsequently returned to the United States, the importer of the taxable chemical is liable for the section 4661 tax when the importer sells or uses the taxable chemical.

(3) *Sale or resale to a purchaser located outside the United States.* To make a tax-free sale of a taxable chemical for export to a first purchaser that is located outside the United States, the manufacturer or producer must obtain from the first purchaser, at the earlier of the time title to the taxable chemical passes to the first purchaser or the time of shipment, either:

(i) A written order or contract of sale that states the manufacturer or producer will ship the taxable chemical to a location outside the United States; or

(ii) Where shipment is to be made to a location within the United States, a statement from the first purchaser showing:

(A) That the first purchaser is purchasing the taxable chemical to fill existing or future orders for shipment to a location outside the United States, or for resale to a second purchaser that is engaged in the business of exporting and that will export the taxable chemical; and

(B) That such taxable chemical will be shipped to a location outside the United States prior to any resale except for export.

(4) *Cessation of exemption.* The exemption provided in section 4662(e)(1) and paragraph (b) of this section will cease to apply on the first day following the close of the 6-month period that begins on the date the manufacturer or producer sold the taxable chemical to the first purchaser, or the date the manufacturer or producer shipped the taxable chemical to the first purchaser, whichever is earlier, unless the manufacturer or producer receives proof of export, in the form prescribed by paragraph (b)(5) of this section, within such 6-month period. If, on the first day following the close of such 6-month period, the manufacturer or producer has not received proof of export, in the form prescribed by paragraph (b)(5) of this section, the manufacturer or producer is liable for the tax and tax attaches at that time.

(5) *Proof of export—(i) Proof required when the manufacturer or producer is the*

exporter. The following constitutes proof of export when the manufacturer or producer is the exporter:

(A) A copy of the export bill of lading issued by the delivering carrier;

(B) A certificate by the agent or representative of the export carrier showing actual exportation of the taxable chemical;

(C) A certificate of landing signed by a customs officer of the foreign country to which the taxable chemical is exported;

(D) Where the foreign country has no customs administration, a statement of the foreign consignee showing receipt of the taxable chemical; or

(E) Where a department or agency of the United States government is unable to furnish any one of the foregoing types of proof of exportation, a statement or certification on department or agency letterhead, executed by an authorized person, that the taxable chemicals have been exported.

(ii) *Statement of export required when manufacturer or producer is not the exporter—(A) In general.* If the manufacturer or producer of a taxable chemical is not the exporter of the taxable chemical, the manufacturer or producer must have in its possession a statement from the first purchaser stating that the taxable chemical was, in fact, exported by the first purchaser, or was resold to a second purchaser that exported the taxable chemical. The manufacturer or producer must receive such statement of export no later than the close of the 6-month period that begins on the earlier of the date the manufacturer or producer sold the taxable chemical to the first purchaser, or the date the manufacturer or producer shipped the taxable chemical to the first purchaser. The statement of export consists of a statement that is signed under penalties of perjury by a person with authority to bind the first purchaser, is in substantially the same form as the model statement of export in paragraph (b)(5)(ii)(B) of this section, and contains all the information necessary to complete the model statement. The statement of export must be included as part of the manufacturer or producer's business records.

(B) *Model statement of export.*

STATEMENT OF EXPORT

(To support tax-free sales of taxable chemicals under section 4662(e)(1)(B) of the Internal Revenue Code (Code).)

_____(Purchaser) certifies the following under penalties of perjury:

Name of Purchaser _____

Name of taxable chemical(s) purchased by Purchaser: _____

Purchaser purchased the taxable chemical(s) specified above tax free on _____ (purchase date). The taxable chemicals were thereafter exported.

Purchaser has in its possession proof of export with respect to the taxable chemicals identified in this statement. The proof of export is: _____

Purchaser will retain the business records needed to document the export of the taxable chemical(s) to which this statement applies and will make such records available to the Internal Revenue Service.

Purchaser has not previously executed a statement with respect to the taxable chemical(s) identified in this certificate.

Purchaser understands that Purchaser may be liable for the penalty under section 6701 of the Code (relating to aiding and abetting an understatement of tax liability) if this is an erroneous certification.

Purchaser understands that the fraudulent use of this statement may subject Purchaser and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Printed or typed name of person signing

Title of person signing

Employer identification number

Address of Purchaser

Signature and date signed

(c) *Credit or refund*—(1) *In general.* The person that paid the section 4661 tax with respect to a taxable chemical is allowed a credit or refund (without interest) if:

(i) Such chemical was exported by any person; or

(ii) Such chemical was used as material in the manufacture or production of a substance that was exported by any person and, at the time of export, was a taxable substance (as defined in section 4672(a) of the Code and §52.4672-1(b)(8)). *See* section 4662(e)(2)(A).

(2) *Conditions to allowance of claim for credit or refund.* A claim for credit or refund of section 4661 tax with respect to a tax-paid chemical that is exported (or with respect to a tax-paid chemical that is used as material in the manufacture or production of a substance that is a taxable

substance at the time of export) is allowed under section 4662(e)(2) and paragraph (c) of this section only if the person that paid the section 4661 tax establishes that:

(i) The person has repaid or agreed to repay the amount of the section 4661 tax to the person that exported the tax-paid chemical (or the taxable substance manufactured or produced with the tax-paid chemical); or

(ii) The person has obtained the written consent of the exporter to the allowance of the credit or the making of the refund; and

(iii) The person provides the supporting information described in paragraph (c) (3) of this section.

(3) *Supporting information required.* Each claim for credit or refund with respect to a tax-paid chemical that is exported (or with respect to a tax-paid chemical that is used as material in the manufacture or production of a substance that is a taxable substance at the time of export) must include the following information:

(i) The name of the tax-paid chemical to which the claim relates and the total number of tons of the tax-paid chemical exported during the period covered by the claim (in the case of a tax-paid chemical used to manufacture or produce a taxable substance, the claim must also include the name of each taxable substance and the number of tons of each taxable substance exported during the period covered by the claim);

(ii) The amount of section 4661 tax paid with respect to the tax-paid chemical (in the case of a taxable substance, the amount of section 4661 tax paid with respect to each tax-paid chemical used in the manufacture or production of the substance); and

(iii) Proof of export of the taxable chemical (or the taxable substance) in the form prescribed by paragraph (b)(5) of this section.

(d) *Credit or refund directly to exporter*—(1) *In general.* The exporter is allowed a credit or refund (without interest), provided the conditions to allowance in paragraph (d)(2) of this section are satisfied. See section 4662(e)(3).

(2) *Conditions to allowance.* Any section 4661 tax paid on a taxable chemical (or on any taxable chemical used as material in the manufacture or production of a taxable substance) may be credited or

refunded (without interest) to the exporter pursuant to section 4662(e)(3) and paragraph (d) of this section only if:

(i) The person that paid the section 4661 tax waives the right to claim a credit or refund of the section 4661 tax; and

(ii) The exporter provides the supporting information described in paragraph (d) (3) of this section.

(3) *Supporting information required.* Each claim for credit or refund by the exporter must include the following information:

(i) The name of the tax-paid chemical to which the claim relates and the total number of tons of the tax-paid chemical exported during the period covered by the claim (or in the case of a taxable substance, the name of the taxable substance to which the claim relates, the name of each tax-paid chemical used as material in the manufacture or production of the taxable substance, and the total number of tons of each tax-paid chemical used as material in the manufacture or production of the taxable substance that was exported during the period covered by the claim);

(ii) Proof of export of the tax-paid chemical (or the taxable substance) in the form prescribed by paragraph (b)(5) of this section; and

(iii) A statement, signed under penalties of perjury by the person that paid the section 4661 tax, providing:

(A) That the person that paid the tax waives the right to claim a credit or refund of the section 4661 tax;

(B) The amount of section 4661 tax the person paid on the sale of the taxable chemical (or on the sale or use of each taxable chemical used to manufacture or produce the taxable substance); and

(C) The date the person paid the section 4661 tax.

(e) *Applicability date.* This section applies to sales or uses in calendar quarters beginning on or after [date of publication of final regulations in the **Federal Register**].

Par. 8. Section 52.4671-1 is added to read as follows:

§52.4671-1 Imposition of tax.

(a) *In general.* Section 4671(a) of the Internal Revenue Code (Code) imposes an excise tax on any taxable substance

sold or used by the importer of the taxable substance.

(b) *Person liable for tax.* The importer of a taxable substance is the person liable for the section 4671 tax.

(c) *Attachment of tax.* The section 4671 tax attaches at the time the importer first sells or uses the taxable substance.

(d) *Procedural rules.* Part 40 of this chapter provides rules related to filing excise tax returns, making semimonthly deposits of excise tax, making payments of excise tax, and other procedural rules. See §§52.0-1 and 40.0-1(a) of this chapter. Each business unit that has, or is required to have, a separate employer identification number is treated as a separate person for purposes of filing excise tax returns, making semimonthly deposits of excise tax, and making payments of excise tax. See §40.0-1(d) of this chapter.

(e) *Amount of tax*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, the amount of section 4671 tax with respect to any taxable substance is the amount of section 4661 tax that would have been imposed on the taxable chemicals used as materials in the manufacture or production of the taxable substance if the taxable chemicals had been sold in the United States for use in the manufacture or production of the taxable substance. See section 4671(b)(1).

(2) *Special rules.* If the importer does not furnish sufficient information to the Secretary of the Treasury or her delegate (Secretary) to determine the amount of section 4671 tax imposed on any taxable substance, the amount of section 4671 tax is 10 percent of the appraised value of the taxable substance at the time the substance was entered into the United States for consumption, use, or warehousing. See section 4671(b)(2). Alternatively, the Secretary may prescribe a tax rate for any taxable substance in lieu of the amount prescribed in section 4671(b)(2). The tax rate prescribed by the Secretary equals the amount of section 4671 tax that would have been imposed if the taxable substance were produced using the predominant method of production of such substance using a stoichiometric material consumption equation that assumes a 100-percent yield. See section 4671(b)(3). Importers of taxable substances are not required to use the rate or rates prescribed

by the Secretary and may instead calculate the amount of section 4671 tax pursuant to section 4671(b)(1) and §52.4671-1(e)(1).

(3) *Example.* An importer sells a substance that is a taxable substance listed in section 4672(a)(3). The taxable chemical, acetylene, constitutes, by weight, 19 percent of the materials used to produce the taxable substance. Section 4671 tax attaches at the time of the importer's sale of the taxable substance. The Secretary has prescribed a tax rate for the taxable substance pursuant to section 4671(b)(3). The importer may calculate the amount of section 4671 tax pursuant to section 4671(b)(1), or use the rate prescribed by the Secretary to calculate the amount of section 4671 tax imposed on the importer's sale of the taxable substance.

(f) *Exemption for substances taxed under sections 4611 and 4661.* No section 4671 tax is imposed on the importer's sale or use of any taxable substance if tax is imposed on such sale or use under section 4611 or 4661 of the Code. *See* section 4671(c).

(g) *Applicability date.* This section applies to calendar quarters beginning on or after [date of publication of final regulations in the **Federal Register**].

Par. 9. Section 52.4671-2 is added to read as follows:

§52.4671-2 Certain fertilizer, fuel, and animal feed uses.

(a) *In general.* Section 4671(d) of the Internal Revenue Code (Code) provides that rules similar to section 4662(b)(2) of the Code (pertaining to fertilizer), section 4662(b)(5) (pertaining to motor fuel), and section 4662(b)(9) (pertaining to animal feed) apply with respect to taxable substances used or sold for use as described in section 4662(b)(2), (5), and (9).

(b) *Tax-free sales—(1) In general.* No section 4671 tax is imposed on a taxable substance used or sold for use as described in section 4662(b)(2), (5), or (9), if all taxable chemicals used as materials in the manufacture or production of such substance would have been exempt under section 4662(b)(2), (5), or (9) if such taxable chemicals had been sold in the United States for use in the manufacture or production of the taxable substance. To make a tax-free sale of a taxable substance pursuant to section 4671(d)(1), the importer (or, in the case of resales, the reseller) of the taxable substance must obtain an unexpired exemption certificate from the purchaser, in the form prescribed in paragraph (b)(3) of this section, prior to or at the time of sale, and the importer or reseller must have no reason to believe that any information in the certificate regarding the use of the taxable substance is false. If the importer or reseller does not obtain an unexpired exemption certificate by the time of the sale, or if the importer or reseller has reason to believe that any information in the certificate regarding the use of the substance is false, the importer or reseller is liable for the full amount of the section 4671 tax. However, if the purchaser subsequently uses the taxable substance as described in section 4662(b)(2), (5), or (9), the purchaser may file a claim for credit or refund pursuant to section 4671(d)(2) and paragraph (c) of this section.

(2) *Tax-free sales not available in certain situations.* The provisions of paragraph (b)(1) of this section apply only if all taxable chemicals used as materials in the manufacture or production of a taxable substance would have been exempt under section 4662(b)(2), (5), or (9) if such taxable chemicals had been sold in the United States for use in the manufacture

or production of the taxable substance. Section 4671 tax is imposed on a taxable substance used or sold for use if the taxable chemicals used as materials in the manufacture or production of such taxable substance consist of one or more taxable chemicals that would have been exempt under section 4662(b)(2), (5), or (9), and one or more taxable chemicals that would not have been exempt under section 4662(b)(2), (5), or (9). If the purchaser subsequently uses the taxable substance as described in section 4662(b)(2), (5), or (9), the purchaser may file a claim for credit or refund of the section 4671 tax paid on the taxable chemicals that would have been exempt under section 4662(b)(2), (5), or (9) pursuant to section 4671(d)(2) and paragraph (c) of this section and were used as materials in the manufacture or production of the taxable substance.

(3) *Exemption certificate—(i) Overview.* The exemption certificate consists of a statement that is signed under penalties of perjury by a person with authority to bind the purchaser, is in substantially the same form as the model certificate in paragraph (b)(3)(ii) of this section, and contains all of the information necessary to complete such model certificate. A new certificate must be given if any information in the certificate changes. The certificate expires no later than one year from the effective date specified in the certificate. The certificate may be included as part of any business records normally used to document a sale. The Internal Revenue Service (IRS) may withdraw the right of a purchaser of a taxable substance to provide a certificate under this section if the purchaser uses the taxable substance to which a certificate relates other than as stated in the certificate.

(ii) *Model certificate.*

EXEMPTION CERTIFICATE

(To support tax-free sales of taxable substances under section 4671(d)(1) of the Internal Revenue Code (Code).)

Name, address, and employer identification number of seller

_____(Purchaser) certifies the following under penalties of perjury:
Name of Purchaser

The sale(s) to which this certificate applies are for (mark below):

_____ Sold for use by Purchaser as described in section 4662(b)(2) (qualified fertilizer use), section 4662(b)(5) (qualified fuel use), or section 4662(b)(9) (qualified animal feed use) of the Code

_____ Sold for resale by Purchaser for use, or resale for ultimate use, in a qualified use

The taxable substance(s) to which this certificate applies will be used (mark below):

_____ Qualified fertilizer use

_____ Qualified fuel use

_____ Qualified animal feed use

Name of taxable substance(s) to be purchased by Purchaser

This certificate applies to:

1. Percentage of Purchaser's purchases _____ between _____ (effective date) and _____ (expiration date) (period not to exceed one year after the effective date) under account or order number(s) _____; or
2. A single purchase invoice or delivery ticket number _____.

If Purchaser sells or uses the taxable substance to which this certificate relates for a nonqualified sale or use, Purchaser will be treated as the importer of the taxable substance and will be liable for the tax imposed by section 4671.

Purchaser will provide a new certificate to the seller if any information in this certificate changes.

Purchaser understands that Purchaser may be liable for the penalty under section 6701 of the Code (relating to aiding and abetting an understatement of tax liability) if this is an erroneous certification.

Purchaser understands that the fraudulent use of this certificate may subject Purchaser and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Printed or typed name of person signing

Title of person signing

Employer identification number

Address of Purchaser

Signature and date signed

(c) *Credits and refunds*—(1) *In general.* If any section 4671 tax was paid with respect to a taxable substance used or sold for use as described in section 4662(b)(2), (5), or (9), the portion of the tax attributable to any taxable chemical used as material in the manufacture or production of such substance that would have been exempt under section 4662(b)(2), (5), or (9) if the taxable chemical had been sold in the United States will be allowed as a credit or refund (without interest) to the person using the substance in the same manner as if it were an overpayment of section 4671 tax. See sections 4671(d)(2) and 4662(d). Such person may file a claim for credit or refund of the amount of the overpayment, provided the conditions to allowance set forth in paragraph (c)(2) of this section are satisfied. See paragraph (c)(3) of this section for the supporting information that must be included in a claim for credit or refund pursuant to section 4671(d)(2).

(2) *Conditions to allowance of a claim for credit or refund.* A claim for credit or refund of section 4671 tax is allowed under section 4671(d)(2) and this section only if:

(i) A section 4671 tax was paid to the Internal Revenue Service and not credited or refunded;

(ii) After the imposition of section 4671 tax, a person used the taxable substance as described in section 4662(b)(2), (5), or (9);

(iii) The person using the taxable substance has filed a timely claim for credit or refund that includes the information required under paragraph (c)(3) of this section; and

(iv) The person using the taxable substance has a certificate, in the form prescribed in paragraph (c)(4) of this section, from the person that paid the section 4671 tax. The claimant must have a separate certificate for each taxable substance to which the claim relates.

(3) *Supporting information required.* Each claim for credit or refund must include the following information:

(i) The name of the taxable substance to which the claim relates and the total number of tons of the taxable substance used as described in section 4662(b)(2), (5), or (9) during the period covered by the claim;

(ii) The name of any taxable chemicals used as material in the manufacture or production of the taxable substance that would have been exempt under section 4662(b)(2), (5), or (9) if the taxable chemicals had been sold in the United States;

(iii) The type of qualified use (fertilizer, fuel, or animal feed);

(iv) The total amount of section 4671 tax paid on the taxable substance under section 4671(a);

(v) If the amount of section 4671 tax was calculated pursuant to section 4671(b)(1) and §52.4671-1(e)(1), the rate of tax and conversion factors for any taxable chemicals used as material in the manufacture or production of the taxable substance that would have been exempt under section 4662(b)(2), (5), or (9) if the taxable chemicals had been sold in the United States; and

(vi) A certificate described in paragraph (c)(4) of this section, or a copy of such certificate, that relates to the taxable substance for which the claim is being made.

(4) *Certificate*—(i) *Overview.* The certificate to be provided with regard to claims for credit or refund under this section consists of a statement that is signed under penalties of perjury by a person with authority to bind the person that paid the section 4671 tax, is in substantially the same form as the model certificate provided in paragraph (c)(4)(ii) of this section, and contains all of the information necessary to complete the model certificate.

(ii) *Model certificate.*

CERTIFICATE TO SUPPORT A CLAIM FOR CREDIT OR REFUND

(To support claims for credit or refund under section 4671(d)(2) of the Internal Revenue Code (Code).)

Name, address, and employer identification number of person that paid the tax imposed by section 4671 of the Code (section 4671 tax)

The undersigned taxpayer hereby certifies the following under penalties of perjury:

The undersigned taxpayer reported and paid the section 4671 tax on the following taxable substance (include lot numbers (if applicable) and the date(s) of sale or use): _____

Number of tons of the taxable substance on which tax was paid: _____

Name of any taxable chemicals used as material in the manufacture or production of the taxable substance: _____

Total amount of section 4671 tax the undersigned taxpayer paid with respect to the taxable substance listed above: _____

Rate of tax for the taxable substance listed above (complete only if the amount of tax was calculated pursuant to section 4671(b)(1)): _____

Conversion factor for each taxable chemical listed above (complete only if the amount of tax was calculated pursuant to section 4671(b)(1)): _____

Tax quarter(s) during which tax payment was made: _____

The undersigned taxpayer has not received a credit or a refund, and will not claim a credit or a refund, with regard to the tax paid on the taxable substance to which this certificate relates.

The undersigned taxpayer understands that it may be liable for the penalty under section 6701 of the Code (relating to aiding and abetting an understatement of tax liability) if this is an erroneous certification.

The undersigned taxpayer understands that the fraudulent use of this certificate may subject the undersigned taxpayer and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Signature and date signed

Printed or typed name of person signing

Title of person signing

(d) *Applicability date.* This section applies to calendar quarters beginning on or after [date of publication of final regulations in the **Federal Register**].

Par. 10. Section 52.4672-1 is added to read as follows:

§52.4672-1 Definitions.

(a) *Overview.* This section provides definitions for purposes of sections 4671 and 4672 of the Internal Revenue Code (Code), §§52.4671-1 and 52.4671-2, this section, and §52.4672-2.

(b) *Definitions—(1) Conversion factor.* The term *conversion factor* means the ratio of the weight of an individual taxable chemical used in the production of a substance to the total weight of the substance.

(2) *Entry for consumption, use, or warehousing.* The term *entry for consumption, use, or warehousing* has the meaning given such term by §52.4662-1(c)(2).

(3) *Importer—(i) In general.* The term *importer* means the person entering the taxable substance for consumption, use, or warehousing. *See* section 4662(a)(3). If the person entering the taxable substance for consumption, use, or warehousing is merely acting as an agent or a customs broker for another person, then the agent or customs broker is not the importer and the importer is the first person in the United States to sell or use the taxable substance after entry of the taxable substance for consumption, use, or warehousing.

(ii) *Drop ship businesses.* If a drop ship business in the United States purchases or otherwise arranges for a person outside the United States to ship a taxable substance directly to a purchaser in the United States, the drop ship business is the importer of the taxable substance. If a drop ship business outside the United States purchases or otherwise arranges for a person outside the United States to

ship a taxable substance directly to a purchaser in the United States, the purchaser in the United States is the importer of the taxable substance. With regard to any sale of a taxable substance, the term *drop ship business* means a person that sells the taxable substance or arranges for purchasers to purchase the taxable substance, and uses a third party to fill orders by shipping the taxable substance directly to the purchaser. The determination of whether a person is a drop ship business is made on a sale-by-sale basis.

(4) *Predominant method of production.* The term *predominant method of production* means the method used to produce the greatest number of tons of a particular substance worldwide, relative to the total number of tons of the substance produced worldwide.

(5) *Sale.* The term *sale* means the transfer of title or substantial incidents of ownership (whether or not delivery to, or

payment by, the purchaser has been made) in a taxable substance for a consideration, which may include, but is not limited to, money, services, or property.

(6) *Section 4671 tax.* The term *section 4671 tax* means the excise tax imposed by section 4671(a) of the Code on any taxable substance sold or used by the importer of the taxable substance.

(7) *Taxable chemical.* The term *taxable chemical* has the meaning given such term by section 4662(a)(1) of the Code and section §52.4662-1(b).

(8) *Taxable substance.* The term *taxable substance* means any substance, which at the time of sale or use by the importer, is listed in section 4672(a)(3) or has been added to the list of taxable substances pursuant to section 4672(a)(2) or (4). The term does not include any substance that the Secretary of the Treasury or her delegate has removed from the list of taxable substances through the process described in section 4672(a)(2) or (4). A substance that satisfies the weight or value test, but that is not listed in section 4672(a)(3) and has not been added to the list of taxable substances pursuant to section 4672(a)(2) or (4), is not a taxable substance.

(9) *Use.* A taxable substance is used when it is consumed, when it functions as a catalyst, when its chemical composition changes, when it is used in the manufacture or production of another substance (including by mixing or combining the taxable substance with other substances), or when it is put into service in a trade or business for the production of income. The loss or destruction of a taxable substance through spillage, fire, natural degradation, or other casualty is not a use. The mere manufacture or production of a taxable substance is not a use of that taxable substance.

(10) *United States.* The term *United States* has the meaning given such term by section 4612(a)(4) of the Code. *See* sections 4672(b)(2) and 4662(a)(2).

(11) *Weight or value test.* The term *weight or value test* means the test under section 4672(a)(2)(B) for determining whether taxable chemicals constitute more than 20 percent of the weight or more than 20 percent of the value of the materials used to produce a substance, based on the predominant method of production.

(c) *Applicability date.* This section applies to calendar quarters beginning on or after [date of publication of final regulations in the **Federal Register**].

Par. 11. Section 52.4672-2 is added to read as follows:

§52.4672-2 List of taxable substances.

(a) *Overview.* Section 4672(a)(3) of the Internal Revenue Code (Code) provides the initial list of taxable substances. Section 4672(a)(2) and (4) provides mechanisms by which substances may be added to or removed from the list. Therefore, the list of taxable substances is subject to change. The Internal Revenue Service (IRS) will maintain the current list of taxable substances at <https://www.irs.gov/businesses/small-businesses-self-employed/superfund-chemical-excise-taxes>.

(b) *Requests to modify the list of taxable substances—(1) In general.* An importer or exporter of any substance, or a person other than an importer or exporter (interested person), may petition to add a substance to or remove a substance from the list of taxable substances. *See* section 4672(a)(2). The procedures governing the exclusive process by which importers, exporters, and interested persons may request modifications to the list of taxable substances are provided in guidance published in the Internal Revenue Bulletin. *See* §601.601(d) of this chapter.

(2) *Synthetic organic substances.* A synthetic organic substance is eligible for addition to the list of taxable substances through the process described in paragraph (b)(1) of this section unless such substance is a textile fiber (other than a polymer in extruded fiber form), yarn, or staple, or a fabricated product that is molded, formed, woven, or otherwise finished into an end-use product. However, such substance may be added to the list of taxable substances only if it meets the weight or value test.

(3) *Inorganic substances.* An inorganic substance is eligible for addition to the list of taxable substances through the process described in paragraph (b)(1) of this section unless it is a fabricated product that is molded, formed, or otherwise finished into an end-use product. However, such

substance may be added to the list of taxable substances only if it meets the weight or value test.

(c) *Applicability date.* This section applies to calendar quarters beginning on or after [date of publication of final regulations in the **Federal Register**].

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

(Filed by the Office of the Federal Register March 27, 2023, 11:15a.m., and published in the issue of the Federal Register for March 29, 2023, 88 FR 18446)

Notice of Proposed Rulemaking

Section 30D New Clean Vehicle Credit

REG-120080-22

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the Federal income tax credit under the Inflation Reduction Act of 2022 for the purchase of qualifying new clean vehicles, including new plug-in electric vehicles powered by an electric battery meeting certain requirements and new qualified fuel cell vehicles. These proposed regulations would affect eligible taxpayers who purchase new vehicles that qualify for the credit.

DATES: *Comments and Requests for a Public Hearing:* Written or electronic comments and requests for a public hearing must be received by June 16, 2023. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section.

Applicability Date of New Critical Mineral and Battery Component Requirements: See section III.D of the “Background” section for a discussion of the applicability date of the new crit-

ical mineral and battery component requirements.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-120080-22) 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, whether electronically or on paper, to the IRS's public docket. Send paper submissions to: CC:PA:LPD:PR (REG-120080-22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, the Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317-6853 (not a toll-free number); concerning submissions of comments and requests for a public hearing, Vivian Hayes at (202) 317-5306 (not a toll-free number) or by email to publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Background

I. Overview

Section 30D(a) of the Internal Revenue Code (Code) provides a credit (section 30D credit) against the tax imposed by chapter 1 of the Code (chapter 1) with respect to each new clean vehicle that a taxpayer purchases and places in service. The credit is determined and allowable with respect to the taxable year in which the taxpayer places the new clean vehicle in service. This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 30D of the Code (proposed regulations). To date, no regulations have been proposed pursuant to section 30D.

Section 30D was originally enacted by section 205(a) of the Energy Improvement

and Extension Act of 2008, Division B of Public Law 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 has been amended several times since its enactment, most recently by section 13401 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA).

The amount of the section 30D credit is treated as a personal credit or a general business credit depending on the character of the vehicle. In general, the section 30D credit is treated as a personal credit allowable under subpart A of the Code. Section 30D(c)(2). However, the amount of the section 30D credit that is attributable to property that is of a character subject to an allowance for depreciation is treated as a current year business credit under section 38(b) instead of being allowed under section 30D(a). Section 30D(c)(1). Section 38(b)(30) lists as a current year business credit the portion of the section 30D credit to which section 30D(c)(1) applies. The IRA did not amend section 30D(c)(1) or (2).

II. IRA Amendments to Section 30D

The IRA made a number of amendments to section 30D. In general, the purpose of these amendments is to promote the purchase and use of new clean vehicles by lower and middle-income Americans, to promote resilient supply chains and domestic manufacturing, to strengthen supply chains with trusted trading partners, to protect against improper credit claims, and to achieve significant carbon emissions reductions. These amendments are specifically described in the following subsections.

A. Credit amount and critical mineral and battery component requirements

The IRA amends the rules for determining the amount of the section 30D credit. Prior to the amendments to section 30D made by section 13401(a) and (e) of the IRA becoming applicable, the amount of the section 30D credit is calculated based on the vehicle's battery capacity. The base amount is \$2,500, plus \$417 for a battery with a

capacity of at least 5 kilowatt hours, and an additional \$417 for each kilowatt hour of capacity in excess of 5 kilowatt hours, up to a maximum credit of \$7,500 per vehicle. Section 13401(a) of the IRA amends section 30D(b) of the Code to provide a maximum credit of \$7,500 per vehicle, consisting of \$3,750 in the case of a vehicle that meets certain requirements relating to critical minerals and \$3,750 in the case of a vehicle that meets certain requirements relating to battery components. The amendments made by section 13401(a) of the IRA apply to vehicles placed in service after the date on which the Secretary of the Treasury or her delegate (Secretary) issues proposed guidance described in new section 30D(e)(3)(B) of the Code relating to the new critical minerals requirements described in new section 30D(e)(1)(A) (Critical Minerals Requirement) and the new battery components requirements described in new section 30D(e)(2)(A) (Battery Components Requirement). See section 13401(k)(3) of the IRA.

New section 30D(e)(1)(A) provides that the Critical Minerals Requirement with respect to the battery from which the electric motor of a vehicle draws electricity is satisfied if the percentage of the value of the applicable critical minerals (as defined in section 45X(c)(6)) contained in such battery that were (i) extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or (ii) recycled in North America, is equal to or greater than the applicable percentage (as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary). The applicable percentage for the Critical Minerals Requirement is set forth in section 30D(e)(1)(B)(i) through (v) of the Code and varies based on when the vehicle is placed in service. In the case of a vehicle placed in service after the date of issuance of the proposed guidance described in new section 30D(e)(3)(B) of the Code and before January 1, 2024, the applicable percentage is 40 percent. In the case of a vehicle placed in service during calendar year 2024, 2025, and 2026, the applicable percentage is 50 percent, 60 percent, and 70 percent, respectively. In the case of a vehicle placed in service after December 31, 2026, the applicable percentage is 80 percent.

New section 30D(e)(2)(A) provides that the Battery Components Requirement with respect to the battery from which the electric motor of a vehicle draws electricity is satisfied if the percentage of the value of the components contained in such battery that were manufactured or assembled in North America is equal to or greater than the applicable percentage (as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary). The applicable percentage for the Battery Components Requirement is set forth in section 30D(e)(2)(B)(i) through (vi) of the Code and varies based on when the vehicle is placed in service. In the case of a vehicle placed in service after the date of issuance of the proposed guidance described in new section 30D(e)(3)(B) of the Code and before January 1, 2024, the applicable percentage is 50 percent. In the case of a vehicle placed in service during calendar year 2024 or 2025, the applicable percentage is 60 percent. In the case of a vehicle placed in service during calendar year 2026, 2027, and 2028, the applicable percentage is 70 percent, 80 percent, and 90 percent, respectively. In the case of a vehicle placed in service after December 31, 2028, the applicable percentage is 100 percent.

B. New clean vehicle definition

The IRA amends the definition of the vehicles that may qualify for the section 30D credit. Section 13401(c) of the IRA amends section 30D(d) of the Code by making the credit applicable to “new clean vehicles,” instead of “new qualified plug-in electric drive motor vehicles,” applicable to vehicles placed in service after December 31, 2022. As amended by section 13401(c) and (g)(2) of the IRA, section 30D(d)(1) of the Code defines a “new clean vehicle” as a motor vehicle that satisfies the eight requirements set forth in section 30D(d)(1)(A) through (H) of the Code: the original use of the motor vehicle must commence with the taxpayer; the motor vehicle must be acquired for use or lease by the taxpayer and not for resale; the motor vehicle must be made by a qualified manufacturer; the motor vehicle must be treated as a motor vehicle for purposes of title II of the Clean Air Act; the motor vehicle must have a

gross vehicle weight rating of less than 14,000 pounds; the motor vehicle must be propelled to a significant extent by an electric motor which draws electricity from a battery that has a capacity of not less than 7 kilowatt hours, and is capable of being recharged from an external source of electricity; the final assembly of the motor vehicle must occur within North America; and the person who sells any vehicle to the taxpayer must furnish a report to the taxpayer and to the Secretary, at such time and in such manner as the Secretary provides, containing specifically enumerated items.

With respect to the requirement that the motor vehicle must be made by a qualified manufacturer, the IRA creates new requirements for manufacturers of vehicles eligible for the section 30D credit applicable to vehicles placed in service after December 31, 2022. As amended by section 13401(c) the IRA, section 30D(d)(3) of the Code defines a “qualified manufacturer” as any manufacturer (within the meaning of the regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*)) 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.

The IRA provides that certain fuel cell vehicles may qualify for the section 30D credit. Section 13401(c) of the IRA adds new section 30D(d)(6) to the Code, which includes in the definition of the term “new clean vehicle” applicable to vehicles placed in service after December 31, 2022, any “new qualified fuel cell motor vehicle” (as defined in section 30B(b)(3)) that meets the requirements under section 30D(d)(1)(G) and (H) (North American final assembly and seller reporting requirements).

The IRA disqualifies certain vehicles from the section 30D credit if the battery of the vehicle contains critical minerals or battery components from a foreign entity of concern. As amended by section

13401(e) of the IRA, section 30D(d)(7) of the Code excludes, after certain specified dates, vehicles placed in service with batteries containing certain critical minerals or battery components from a foreign entity of concern from the definition of the term “new clean vehicle.” In particular, amended section 30D(d)(7) provides that the term “new clean vehicle” does not include (A) any vehicle placed in service after December 31, 2024, with respect to which any of the applicable critical minerals contained in the battery of such vehicle (as described in section 30D(e)(1)(A)) were extracted, processed, or recycled by a foreign entity of concern (as defined in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5))), or (B) any vehicle placed in service after December 31, 2023, with respect to which any of the components contained in the battery of such vehicle (as described in section 30D(e)(2)(A)) were manufactured or assembled by a foreign entity of concern (as so defined). These rules will be addressed in future guidance.

C. Final assembly requirement

As described in section II.B of the Background section of this preamble, the IRA requires new clean vehicles to undergo final assembly in North America to be eligible for the section 30D credit. This requirement is applicable to vehicles sold after August 16, 2022. See section 13401(k)(2) of the IRA. New section 30D(d)(5) defines “final assembly” as the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle.

D. Elimination of phaseout

The IRA eliminates the phaseout of the section 30D credit for vehicles made by manufacturers that have sold at least 200,000 vehicles eligible for the credit for use in the United States after December 31, 2009. Pursuant to section 13401(d) of the IRA this limitation does not apply

to vehicles sold after December 31, 2022. See section 13401(k)(5) of the IRA.

E. Special rules

The IRA adds four new special rules under section 30D(f) applicable to vehicles placed in service after December 31, 2022. First, section 30D(f)(8) permits only one section 30D credit to be claimed for each vehicle identification number (VIN). Second, section 30D(f)(9) requires taxpayers to include on the taxpayer's return for the taxable year the VIN of the vehicle for which the section 30D credit is claimed. Third, section 30D(f)(10) denies the section 30D credit to certain high-income taxpayers. More specifically, section 30D(f)(10)(A) provides that no credit is allowed for any taxable year if (i) the lesser of (I) the modified adjusted gross income of the taxpayer for such taxable year, or (II) the modified adjusted gross income of the taxpayer for the preceding taxable year, exceeds (ii) the threshold amount (Modified AGI Limitation). New section 30D(f)(10)(B) provides that the threshold amount is (i) in the case of a joint return or a surviving spouse (as defined in section 2(a) of the Code), \$300,000, (ii) in the case of a head of household (as defined in section 2(b) of the Code), \$225,000, and (iii) in the case of any other taxpayer, \$150,000. New section 30D(f)(10)(C) defines "modified adjusted gross income" as adjusted gross income (AGI) increased by any amount excluded from gross income under sections 911, 931, or 933.

Fourth, section 30D(f)(11) excludes from the section 30D credit vehicles that exceed certain manufacturer's suggested retail price thresholds. New section 30D(f)(11)(A) provides that no credit is allowed for a vehicle with a manufacturer's suggested retail price in excess of the applicable limitation. New section 30D(f)(11)(B) provides that the applicable limitation for each vehicle classification is as follows: in the case of a van, \$80,000; in the case of a sport utility vehicle, \$80,000; in the case of a pickup truck, \$80,000; and in the case of any other vehicle, \$55,000. New section 30D(f)(11)(C) authorizes the Secretary to prescribe such regulations or other guidance as the Secretary determines necessary to determine vehi-

cle classifications using criteria similar to that employed by the Environmental Protection Agency and the Department of the Energy to determine size and class of vehicles.

Section 13401(i)(4) of the IRA amended section 6213(g)(2) to provide the IRS with math error authority for the omission of a correct VIN included on the return as required under section 30D(f)(9).

Amended section 30D(g) provides rules for transfer of the credit from the taxpayer to certain registered dealers applicable to vehicles placed in service after December 31, 2023. Those rules will be addressed in future guidance.

Amended section 30D(h) provides that no credit is allowed with respect to any vehicle placed in service after December 31, 2032.

F. IRA applicability dates

Section 13401(k) of the IRA specifies various applicability dates for its amendments to section 30D. As noted previously, except as provided in section 13401(k)(2) through (5) of the IRA, the amendments made by section 13401 of the IRA apply to vehicles placed in service after December 31, 2022. Section 13401(k)(2) of the IRA provides that the amendments made by section 13401(b) of the IRA relating to final assembly apply to vehicles sold after the date of enactment of the IRA (August 16, 2022). Section 13401(k)(3) of the IRA provides that the amendments made by section 13401(a) and (e) of the IRA relating to the per vehicle credit amount dollar limitation and Critical Minerals and Battery Components Requirements apply to vehicles placed in service after the date on which the proposed guidance described in new section 30D(e)(3)(B) is issued by the Secretary. Section 13401(k)(4) of the IRA provides that the amendments made by section 13401(g) of the IRA relating to transfers of the section 30D credit apply to vehicles placed in service after December 31, 2023. Section 13401(k)(5) of the IRA provides that the amendment made by section 13401(d) of the IRA eliminating the manufacturer limitation applies to vehicles sold after December 31, 2022.

Section 13401(l) of the IRA provides a transition rule for a taxpayer who purchased or entered into a written binding

contract to purchase a new qualified plug-in electric drive motor vehicle (as defined in section 30D(d)(1) of the Code, as in effect on the day before the date of enactment of the IRA (August 15, 2022)) after December 31, 2021, and before the date of enactment of the IRA (August 16, 2022), and placed such vehicle in service on or after the date of enactment of the IRA. The transition rule provides that such a taxpayer may elect (at such time, and in such form and manner as the Secretary may prescribe) to treat such vehicle as having been placed in service on the day before the date of enactment of the IRA.

III. Prior Guidance, Request for Comments, and Other Documents Relating to the New Clean Vehicle Credit

A. Notice 2022-46

On October 5, 2022, the Treasury Department and the IRS published Notice 2022-46, 2022-43 I.R.B. 302. The notice requested general comments on issues arising under section 30D, as well as specific comments concerning: (1) definitions; (2) critical minerals; (3) battery components; (4) applicable values; (5) foreign entities of concern; (6) recordkeeping and reporting; (7) tax-exempt entities; (8) registered dealers and eligible entities; (9) the final assembly requirement; (10) vehicle classifications; (11) elections to transfer and advance payments; and (12) recapture. The Treasury Department and the IRS received 884 comments from industry participants, environmental groups, individual consumers, and other stakeholders. The Treasury Department and the IRS appreciate the commenters' interest and engagement on these issues. These comments have been carefully considered in the preparation of the proposed regulations.

B. Revenue Procedure 2022-42

On December 12, 2022, the Treasury Department and the IRS published Revenue Procedure 2022-42, 2022-52 I.R.B. 565, providing guidance for qualified manufacturers to enter into written agreements with the IRS, as required in sections 30D, 25E, and 45W of the Code, and to report

certain information regarding vehicles produced by such manufacturers that may be eligible for these credits. Information required to be reported includes certifications regarding the Critical Minerals and Battery Components Requirements, as required in sections 30D(e)(1)(A) and (e)(2)(A), once those requirements are applicable. In addition, Revenue Procedure 2022-42 provides the procedures for sellers of new clean vehicles or previously-owned clean vehicles to report certain information to the IRS and the purchasers of such clean vehicles.

C. Notices 2023-1 and 2023-16 and 30D White Paper

On December 29, 2022, the Treasury Department and the IRS published Notice 2023-1, 2023-3 I.R.B. 373, which describes definitions for certain terms in section 30D that the Treasury Department and the IRS intended to include in proposed regulations. The Treasury Department also released a white paper on the anticipated direction, as of December 29, 2022, of the proposed guidance on the Critical Minerals and Battery Components Requirements and the process for determining whether vehicles qualify under these requirements (30D White Paper). See “Anticipated Direction of Forthcoming Proposed Guidance on Critical Mineral and Battery Component Value Calculations for the New Clean Vehicle Credit,” Dec. 29, 2022, <https://home.treasury.gov/system/files/136/30DWhite-Paper.pdf> (last accessed March 28, 2023).

On February 3, 2023, the Treasury Department and the IRS published Notice 2023-16, 2023-8 I.R.B. 479, which modifies Notice 2023-1 by revising the vehicle classification standard that the Treasury Department and the IRS intend to provide in proposed regulations.

D. Proposed guidance described in section 30D(e)(3)(B)

The publication of these proposed regulations in the *Federal Register* is the issuance of the proposed guidance described in section 30D(e)(3)(B) (as added by section 13401(e) of the IRA). Pursuant to section 13401(a), (e), and (k) (3) of the IRA, the critical minerals and

battery components requirements of section 13401(a) and (e) of the IRA amend section 30D with respect to vehicles placed in service after the date on which these proposed regulations are published in the *Federal Register*. Accordingly, the Critical Minerals and Battery Components Requirements apply to vehicles placed in service after April 17, 2023, the date of publication in the *Federal Register*.

Explanation of Provisions

I. General Rules

Section 30D(a) and proposed §1.30D-1(a) provide that there is allowed as a credit against the tax imposed by chapter 1 for the taxable year an amount equal to the sum of the credit amounts determined under section 30D(b) with respect to each new clean vehicle placed in service by the taxpayer during the taxable year.

Section 30D(c) and proposed §1.30D-1(b) provide that the section 30D credit may be allowed as a general business credit or a personal credit depending on whether the property is of a character subject to an allowance for depreciation (depreciable vehicle).

Section 30D(c)(1) and proposed §1.30D-1(b)(1) provide that so much of the credit that would be allowed to a taxpayer under section 30D(a) for any taxable year with respect to all new clean vehicles placed in service by the taxpayer during the taxable year (determined without regard to section 30D(c) and proposed §1.30D-1(b)(1)) that is attributable to one or more depreciable vehicles will be treated as a current year general business credit under section 38 of the Code that is listed in section 38(b)(30) for such taxable year (and not allowed under section 30D(a)). Depreciable vehicles may also be eligible for the credit for qualified commercial clean vehicles under section 45W. However, under section 45W(d)(3), no credit is allowed under section 45W for a vehicle for which a section 30D credit was allowed to any taxpayer for any taxable year. In addition, proposed §1.30D-1(b)(2) would require the apportionment of any section 30D credit with respect to a depreciable vehicle the business use of which is less than 50 percent of a taxpayer's total use of the vehicle for the taxable

year in which the vehicle is placed in service. The portion of the section 30D credit corresponding to the percentage of the taxpayer's business use of the depreciable vehicle would be treated as a general business credit under section 30D(c)(1) and proposed §1.30D-1(b)(1), and the portion of the section 30D credit corresponding to the percentage of the taxpayer's personal use of such vehicle would be treated as a section 30D credit allowed under section 30D(a) pursuant to section 30D(c)(2) and proposed §1.30D-1(b)(3).

Section 30D(c)(2) and proposed §1.30D-1(b)(3) provide that the section 30D credit allowed for any taxable year (determined after application of section 30D(c)(1) and proposed §1.30D-1(b)(1)) is treated as a nonrefundable personal credit allowable under subpart A of part IV of subchapter A of chapter 1 (subpart A) for such taxable year. Section 26 of the Code limits the aggregate amount of credits allowed to a taxpayer by subpart A based on the taxpayer's tax liability. Under section 26(a), the aggregate amount of credits allowed to a taxpayer by subpart A cannot exceed the sum of (i) the taxpayer's regular tax liability (as defined in section 26(b)) for the taxable year reduced by the foreign tax credit allowable under section 27 of the Code, and (ii) the alternative minimum tax imposed by section 55(a) for the taxable year.

II. Definitions

Proposed §1.30D-2 clarifies the definitions of certain terms related to the statutory requirements of the section 30D credit. The definitions contained in proposed §1.30D-2 were substantially described in Notice 2023-1, as modified by Notice 2023-16.

A. Final assembly

Under section 30D(d)(1)(G) and section 13401(k)(2) of the IRA, any vehicle sold after August 16, 2022, must undergo its final assembly in North America to be eligible for the section 30D credit. Section 30D(d)(5) defines “final assembly” as the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer

or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle.

Proposed §1.30D-2(b) would provide that, for purposes of section 30D(d)(5) of the Code, “final assembly” means the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle. To establish where final assembly of a new clean vehicle occurred, the taxpayer could rely on the following information: (1) the vehicle’s plant of manufacture as reported in the vehicle identification number (VIN) pursuant to 49 CFR 565; or (2) the final assembly point reported on the label affixed to the vehicle as described in 49 CFR 583.5(a)(3).

The vehicle’s plant of manufacture as reported in the VIN means the plant where the manufacturer affixes the VIN. See 49 CFR 565.12. The plant of manufacture is reported in the VIN pursuant to 49 CFR 565.15(d)(2). The Department of Energy, Alternative Fuels Data Center (AFDC), and the Department of Transportation, National Highway Traffic Safety Administration (NHTSA), each provide a VIN decoder to the public, which can be used to identify a vehicle’s plant of manufacture. AFDC, VIN Decoder, <https://afdc.energy.gov/laws/electric-vehicles-for-tax-credit> (last accessed March 28, 2023); NHTSA, VIN Decoder, <https://www.nhtsa.gov/vin-decoder> (last accessed March 28, 2023).

Labeling requirements in 49 CFR 583.5 require the final assembly point to be reported on the label affixed to a passenger motor vehicle. Final assembly point means the plant, factory, or other place, which is a building or series of buildings in close proximity, where a new passenger motor vehicle is produced or assembled from passenger motor vehicle equipment and from which such vehicle is delivered to a dealer or importer in such a condition that all component parts necessary to the mechanical operation of such automobile

are included with such vehicle whether or not such component parts are permanently installed in or on such vehicle. For multi-stage vehicles, the final assembly point is the location where the first stage vehicle is assembled. 49 CFR 583.4(b)(5).

B. North America

Proposed §1.30D-2(d) would provide that for purposes of section 30D(d)(1)(G), “North America” means the territory of the United States, Canada, and Mexico as defined in 19 CFR part 182, Appendix A, § 1(1). The territory described in 19 CFR part 182, Appendix A, §1(1), which provides rules of origin regulations for the United States-Mexico-Canada Agreement, is defined as (a) for Canada, the following zones or waters as determined by its domestic law and consistent with international law: (i) The land territory, air space, internal waters, and territorial sea of Canada, (ii) the exclusive economic zone of Canada, and (iii) the continental shelf of Canada; (b) for Mexico, (i) the land territory, including the states of the Federation and Mexico City, (ii) the air space, and (iii) the internal waters, territorial sea, and any areas beyond the territorial seas of Mexico within which Mexico may exercise sovereign rights and jurisdiction, as determined by its domestic law, consistent with the *United Nations Convention on the Law of the Sea*, done at Montego Bay on December 10, 1982; and (c) for the United States, (i) the customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico, (ii) the foreign trade zones located in the United States and Puerto Rico, and (iii) the territorial sea and air space of the United States and any area beyond the territorial sea within which, in accordance with customary international law as reflected in the *United Nations Convention on the Law of the Sea*, the United States may exercise sovereign rights or jurisdiction.

C. Manufacturer’s suggested retail price (MSRP)

Section 30D(f)(11)(A) provides that no section 30D credit is allowed for a vehicle with an MSRP in excess of the applicable limitation. Section 30D(f)(11)(B) pro-

vides that the “applicable limitation” for each vehicle classification is as follows: in the case of a van, \$80,000; in the case of a sport utility vehicle, \$80,000; in the case of a pickup truck, \$80,000; and in the case of any other vehicle, \$55,000.

Proposed §1.30D-2(c) would provide that for purposes of section 30D(f)(11)(A), “manufacturer’s suggested retail price” means the sum of: (A) the retail price of the automobile suggested by the manufacturer as described in 15 U.S.C. 1232(f)(1); and (B) the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment, physically attached to such automobile at the time of its delivery to the dealer, which is not included within the price of such automobile as stated pursuant to 15 U.S.C. 1232(f)(1), as described in 15 U.S.C. 1232(f)(2). This price information is reported on the label that is affixed to the windshield or side window of the vehicle, as described in 15 U.S.C. 1232.

D. Vehicle classifications

For purposes of applying the MSRP limitation under section 30D(f)(11)(A), section 30D(f)(11)(C) authorizes the Secretary to prescribe such regulations or other guidance as the Secretary determines necessary to determine vehicle classifications using criteria similar to that employed by the Environmental Protection Agency (EPA) and the Department of Energy to determine size and class of vehicles.

The Treasury Department and the IRS originally announced an intent to propose use of the vehicle classification standards in 40 CFR 600.002 in Notice 2023-1; however, in Notice 2023-16, the Treasury Department and the IRS modified the expected vehicle classification standard set forth in Notice 2023-1 to instead provide that a vehicle’s vehicle classification is expected to be determined consistent with the fuel economy labeling regime described in 40 CFR 600.315-08. Although the EPA vehicle classification standards in both regimes are similar, the fuel economy labeling regime provides for EPA discretion to assign so-called “crossover” vehicles to a class on a case-by-case basis, taking into account consumer perspective and the marketing segment

targeted by the manufacturer. EPA, “Fuel Economy Labeling of Motor Vehicles: Revisions to Improve Calculation of Fuel Economy Estimates,” 71 Fed. Reg. 77872, 77913 (Dec. 27, 2006). In addition, the proposed adoption of the fuel economy labeling regime would align the vehicle classification standards for purposes of the section 30D credit with the classification displayed on the vehicle label and on the consumer-facing website FuelEconomy.gov, making it easier for consumers to know which vehicles qualify under the applicable MSRP limitation.

Proposed §1.30D-2(g) would provide that for purposes of section 30D(f)(11)(B), a vehicle’s vehicle classification is to be determined consistent with the rules and definitions provided in 40 CFR 600.315-08 for vans, sport utility vehicles, pickup trucks, and other vehicles. Specifically, “van” means a vehicle classified as a van or minivan under 40 CFR 600.315-08(a)(2)(iii) and (iv), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315-08(a)(3)(ii); “sport utility vehicle” means a vehicle classified as a small sport utility vehicle or standard sport utility vehicle under 40 CFR 600.315-08(a)(2)(v) and (vi), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315-08(a)(3)(ii); “pickup truck” means a vehicle classified as a small pickup truck or standard pickup truck under 40 CFR 600.315-08(a)(2)(i) and (ii), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315-08(a)(3)(ii); and “other vehicle” means any vehicle classified in one of the classes of passenger automobiles listed in 40 CFR 600.315-08(a)(1), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315-08(a)(3)(ii).

E. Placed in service

Proposed §1.30D-2(e) would provide that for purposes of the section 30D credit, a new clean vehicle is considered to be placed in service on the date the taxpayer takes possession of the vehicle. This proposed definition is consistent with the meaning of “placed in service” for purposes of other provisions of the Code under which property is considered to be “placed in service” when the property is

“placed in a condition or state of readiness and availability for a specifically assigned function” and as “the date on which the owner of the vehicle took actual possession of the vehicle.” See §§1.46-3(d)(1)(ii) and (4)(i), 1.179-4(e) and 145.4051-1(c)(2); see also §1.1250-4(b)(2); *Consumers Power Co. v. Commissioner*, 89 T.C. 710 (1987); *Noell v. Commissioner*, 66 T.C. 718, 728-729 (1976).

III. The Critical Minerals and Battery Components Requirements

Section 30D(e) of the Code provides requirements for critical minerals and battery components with respect to the battery from which the electric motor of a new clean vehicle draws electricity. The Critical Mineral and Battery Component Requirements apply to applicable critical minerals and battery components, respectively, contained in a battery as defined in proposed §1.30D-3(c)(3).

A. Critical Minerals Requirement

Proposed §1.30D-3(a) would provide the rules for determining compliance with the Critical Minerals Requirement. In general, proposed §1.30D-3(a) is consistent with the framework for the Critical Minerals Requirement that was described in the 30D White Paper. Proposed §1.30D-3(a) would provide a three-step process for determining the percentage of the value of the applicable critical minerals in a battery that contribute toward meeting the Critical Minerals Requirement.

i. Step 1: Determine procurement chains

In the first step for determining compliance with the Critical Minerals Requirement, the manufacturer would need to determine the procurement chain or chains for each applicable critical mineral. Proposed §1.30D-3(c)(14) would define a “procurement chain” as a common sequence of extraction, processing, or recycling activities that occur in a common set of locations, concluding in the production of constituent materials. Proposed §1.30D-3(c)(14) would further clarify that sources of a single applicable critical mineral may have multiple procurement

chains if, for example, one source of the applicable critical mineral undergoes the same extraction, processing, or recycling process in different locations. Each applicable critical mineral procurement chain would need to be evaluated separately pursuant to proposed §1.30D-3(a)(3)(ii).

ii. Step 2: Identify qualifying critical minerals

In the second step for determining compliance with the Critical Minerals Requirement, each applicable critical mineral procurement chain in the battery would need to be evaluated to determine whether critical minerals procured from the chain have been (1) extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or (2) recycled in North America. Applicable critical minerals that satisfy this requirement are considered qualifying critical minerals. Proposed §1.30D-3(c)(17) would define “qualifying critical mineral” as an applicable critical mineral that is extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or recycled in North America. Proposed §1.30D-3(c)(17) would use a “50% of value added test” to determine whether this definition is satisfied. Thus, an applicable critical mineral would be treated as extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, if: (1) 50 percent or more of the value added to the applicable critical mineral by extraction is derived from extraction that occurred in the United States or in any country with which the United States has a free trade agreement in effect; or (2) 50 percent or more of the value added to the applicable critical mineral by processing is derived from processing that occurred in the United States or in any country with which the United States has a free trade agreement in effect. An applicable critical mineral would be treated as recycled in North America if 50 percent or more of the value added to the applicable critical mineral by recycling is derived from recycling that occurred in North America.

The 30D White Paper explained the likely need for transition rules that would

provide manufacturers time to develop the necessary capability to certify compliance with the Critical Minerals Requirement throughout their supply chains—especially given the complexity of battery supply chains and the detailed tracking that would be required—while moving towards more secure and resilient critical mineral supply chains. The proposed 50% of value added test would serve that purpose for vehicles placed in service in 2023 and 2024. For later years, however, the Treasury Department and the IRS anticipate moving to a more stringent test for determining if an applicable critical mineral was extracted or processed in the United States or in any country with which the United States has a free trade agreement in effect, or whether an applicable critical mineral was recycled in North America. This more stringent test would reflect the potential for more detailed tracking throughout manufacturers' supply chains, which may be necessary to certify compliance with the foreign entity of concern requirements described in section 30D(d)(7)(A) (applicable for vehicles placed in service after December 31, 2024).

The Treasury Department and the IRS specifically request comment on the 50% of value added test, and the best approach for adopting a more stringent test for vehicles placed in service in 2025 and later years. For example, under one approach, the standard of 50 percent or more of the value added to the applicable critical mineral for extraction, processing, or recycling in the definition of qualifying critical mineral, could increase incrementally over time (similar to the incremental increase in the applicable critical minerals percentages in section 30D(e)(1)(B) and proposed § 1.30D-3(a)(2)).

Notably, the 50% of value added test would need to be applied separately for each procurement chain of an applicable critical mineral pursuant to proposed § 1.30D-3(a)(3)(ii). For example, lithium that undergoes initial processing activities in a plant in Country A and then is transferred to a plant in Country B to undergo final processing activities, culminating in the lithium being incorporated into a constituent material, would be analyzed under this step together with other lithium moving through the same procurement

chain. However, if some of the lithium in the prior example instead undergoes final processing activities in a plant in Country C instead of Country B, then there would be two procurement chains for lithium: (1) Country A to Country B and (2) Country A to Country C.

Proposed § 1.30D-3(c)(8) would define “extraction” as the activities performed to extract or harvest minerals or natural resources from the ground or a body of water, including, but not limited to, by operating equipment to extract minerals or natural resources from mines and wells, or to extract or harvest minerals or natural resources from the waste or residue of prior extraction. Extraction would conclude when activities are performed to convert raw mined or harvested products or raw well effluent to substances that can be readily transported or stored for direct use in applicable critical mineral processing. Extraction would include the beneficiation or other physical processes that allow the extracted materials, including ores, clays, and brines, to become transportable. Extraction would include the physical processes involved in refining. Extraction would not include the chemical and thermal processes involved in refining.

Proposed § 1.30D-3(c)(13) would define “processing” as the non-physical processes involved in refining of non-recycled substances or materials, including the treating, baking, and coating processes used to convert such substances and materials into constituent materials. Processing would begin when chemical or thermal processes, or the combination of them, are used on extracted minerals or natural resources or manmade minerals or resources to create a new product that, through subsequent steps in the applicable critical minerals supply chain, will be processed into a final constituent material. Processing would include the chemical or thermal processes involved in refining. Processing would not include the physical processes involved in refining.

Proposed § 1.30D-3(c)(6) would define “constituent materials” as materials that contain applicable critical minerals and are employed directly in the manufacturing of battery components. Constituent materials could include, but would not be limited to, powders of cathode active

materials, powders of anode active materials, foils, metals for solid electrodes, binders, electrolyte salts, and electrolyte additives, as required for a battery cell. The definition of constituent materials describes the materials that distinguish the steps of extraction, processing, and recycling of critical minerals from the subsequent steps of manufacturing and assembly of battery components. Constituent materials would be the final products relevant for calculating the value of the applicable critical minerals in the battery.

Constituent materials would mark the end of processing as the point at which no further chemical, physical, or thermal processes are needed to create the final product that is then used in battery component manufacturing. Constituent materials would similarly mark the end of recycling as the point at which no further transformations are needed to create the final product that is then used in battery component manufacturing. All constituent materials contain applicable critical minerals. Once the final constituent material is created, it then is used as an input to a battery component. Some battery components could be made entirely of inputs that do not contain constituent materials. Inputs used to manufacture battery components that do not contain any applicable critical minerals (for example, solvents, conductive additives, etc.) would not be considered to be constituent materials.

Proposed § 1.30D-3(c)(19) would define “recycling” as the series of activities during which recyclable materials containing applicable critical minerals are transformed into specification-grade commodities and consumed in lieu of virgin materials to create new constituent materials; such activities result in new constituent materials contained in the battery from which the electric motor of a new clean vehicle draws electricity. All physical, chemical, and thermal treatments or modifications that convert recycled feedstocks to specification grade constituent materials would be included in recycling. This definition would align with the current methods of direct, hydrometallurgical, or pyrometallurgical recycling that are utilized commercially for reuse of materials for battery applications.

Proposed § 1.30D-3(c)(24) would define “value,” with respect to property,

as the arm's-length price that was paid or would be paid for the property by an unrelated purchaser determined in accordance with the principles of section 482 of the Code and regulations thereunder.

Proposed §1.30D-3(c)(25) would define “value added,” with respect to recycling, extraction, or processing of an applicable critical mineral as the increase in the value of the applicable critical mineral attributable to the relevant activity.

Proposed §1.30D-3(c)(11) would define “North America” as the territory of the United States, Canada, and Mexico as defined in 19 CFR. part 182, Appendix A, § 1(1).

Proposed §1.30D-3(c)(7) would define the term “country with which the United States has a free trade agreement in effect” and list the countries with which the United States has a “free trade agreement in effect.” The term free trade agreement is not defined in the IRA or in the Code. The proposed definition takes into account the term's meaning, use and context in the statute. The IRA's amendments to section 30D expand the incentives for taxpayers to purchase new clean vehicles and for vehicle manufacturers to increase their reliance on supply chains in the United States and in countries with which the United States has reliable and trusted economic relationships. The Treasury Department and the IRS recognize that more secure and resilient supply chains are essential for our national security, our economic security, and our technological leadership. The Treasury Department and the IRS propose to identify the countries with which the United States has free trade agreements in effect for purposes of section 30D consistent with the statute's purposes of promoting reliance on such supply chains and of providing eligible consumers with access to tax credits for the purchase of new clean vehicles.

Based on these considerations, the Treasury Department and the IRS propose criteria the Secretary would consider in

identifying these countries. As set forth in proposed §1.30D-3(c)(7)(i), those criteria would include whether an agreement between the United States and another country, as to the critical minerals contained in electric vehicle batteries or more generally, and in the context of the overall commercial and economic relationship between that country and the United States: (A) reduces or eliminates trade barriers on a preferential basis, (B) commits the parties to refrain from imposing new trade barriers, (C) establishes high-standard disciplines in key areas affecting trade (such as core labor and environmental protections), and/or (D) reduces or eliminates restrictions on exports or commits the parties to refrain from imposing such restrictions on exports.

Applying those factors, the proposed regulations include countries with which the United States has comprehensive free trade agreements (that is, agreements covering substantially all trade in goods and services between the parties, including trade in critical minerals). These are Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, and Singapore. In addition, the Treasury Department and the IRS also propose to include additional countries that the Secretary identifies after considering the factors listed in proposed §1.30D-3(c)(7)(i). One example of such a country is Japan, with which the United States recently concluded a Critical Minerals Agreement (CMA)¹ containing robust obligations to help ensure free trade in critical minerals, including a commitment to refrain from imposing duties on exports of critical minerals that are currently essential to the electric vehicle battery supply chain, a commitment for the United States and Japan to confer on investments in this sector that may affect national security, and detailed undertakings related to the enforcement of labor and environmen-

tal laws related to trade in those critical minerals. The CMA was concluded in the context of an earlier trade agreement the United States concluded with Japan in 2019,² a related 2019 agreement on digital trade,³ and the U.S.-Japan Partnership on Trade announced in November 2021.⁴ The Treasury Department and the IRS have consulted with the U.S. Trade Representative in applying the proposed factors here.

Based on an evaluation of the criteria in proposed §1.30D-3(c)(7)(i), the Treasury Department and the IRS would make any necessary amendments to the list in proposed §1.30D-3(c)(7)(ii), including adding any additional countries as any new qualifying international agreements enter into force and the Secretary determines that the factors have been met. The Treasury Department and the IRS would similarly make any necessary amendments based on the modification, termination, or expiration of any previously identified free trade agreements. Proposed § 1.30D-3(c)(7)(iii) would provide that the list of countries in proposed § 1.30D-3(c)(7)(ii) may be revised and updated through appropriate publication in the *Federal Register* or in the *Internal Revenue Bulletin*. The treatment of any given country under this overall approach is independent from the inclusion or exclusion of any other.⁵

The Treasury Department and the IRS seek comment on the proposed criteria for identifying countries with which the United States has free trade agreements in effect, other potential approaches for identifying those countries, and the list of countries set forth in proposed §1.30D-3(c)(7)(ii).

iii. Step 3: Calculate qualifying critical mineral content

The third step for determining compliance with the Critical Minerals Requirement would involve the calculation of the percentage of the value of qualifying critical minerals contained in

¹Agreement Between the Government of the United States of America and the Government of Japan on Strengthening Critical Minerals Supply Chains, concluded March 28, 2023, <https://ustr.gov/sites/default/files/2023-03/US%20Japan%20Critical%20Minerals%20Agreement%202023%2003%2028.pdf>.

²Trade Agreement Between the United States of America and Japan, concluded October 7, 2019, https://ustr.gov/sites/default/files/files/agreements/japan/Trade_Agreement_between_the_United_States_and_Japan.pdf.

³Agreement Between the United States of America and Japan Concerning Digital Trade, concluded October 7, 2019, https://ustr.gov/sites/default/files/files/agreements/japan/Agreement_between_the_United_States_and_Japan_concerning_Digital_Trade.pdf.

⁴Office of United States Trade Representative, United States and Japan Announce the Formation of the U.S.-Japan Partnership on Trade, Nov. 17, 2021, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/november/united-states-and-japan-announce-formation-us-japan-partnership-trade-0>.

⁵This independent treatment is consistent with proposed §1.30D-3(c)(e).

a battery. The proposed regulations refer to this percentage as the “qualifying critical mineral content” and define that term under proposed §1.30D-3(c)(18) as the percentage of the value of the applicable critical minerals contained in the battery from which the electric motor of a new clean vehicle draws electricity that were extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or were recycled in North America. Under proposed §1.30D-3(a)(3)(i), qualifying critical mineral content would be calculated as the percentage that results from dividing the total value of qualifying critical minerals by the total value of critical minerals. Proposed §1.30D-3(c)(23) would define “total value of qualifying critical minerals” as the sum of the values of all the qualifying critical minerals contained in a battery described in proposed §1.30D-3(a)(1). Proposed §1.30D-3(c)(22) would define “total value of critical minerals” as the sum of the values of all applicable critical minerals contained in a battery described in proposed §1.30D-3(a)(1).

Proposed §1.30D-3(a)(3)(iii) would require qualified manufacturers to select a date for determining the values associated with the total value of qualifying critical minerals (determined separately for each procurement chain) and the total value of critical minerals. Such date would need to be after the final processing or recycling step for the applicable critical minerals relevant to the certification described in section 30D(e)(1)(A) of the Code. This date would need to be uniformly applied for all applicable critical minerals contained in the battery. Proposed §1.30D-3(a)(15) would define a qualified manufacturer as a manufacturer described in section 30D(d)(3) of the Code.

Proposed §1.30D-3(a)(3)(iv) would provide that a qualified manufacturer may determine qualifying critical mineral content based on the value of the applicable critical minerals actually contained in the battery of a specific vehicle. Alternatively, for purposes of calculating the qualifying critical mineral content for batteries in a group of vehicles, a qualified manufacturer could average the qualifying critical mineral content calculation over a lim-

ited period of time (for example, a year, quarter, or month) with respect to vehicles from the same model line, plant, class, or some combination of thereof, with final assembly (as defined in section 30D(d)(5) of the Code and proposed §1.30D-2(b)) within North America. The Treasury Department and the IRS seek comment on whether to include any more specific conditions or limitations on this ability to average these calculations

The percentage of qualifying critical minerals content that is calculated in Step 3 would ultimately be compared with the relevant applicable critical minerals percentage provided in proposed §1.30D-3(a)(2) to determine whether a vehicle satisfies the Critical Minerals Requirement described in section 30D(e)(1)(A) of the Code.

B. Battery Components Requirement

Proposed §1.30D-3(b) would provide the rules for determining compliance with the Battery Components Requirement. In general, proposed §1.30D-3(b) is consistent with the framework for the Battery Components Requirement that was described in the 30D White Paper. Proposed §1.30D-3(b) would provide a four-step process for determining the percentage of the value of the battery components in a battery that contribute toward meeting the Battery Components Requirement.

i. Step 1: Identify components that are manufactured or assembled in North America

In the first step for determining compliance with the Battery Components Requirement, qualified manufacturers would need to determine whether each battery component in a battery was manufactured or assembled in North America. Such components are referred to in the proposed regulations as “North American battery components” and are defined in proposed §1.30D-3(c)(12) as a battery component substantially all of the manufacturing or assembly of which occurs in North America, without regard to the location of the manufacturing or assembly activities of the components that make up the particular battery component.

Proposed §1.30D-3(c)(3) would define “battery,” for purposes of a new clean vehicle, as a collection of one or more battery modules, each of which has two or more electrically configured battery cells in series or parallel, to create voltage or current. The term “battery” would 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 of battery is consistent with the statute because battery modules and cells are the sources “from which the electric motor of such vehicle draws electricity.” Sections 30D(e)(1)(A) and (2)(A). The battery module is the end point for the purpose of calculating the value of battery components.

Proposed §1.30D-3(c)(4) would define “battery cell” as a combination of battery components (other than battery cells) capable of electrochemically storing energy from which the electric motor of a new clean vehicle draws electricity. This definition of battery cell would encompass the smallest combination of battery components necessary for the function of energy storage.

Proposed §1.30D-3(c)(5) would define “battery component” as a component that forms part of a battery and which is manufactured or assembled from one or more components or constituent materials that are combined through industrial, chemical, and physical assembly steps. Battery components would include, but not be limited to, a cathode electrode, anode electrode, solid metal electrode, separator, liquid electrolyte, solid state electrolyte, battery cell, and battery module. Constituent materials would not be considered a type of battery component, although constituent materials could be manufactured or assembled into battery components. Some battery components could be made entirely of inputs that do not contain constituent materials. Battery components would include any piece of the assembled battery cell that contribute to electrochemical energy storage.

Proposed §1.30D-3(c)(10) would define “manufacturing,” with respect to a battery component, as the industrial and chemical steps taken to produce a battery

component. Manufacturing would use industrial and chemical steps starting with constituent materials and other battery components that do not contain constituent materials to create a new battery component.

Proposed §1.30D-3(c)(2) would define “assembly,” with respect to battery components, as the process of combining battery components into battery cells and battery modules.

ii. Step 2: Determine the incremental value of each battery component and North American battery components

In the second step for determining compliance with the Battery Components Requirement, qualified manufacturers would need to determine the incremental value for each battery component. The resulting incremental value for a battery component would be attributable to North America if the battery component is a “North American battery component” as defined in proposed §1.30D-3(c)(12).

Proposed §1.30D-3(c)(9) would define “incremental value,” with respect to a battery component, as the value (as defined in proposed §1.30D-3(c)(24)) determined by subtracting from the value of that battery component the value of the manufactured or assembled battery components, if any, that are contained in that battery component.

Proposed §1.30D-3(c)(20) would define “total incremental value of North American battery components” as the sum of the incremental values of each North American battery component contained in a battery described in proposed §1.30D-3(b)(1).

iii. Step 3: Determine the total incremental value of battery components

In the third step for determining compliance with the Battery Components Requirement, qualified manufacturers would need to total the incremental value of battery components. Proposed §1.30D-3(c)(21) would define “total incremental value of battery components” as the sum of the incremental values of each battery component contained in a battery described in proposed §1.30D-3(b)(1).

The total incremental value of battery components could also be calculated by totaling the value of each battery module in the battery.

iv. Step 4: Calculate the qualifying battery component content

In the fourth step for determining compliance with the Battery Components Requirement, qualified manufacturers would need to determine the qualifying battery component content. Proposed §1.30D-3(c)(16) would define “qualifying battery component content” as the percentage of the value of the battery components contained in the battery from which the electric motor of a new clean vehicle draws electricity that were manufactured or assembled in North America. Proposed §1.30D-3(b)(3)(i) would provide that the qualifying battery component content is the percentage that results from dividing the total incremental value of North American battery components (determined in step 2) by the total incremental value of battery components (determined in step 3).

Proposed §1.30D-3(b)(3)(ii) would require qualified manufacturers to select a date for determining the values associated with the total incremental value of North American battery components and the total incremental value of battery components. Such date would need to be after the last manufacturing or assembly step for the battery components relevant to the certification described in section 30D(e)(2)(A) of the Code. This date must be uniformly applied for all battery components contained in the battery.

Proposed §1.30D-3(b)(3)(iii) would provide that a qualified manufacturer may determine qualifying battery component content based on the incremental values of the battery components actually contained in the battery of a specific vehicle. Alternatively, for purposes of calculating the qualifying battery component content for batteries in a group of vehicles, a qualified manufacturer could average the qualifying battery component content calculation over a limited period of time (for example, a year, quarter, or month) with respect to vehicles from the same model line, plant, class, or some combination of thereof, with final assembly (as defined in sec-

tion 30D(d)(5) of the Code and proposed §1.30D-2(a)) within North America. The Treasury Department and the IRS seek comment on whether to include any more specific conditions or limitations on this ability to average these calculations.

The percentage of qualifying battery component content that would be calculated in Step 4 would ultimately be compared with the relevant applicable battery components percentage provided in proposed §1.30D-3(b)(2) to determine whether a vehicle satisfies the Battery Components Requirement described in section 30D(e)(2)(A) of the Code.

The Treasury Department and the IRS request comments on the Critical Mineral and Battery Component Requirements as they would be implemented in proposed §1.30D-3, including the distinction between processing of applicable critical minerals and manufacturing and assembly of battery components, and related definitions.

C. Excluded entities

Section 30D(d)(7) of the Code excludes from the definition of “new clean vehicle” any vehicle placed in service after December 31, 2024, with respect to which any of the applicable critical minerals contained in the battery of such vehicle (as described in section 30D(e)(1)(A)) were extracted, processed, or recycled by a foreign entity of concern (as defined in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5))), or any vehicle placed in service after December 31, 2023, with respect to which any of the components contained in the battery of such vehicle (as described in section 30D(e)(2)(A)) were manufactured or assembled by a foreign entity of concern (as so defined). The Treasury Department and the IRS intend to issue guidance with respect to section 30D(d)(7) at a later date.

IV. Special Rules

Proposed §1.30D-4 would provide special rules with respect to the section 30D credit.

A. No Double Benefit

Section 30D(f)(2) and proposed §1.30D-4(a)(1) would provide that the

amount of any deduction or other credit allowable under chapter 1 for a vehicle for which a section 30D credit is allowable must be reduced by the amount of the section 30D credit allowed under section 30D(a) for such vehicle determined without regard to section 30D(c), which may treat all or a portion of the aggregate credit allowed under section 30D(a) as a current year general business credit under section 38(b).

Proposed §1.30D-4(a)(2) would provide that a section 30D credit that has been allowed with respect to a vehicle in a taxable year before the taxable year in which a credit under section 25E is allowable for that vehicle does not reduce the amount of the allowable section 25E credit. Accordingly, a taxpayer who otherwise satisfies the requirements of section 25E would be eligible to claim the section 25E credit for a vehicle for which another taxpayer previously claimed the section 30D credit.

Proposed §1.30D-4(a)(3) would provide that no credit is allowed under section 45W with respect to any vehicle for which a credit was allowed under section 30D. This rule, which is based on section 45W(d)(3), precludes both the section 30D credit and the section 45W credit from being allowed for the same vehicle, whether in the same or different taxable years.

B. Limitation based on modified adjusted gross income

Section 30D(f)(10) and proposed §1.30D-4(b) would provide that no section 30D(a) credit is allowed for any taxable year if (i) the lesser of (I) the modified AGI of the taxpayer for such taxable year or (II) the modified AGI of the taxpayer for the preceding taxable year exceeds (ii) the threshold amount (Modified AGI Limitation). The threshold amount is \$300,000 in the case of a joint return or a surviving spouse (as defined in section 2(a) of the Code), \$225,000 in the case of a head of household (as defined in section 2(b) of the Code), and \$150,000 for all other taxpayers. “Modified adjusted gross income” is defined in section 30D(f)(10)(C) as the taxpayer’s AGI increased by any amount excluded from gross income under sections 911, 931, or 933

of the Code. Proposed §1.30D-4(b)(4) provides that if the taxpayer’s filing status changes (for example, from single to head of household) in this two-year period, the taxpayer satisfies the Modified AGI Limitation if the taxpayer’s modified AGI does not exceed the threshold amount in either taxable year based on the applicable filing status for that taxable year.

Proposed §1.30D-4(b)(5)(i) would provide that, except as provided in proposed §1.30D-4(b)(5)(ii), in the case of a new clean vehicle that is placed in service by a corporation or other taxpayer that is not an individual for whom AGI is computed under section 62, the Modified AGI Limitation does not apply. Corporations and such other taxpayers do not have AGI computed under section 62, so the special rule in section 30D(f)(10) establishing a Modified AGI Limitation does not apply to these taxpayers.

Proposed §1.30D-4(b)(5)(ii) would provide that in the event that the new clean vehicle is placed in service by a partnership or an S corporation, and the section 30D credit is claimed by individuals who are direct or indirect partners of that partnership or shareholders of that S corporation, the Modified AGI Limitation will apply to those partners or shareholders. The Treasury Department and the IRS request comments on whether a similar rule should be provided for trusts or other types of entities that place in service a new clean vehicle.

C. Multiple owners and passthrough entity ownership of a single vehicle

In certain instances, multiple taxpayers may purchase, place in service, and be titled as owners of a single vehicle. For example, a married couple that files separate tax returns may jointly purchase and take possession of a new clean vehicle that qualifies for the section 30D credit and both spouses may be titled as owners of the vehicle. However, the structure of section 30D provides for one taxpayer to claim the section 30D credit per vehicle placed in service. See generally section 30D(a), (b), (f)(8), (f)(9) and section 6213(g)(2)(T) of the Code. Section 30D does not contain rules for allocation or proration of the section 30D credit with respect to a single vehicle to multiple

taxpayers placing that vehicle in service, and such an allocation or proration would present challenges from a tax administration perspective.

Proposed §1.30D-4(c)(1) would provide that, except as provided in proposed §1.30D-4(c)(2), the amount of the section 30D credit attributable to a new clean vehicle may be claimed on only one tax return. In the event multiple owners place in service a new clean vehicle, no allocation or proration of the credit would be available. Proposed §1.30D-4(c)(3)(i) would provide that the name and taxpayer identification number of the owner claiming the credit under section 30D(a) should be listed on the seller’s report pursuant to section 30D(d)(1)(H). Accordingly, multiple owners of a new clean vehicle would inform the seller which owner will claim the section 30D credit so that the seller can identify that taxpayer on the seller’s report. The credit would be allowed only on the tax return of the owner listed in the seller’s report.

Proposed §1.30D-4(c)(2) would provide that in the case of a new clean vehicle placed in service by a partnership or S corporation, while the partnership or S corporation is the vehicle owner, the section 30D 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 partners or shareholder(s). Proposed §1.30D-4(c)(3)(i) would provide that in the case of a new clean vehicle placed in service by a partnership or S corporation, the name and tax identification number of the partnership or S corporation that placed the new clean vehicle in service should be listed on the seller’s report pursuant to section 30D(d)(1)(H).

V. Severability

If any provision in this proposed rulemaking is held to be invalid or unenforceable facially, or as applied to any person or circumstance, it shall be severable from the remainder of this rulemaking, and shall not affect the remainder thereof, or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

Effect on Other Documents

This proposed rulemaking hereby makes IRS Notices 2023-1, 2023-3 I.R.B. 373 and 2023-16, 2023-8 I.R.B. 479 obsolete.

Proposed Applicability Dates

Proposed §1.30D-1 is proposed to apply to new clean vehicles placed in service after the date of publication of the Treasury Decision adopting these rules as final rules in the *Federal Register*.

Proposed § 1.30D-2 is proposed to apply to new clean vehicles placed in service on or after January 1, 2023, for taxable years ending after April 17, 2023. The amendments made to section 30D by the IRA generally apply to vehicles placed in service after December 31, 2022, with certain exceptions. The definitions in proposed § 1.30D-2 were substantially described in Notice 2023-1, which was released on December 29, 2022.⁶ The definitions in proposed § 1.30D-2 generally relate to statutory rules applicable to vehicles placed in service on or after January 1, 2023. These proposed regulations are proposed to apply to vehicles placed in service on or after January 1, 2023, for taxable years ending after the date these proposed regulations are published in the *Federal Register* to improve certainty for taxpayers and to provide clear rules for tax administration.

Proposed §1.30D-3 is proposed to apply to new clean vehicles placed in service after April 17, 2023 for taxable years ending after April 17, 2023. Pursuant to section 13401(a), (e), and (k)(3) of the IRA, the critical minerals and battery components requirements of section 13401(a) and (e) of the IRA amend section 30D with respect to vehicles placed in service after the date on which these proposed regulations are published in the *Federal Register*. Accordingly, the Critical Minerals and Battery Components Requirements in proposed § 1.30D-3 are proposed to apply to vehicles placed in service after the date of publication of these proposed regulations for taxable years ending after the date of publication of these proposed regulations.

Proposed § 1.30D-4 is proposed to apply to new clean vehicles placed in service after the date of publication of the Treasury Decision adopting these rules as final rules in the *Federal Register*.

Taxpayers may rely on these proposed regulations for vehicles placed in service prior to the date final regulations are published in the *Federal Register*, provided the taxpayer follows the proposed regulations in their entirety, and in a consistent manner.

Statement of Availability for IRS Documents

For copies of recently issued Revenue Procedures, Revenue Rulings, Notices, and other guidance published in the Internal Revenue Bulletin, please visit the IRS website at <https://www.irs.gov>.

Special Analyses

I. Regulatory Planning and Review – Economic Analysis

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

These proposed regulations have been designated by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. OIRA has determined that the proposed rulemaking is significant and subject to review under Executive Order 12866 and section 1(b) of the Memorandum of Agreement. Accordingly, the proposed regulations have been reviewed by OMB.

II. Paperwork Reduction Act

Any collection burden associated with rules described in these proposed regulations is previously accounted for in OMB Control Number 1545-2137. These proposed regulations do not alter previously accounted for information collection requirements and do not create new collection requirements. OMB Control Number 1545-2137 covers Form 8936 and Form 8936-A regarding electric vehicle credits, including the new requirement in section 30D(f)(9) to include on the taxpayer's return for the taxable year the VIN of the vehicle for which the section 30D credit is claimed. Revenue Procedure 2022-42 describes the procedural requirements for qualified manufacturers to make periodic written reports to the Secretary to provide information related to each vehicle manufactured by such manufacturer that is eligible for the section 30D credit as required in section 30D(d)(3), including the critical mineral and battery component certification requirements in sections 30D(e)(1)(A) and (e)(2)(A). In addition, Revenue Procedure 2022-42 also provides the procedures for sellers of new clean vehicles to report information required by section 30D(d)(1)(H) for vehicles to be eligible for the section 30D credit. The collections of information contained in Revenue Procedure 2022-42 are described in that document and were submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act under control number 1545-2137.

The requirement to determine the final assembly location in proposed §1.30D-2(b) by relying on (1) the vehicle's plant of manufacture as reported in the vehicle identification number (VIN) pursuant to 49 CFR 565 or (2) the final assembly point reported on the label affixed to the vehicle as described in 49 CFR 583.5(a)(3) is accounted for by the Department of Transportation in OMB Control Numbers 2127-0510 and 2127-0573.

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.

⁶Notice 2023-16, released February 3, 2023, modified Notice 2023-1, regarding the vehicle classification standard set forth in Notice 2023-1 in a manner that allowed additional new clean vehicles to be eligible for the section 30D credit. Notice 2023-16 provided that taxpayers could rely on these modified expected definitions for new clean vehicles placed in service on or after January 1, 2023.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), the Secretary hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act. 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.

The proposed regulations affect two types of business entities: (1) qualified manufacturers that must trace and report on their critical minerals and battery components in order to certify that their new clean vehicles qualify for the section 30D credit, and (2) businesses that may earn the section 30D credit when purchasing and placing in service a new clean vehicle.

While the tracking and reporting of critical minerals and battery components is likely to involve significant administrative costs, according to public filings, all qualified manufacturers had total revenues above \$1B in 2022. There are a total of 21 qualified manufacturers that have indicated that they manufacture vehicles currently eligible for the section 30D credit.⁷ Pursuant to Revenue Procedure 2022-42 and following the publication of these proposed regulations, qualified manufacturers will also have to certify that their vehicles qualify under the Critical Minerals and Battery Components Requirements. The proposed regulations provide definitions and general rules for the section 30D credit, including rules for qualified manufacturers to comply with the Critical Mineral and Battery Component Requirements. Accordingly, the Treasury Department and the IRS intend that the proposed rules provide clarity for qualified manufacturers for consistent application of critical minerals and battery components calculations and for taxpayers purchasing new clean vehicles that qualify for the section 30D credit. The Treasury Department and the IRS have determined that qualified manufacturers do not meet the applicable definition of small entity.

Business purchasers of clean vehicles who take the section 30D credit must satisfy reporting requirements that are largely the same as those faced by individuals accessing the section 30D credit to purchase clean vehicles. Taxpayers will continue to file Form 8936, *Qualified Plug-In Electric Drive Motor Vehicle Credit*, to claim the section 30D credit. As was the case for the section 30D credit prior to amendments made by the IRA, taxpayers can rely on qualified manufacturers to determine if the vehicle being purchased qualifies for the section 30D credit and the credit amount. The estimated burden for individual and business taxpayers filing this form is approved under OMB control number 1545-0074 and 1545-0123. To make it easier for a taxpayer to determine the potential section 30D credit available for a specific vehicle, the proposed regulations provide business entities with tools and definitions to ascertain whether any vehicles purchased would be eligible for the credit. The VIN reporting required by section 30D(f)(9) and described in the proposed regulations was included in prior section 30D reporting.

Accordingly, the Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS request comments that provide data, other evidence, or models that provide insight on this issue.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. In 2023, that threshold is approximately \$198 million. 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.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency (to the extent practicable and permitted by law) from promulgating any regulation that has federalism implications, unless the agency meets the consultation and funding requirements of section 6 of the Executive order, if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law. 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 Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the ADDRESSES heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations, including their economic impact and any alternative approaches that should be considered during the rulemaking process. In addition, the Treasury Department and the IRS request comments on the specific issues noted in the previous sections of this preamble.

Any comments submitted, whether electronically or on paper, will be made available at <https://www.regulations.gov> or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments as prescribed in this preamble under the "DATES" heading. 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*. Announcement 2020-4, 2020-17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

⁷ The list of manufacturers is available at the following IRS website: <https://www.irs.gov/credits-deductions/manufacturers-and-models-for-new-qualified-clean-vehicles-purchased-in-2023-or-after#:~:text=If%20you%20bought%20and%20placed,Internal%20Revenue%20Code%20Section%2030D>.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record-keeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1 INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.30D-1 also issued under 26 U.S.C. 30D.

Section 1.30D-2 also issued under 26 U.S.C. 30D.

Section 1.30D-3 also issued under 26 U.S.C. 30D.

Section 1.30D-4 also issued under 26 U.S.C. 30D and 26 U.S.C. 45W(d)(3).

Par 2. Sections 1.30D-0, 1.30D-1, 1.30D-2, 1.30D-3, and 1.30D-4 are added to read as follows:

Sec.

* * * * *

1.30D-0 Table of contents.

1.30D-1 Credit for new clean vehicles.

1.30D-2 Definitions for purposes of section 30D.

1.30D-3 Critical mineral and battery component requirements.

1.30D-4 Special rules.

* * * * *

§1.30D-0 Table of contents.

This section lists the captions contained in §§1.30D-1 through 1.30D-4.

§1.30D-1 Credit for new clean vehicles.

(a) In general.

(b) Treatment of credit.

(1) Business credit treated as part of general business credit.

(2) Apportionment of section 30D credit.

(3) Personal credit limited based on tax liability.

(c) Severability.

(d) Applicability date.

§1.30D-2 Definitions for purposes of section 30D.

(a) In general.

(b) Final assembly.

(c) Manufacturer's suggested retail price.

(d) North America.

(e) Placed in service.

(f) Section 30D regulations.

(g) Vehicle classifications.

(i) Van.

(ii) Sport utility vehicle.

(iii) Pickup truck.

(iv) Other vehicle.

(h) Severability.

(i) Applicability date.

§1.30D-3 Critical mineral and battery component requirements.

(a) Critical minerals requirement.

(1) In general.

(2) Applicable critical minerals percentage.

(3) Determining qualifying critical mineral content.

(i) In general.

(ii) Separate determinations required for each procurement chain.

(iii) Time for determining value.

(iv) Application of qualifying critical mineral content to vehicles.

(b) Battery components requirement.

(1) In general.

(2) Applicable battery components percentage.

(3) Determining qualifying battery component content.

(i) In general.

(ii) Time for determining value.

(iii) Application of qualifying battery component content to vehicles.

(c) Definitions.

(1) Applicable critical mineral.

(2) Assembly.

(3) Battery.

(4) Battery cell.

(5) Battery component.

(6) Constituent materials.

(7) Country with which the United States has a free trade agreement in effect.

(8) Extraction.

(9) Incremental value.

(10) Manufacturing.

(11) North America.

(12) North American battery component.

(13) Processing

(14) Procurement chain.

(15) Qualified manufacturer.

(16) Qualifying battery component content.

(17) Qualifying critical mineral.

(18) Qualifying critical mineral content.

(19) Recycling.

(20) Total incremental value of North American battery components.

(21) Total incremental value of battery components.

(22) Total value of critical minerals.

(23) Total value of qualifying critical minerals.

(24) Value.

(25) Value added.

(d) Excluded entities.

(e) Severability.

(f) Applicability date.

§1.30D-4 Special rules

(a) No double benefit.

(1) In general.

(2) Application to credit for previously-owned clean vehicles under section 25E.

(3) Application to credit for qualified clean vehicles under section 45W.

(b) Limitation based on modified adjusted gross income.

(1) In general.

(2) Threshold amount.

(3) Modified adjusted gross income.

(4) Special rule for change in filing status.

(5) Application to taxpayers other than individuals.

(i) In general.

(ii) Application to passthrough entities.

(c) Multiple owners and passthrough entity ownership of a single vehicle.

(1) In general.

(2) Passthrough entities.

(3) Seller Reporting.

(i) In general.

(ii) Passthrough entities.

(4) Example.

(d) Severability.

(e) Applicability date.

§1.30D-1 Credit for new clean vehicles.

(a) *In general.* Section 30D(a) of the Internal Revenue Code (Code) allows

as a credit against the tax imposed by chapter 1 of the Code (chapter 1) for the taxable year of a taxpayer an amount equal to the sum of the credit amounts determined under section 30D(b) with respect to each new clean vehicle purchased by the taxpayer that the taxpayer places in service during the taxable year. For purposes of the section 30D regulations (as defined in §1.30D-2(f)), the term *section 30D credit* means the credit allowable to a taxpayer for a taxable year under section 30D(a) and the section 30D regulations with respect to all vehicles placed in service by the taxpayer during the taxable year. Section 1.30D-2 provides definitions that apply for purposes of section 30D and the section 30D regulations. Section 1.30D-3 provides rules regarding the critical mineral and battery component requirements of section 30D(e). Section 1.30D-4 provides guidance regarding the limitations and special rules in section 30D(f).

(b) *Application with other credits*—(1) *Business credit treated as part of general business credit*—(i) *In general.* Section 30D(c)(1) requires that so much of the section 30D credit that would be allowed under section 30D(a) for any taxable year (determined without regard to section 30D(c) and this paragraph (b)) that is attributable to a depreciable vehicle must be treated as a general business credit under section 38 of the Code that is listed in section 38(b)(30) for such taxable year (and not allowed under section 30D(a)). In the case of a depreciable vehicle the use of which is 50 percent or more business use in the taxable year such vehicle is placed in service, the section 30D credit that would be allowed under section 30D(a) for that taxable year (determined without regard to section 30D(c) and this paragraph (b)) that is attributable to such depreciable vehicle must be treated as a general business credit under section 38 of the Code that is listed in section 38(b)(30) for such taxable year (and not allowed under section 30D(a)). See paragraph (b)(2) of this section for rules applicable in the case of a depreciable vehicle the use of which is less than 50 percent business use in the taxable year such vehicle is placed in service. See paragraph (b)(3) of this section for rules applicable to a section 30D credit allowed under section 30D(a) pursuant to

section 30D(c)(2) or paragraphs (b)(2)(ii) or (b)(3) of this section.

(ii) *Depreciable vehicle.* For purposes of this paragraph (b), a *depreciable vehicle* is a vehicle of a character subject to an allowance for depreciation.

(2) *Apportionment of section 30D credit.* In the case of a depreciable vehicle the business use of which is less than 50 percent of a taxpayer's total use of the vehicle for the taxable year in which the vehicle is placed in service, the taxpayer's section 30D credit for that taxable year with respect to that vehicle must be apportioned as follows:

(i) The portion of the section 30D credit corresponding to the percentage of the taxpayer's business use of the vehicle is treated as a general business credit under section 30D(c)(1) and paragraph (b)(1) of this section (and not allowed under section 30D(a) or paragraph (b)(3) of this section).

(ii) The portion of the section 30D credit corresponding to the percentage of the taxpayer's personal use of the vehicle is treated as a section 30D credit allowed under section 30D(a) pursuant to section 30D(c)(2) and paragraph (b)(3) of this section.

(3) *Personal credit limited based on tax liability.* Section 26 of the Code limits the aggregate amount of credits allowed to a taxpayer by subpart A of part IV of subchapter A of chapter 1 (subpart A) based on the taxpayer's tax liability. Under section 26(a), the aggregate amount of credits allowed to a taxpayer by subpart A cannot exceed the sum of the taxpayer's regular tax liability (as defined in section 26(b)) for the taxable year reduced by the foreign tax credit allowable under section 27 of the Code, and the alternative minimum tax imposed by section 55(a) for the taxable year. Section 30D(c)(2) provides that the section 30D credit allowed under section 30D(a) for any taxable year (determined after application of section 30D(c)(1) and paragraphs (b)(1) and (2) of this section) is treated as a credit allowable under subpart A for such taxable year, and the section 30D credit allowed under section 30D(a) is therefore subject to the limitation imposed by section 26.

(c) *Severability.* The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid,

it is the agencies' intention that the remaining provisions shall continue in effect.

(d) *Applicability date.* This section applies to new clean vehicles placed in service after [DATE OF PUBLICATION OF FINAL RULE].

§1.30D-2 Definitions for purposes of section 30D.

(a) *In general.* The definitions in paragraphs (b) through (g) of this section apply for purposes of section 30D of the Internal Revenue Code (Code) and the section 30D regulations.

(b) *Final assembly* means the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle. To establish where final assembly of a new clean vehicle occurred for purposes of the requirement in section 30D(d)(1)(G) that final assembly of a new clean vehicle occur within North America, the taxpayer may rely on the following information:

(1) The vehicle's plant of manufacture as reported in the vehicle identification number pursuant to 49 CFR 565; or

(2) The final assembly point reported on the label affixed to the vehicle as described in 49 CFR 583.5(a)(3).

(c) *Manufacturer's suggested retail price* means the sum of the prices described in paragraphs (c)(1) and (2) of this section 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.

(1) The retail price of the automobile suggested by the manufacturer as described in 15 U.S.C. 1232(f)(1).

(2) The retail delivered price suggested by the manufacturer for each accessory or item of optional equipment, physically attached to such automobile at the time of its delivery to the dealer, which is not included within the price of such automobile as stated pursuant to 15 U.S.C. 1232(f)(1), as described in 15 U.S.C. 1232(f)(2).

(d) *North America* means the territory of the United States, Canada, and Mexico

as defined in 19 CFR part 182, appendix A, section 1(1).

(e) *Placed in service.* A new clean vehicle is considered to be placed in service on the date the taxpayer takes possession of the vehicle.

(f) *Section 30D regulations* means §1.30D-1, this section, and §§1.30D-3 and 1.30D-4.

(g) *Vehicle classifications*—(1) *In general.* The vehicle classification of a new clean vehicle is to be determined consistent with the rules and definitions provided in 40 CFR 600.315-08 and this paragraph (g) for vans, sport utility vehicles, and pickup trucks, and other vehicles.

(2) *Van* means a vehicle classified as a van or minivan under 40 CFR 600.315-08(a)(2)(iii) and (iv), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315-08(a)(3)(ii).

(3) *Sport utility vehicle* means a vehicle classified as a small sport utility vehicle or standard sport utility vehicle under 40 CFR 600.315-08(a)(2)(v) and (vi), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315-08(a)(3)(ii).

(4) *Pickup truck* means a vehicle classified as a small pickup truck or standard pickup truck under 40 CFR 600.315-08(a)(2)(i) and (ii), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315-08(a)(3)(ii).

(5) *Other vehicle* means any vehicle classified in one of the classes of passenger automobiles listed in 40 CFR 600.315-08(a)(1), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315-08(a)(3)(ii).

(h) *Severability.* The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agencies' intention that the remaining provisions shall continue in effect.

(i) *Applicability date.* This section applies to new clean vehicles placed in service on or after January 1, 2023, for taxable years ending after April 17, 2023.

§1.30D-3 Critical mineral and battery component requirements.

(a) *Critical minerals requirement*—(1) *In general.* The critical minerals requirement described in section 30D(e)(1)(A) of

the Internal Revenue Code (Code), with respect to the battery from which the electric motor of a new clean vehicle draws electricity, is met if the qualifying critical mineral content of such battery is equal to or greater than the applicable critical minerals percentage (as defined in paragraph (a)(2) of this section), as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary of the Treasury or her delegate (Secretary).

(2) *Applicable critical minerals percentage.* For purposes of paragraph (a)(1) of this section, section 30D(e)(1)(B) provides the *applicable critical minerals percentage*, which is based on the year in which a vehicle is placed in service by the taxpayer and set forth in paragraphs (a)(2)(i) through (v) of this section.

(i) In the case of a vehicle placed in service after April 17, 2023, and before January 1, 2024, the applicable critical minerals percentage is 40 percent.

(ii) In the case of a vehicle placed in service during calendar year 2024, the applicable critical minerals percentage is 50 percent.

(iii) In the case of a vehicle placed in service during calendar year 2025, the applicable critical minerals percentage is 60 percent.

(iv) In the case of a vehicle placed in service during calendar year 2026, the applicable critical minerals percentage is 70 percent.

(v) In the case of a vehicle placed in service after December 31, 2026, the applicable critical minerals percentage is 80 percent.

(3) *Determining qualifying critical mineral content*—(i) *In general.* Qualifying critical mineral content with respect to a battery described in paragraph (a)(1) of this section is calculated as the percentage that results from dividing:

(A) The total value of qualifying critical minerals, by

(B) The total value of critical minerals.

(ii) *Separate determinations required for each procurement chain.* The portion of an applicable critical mineral that is a qualifying critical mineral must be determined separately for each procurement chain.

(iii) *Time for determining value.* A qualified manufacturer must select a date for determining the values described in

paragraphs (a)(3)(i)(A) and (B) of this section. Such date must be after the final processing or recycling step for the applicable critical minerals relevant to the certification described in section 30D(e)(1)(A).

(iv) *Application of qualifying critical mineral content to vehicles.* A qualified manufacturer may determine qualifying critical mineral content based on the value of the applicable critical minerals actually contained in the battery of a specific vehicle. Alternatively, for purposes of calculating the qualifying critical mineral content for batteries in a group of vehicles, a qualified manufacturer may average the qualifying critical mineral content calculation over a period of time (for example, a year, quarter, or month) with respect to vehicles from the same model line, plant, class, or some combination of thereof, with final assembly (as defined in section 30D(d)(5) of the Code and §1.30D-2(b)) within North America.

(b) *Battery components requirement*—(1) *In general.* The battery components requirement described in section 30D(e)(2)(A) of the Code, with respect to the battery from which the electric motor of a new clean vehicle draws electricity, is met if the qualifying battery component content of such battery is equal to or greater than the applicable battery components percentage (as defined in paragraph (b)(2) of this section), as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary.

(2) *Applicable battery components percentage.* For purposes of paragraph (b)(1) of this section, section 30D(e)(2)(B) provides the *applicable battery components percentage*, which is based on the year in which a vehicle is placed in service by the taxpayer as set forth in paragraphs (b)(2)(i) through (vi) of this section.

(i) In the case of a vehicle placed in service after April 17, 2023, and before January 1, 2024, the applicable battery components percentage is 50 percent.

(ii) In the case of a vehicle placed in service during calendar year 2024 or 2025, the applicable battery components percentage is 60 percent.

(iii) In the case of a vehicle placed in service during calendar year 2026, the applicable battery components percentage is 70 percent.

(iv) In the case of a vehicle placed in service during calendar year 2027, the applicable battery components percentage is 80 percent.

(v) In the case of a vehicle placed in service during calendar year 2028, the applicable battery components percentage is 90 percent.

(vi) In the case of a vehicle placed in service after December 31, 2028, the applicable battery components percentage is 100 percent.

(3) *Determining qualifying battery component content*—(i) *In general.* Qualifying battery component content with respect to a battery described in paragraph (b)(1) of this section is calculated as the percentage that results from dividing—

(A) The total incremental value of North American battery components, by

(B) The total incremental value of battery components.

(ii) *Time for determining value.* A qualified manufacturer must select a date for determining the incremental values described in paragraphs (b)(3)(i)(A) and (B) of this section. Such date must be after the last manufacturing or assembly step for the battery components relevant to the certification described in section 30D(e)(2)(A) of the Code.

(iii) *Application of qualifying battery component content to vehicles.* A qualified manufacturer may determine qualifying battery component content based on the incremental values of the battery components actually contained in the battery of a specific vehicle. Alternatively, for purposes of calculating the qualifying battery component content for batteries in a group of vehicles, a qualified manufacturer may average the qualifying battery component content calculation over a period of time (for example, a year, quarter, or month) with respect to vehicles from the same model line, plant, class, or some combination of thereof, with final assembly (as defined in section 30D(d)(5) of the Code and §1.30D-2(b)) within North America.

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

(1) *Applicable critical mineral* means an applicable critical mineral as defined in section 45X(c)(6) of the Code.

(2) *Assembly*, with respect to battery components, means the process of com-

bining battery components into battery cells and battery modules.

(3) *Battery*, for purposes of a new clean vehicle, means a collection of one or more battery modules, each of which has two or more electrically configured battery cells 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.

(4) *Battery cell* means a combination of battery components (other than battery cells) capable of electrochemically storing energy from which the electric motor of a new clean vehicle draws electricity.

(5) *Battery component* means a component that forms part of a battery and which is manufactured or assembled from one or more components or constituent materials that are combined through industrial, chemical, and physical assembly steps. Battery components may include, but are not limited to, a cathode electrode, anode electrode, solid metal electrode, separator, liquid electrolyte, solid state electrolyte, battery cell, and battery module. Constituent materials are not considered a type of battery component, although constituent materials may be manufactured or assembled into battery components. Some battery components may be made entirely of inputs that do not contain constituent materials.

(6) *Constituent materials* means materials that contain applicable critical minerals and are employed directly in the manufacturing of battery components. Constituent materials may include, but are not limited to, powders of cathode active materials, powders of anode active materials, foils, metals for solid electrodes, binders, electrolyte salts, and electrolyte additives, as required for a battery cell.

(7) *Country with which the United States has a free trade agreement in effect*—(i) *In general.* The term “country with which the United States has a free trade agreement in effect” means any of those countries identified in paragraph (c)(7)(ii) of this section or that the Secretary may identify in the future. The criteria the Secretary will consider in determining whether to identify a country under

this paragraph (c)(7) include whether an agreement between the United States and that country, as to the critical minerals contained in electric vehicle batteries or more generally, and in the context of the overall commercial and economic relationship between that country and the United States:

(A) Reduces or eliminates trade barriers on a preferential basis;

(B) Commits the parties to refrain from imposing new trade barriers;

(C) Establishes high-standard disciplines in key areas affecting trade (such as core labor and environmental protections); and/or

(D) Reduces or eliminates restrictions on exports or commits the parties to refrain from imposing such restrictions.

(ii) *Free trade agreements in effect.* The countries with which the United States currently has a free trade agreement in effect are: Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Japan, Jordan, South Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, and Singapore.

(iii) *Updates.* The list of countries in paragraph (c)(7)(ii) may be revised and updated through appropriate guidance published in the *Federal Register* or in the *Internal Revenue Bulletin* (see §601.601(d) of this chapter).

(8) *Extraction* means the activities performed to extract or harvest minerals or natural resources from the ground or a body of water, including, but not limited to, by operating equipment to extract or harvest minerals or natural resources from mines and wells, or to extract minerals or natural resources from the waste or residue of prior extraction. Extraction concludes when activities are performed to convert raw mined or harvested products or raw well effluent to substances that can be readily transported or stored for direct use in critical mineral processing. Extraction includes the physical processes involved in refining. Extraction does not include the chemical and thermal processes involved in refining.

(9) *Incremental value*, with respect to a battery component, means the value determined by subtracting from the value of that battery component the value of the manufactured or assembled battery com-

ponents, if any, that are contained in that battery component.

(10) *Manufacturing*, with respect to a battery component, means the industrial and chemical steps taken to produce a battery component.

(11) *North America* means the territory of the United States, Canada, and Mexico as defined in 19 CFR part 182, appendix A, section 1(1).

(12) *North American battery component* means a battery component substantially all of the manufacturing or assembly of which occurs in North America, without regard to the location of the manufacturing or assembly activities of any components that make up the particular battery component.

(13) *Processing* means the non-physical processes involved in the refining of non-recycled substances or materials, including the treating, baking, and coating processes used to convert such substances and materials into constituent materials. Processing includes the chemical or thermal processes involved in refining. Processing does not include the physical processes involved in refining.

(14) *Procurement chain* means a common sequence of extraction, processing, or recycling activities that occur in a common set of locations with respect to an applicable critical mineral, concluding in the production of constituent materials. Sources of a single applicable critical mineral may have multiple procurement chains if, for example, one source of the applicable critical mineral undergoes the same extraction, processing, or recycling process in different locations.

(15) *Qualified manufacturer* means a manufacturer described in section 30D(d)(3) of the Code.

(16) *Qualifying battery component content* means the percentage of the value of the battery components contained in the battery from which the electric motor of a new clean vehicle draws electricity that were manufactured or assembled in North America.

(17) *Qualifying critical mineral* means an applicable critical mineral that is extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or recycled in North America.

(i) An applicable critical mineral is extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, if:

(A) Fifty (50) percent or more of the value added to the applicable critical mineral by extraction is derived from extraction that occurred in the United States or in any country with which the United States has a free trade agreement in effect; or

(B) Fifty (50) percent or more of the value added to the applicable critical mineral by processing is derived from processing that occurred in the United States or in any country with which the United States has a free trade agreement in effect.

(ii) An applicable critical mineral is recycled in North America if 50 percent or more of the value added to the applicable critical mineral by recycling is derived from recycling that occurred in North America.

(18) *Qualifying critical mineral content* means the percentage of the value of the applicable critical minerals contained in the battery from which the electric motor of a new clean vehicle draws electricity that were extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or recycled in North America.

(19) *Recycling* means the series of activities during which recyclable materials containing critical minerals are transformed into specification-grade commodities and consumed in lieu of virgin materials to create new constituent materials; such activities result in new constituent materials contained in the battery from which the electric motor of a new clean vehicle draws electricity.

(20) *Total incremental value of North American battery components* means the sum of the incremental values of each North American battery component contained in a battery described in paragraph (b)(1) of this section.

(21) *Total incremental value of battery components* means the sum of the incremental values of each battery component contained in a battery described in paragraph (b)(1) of this section.

(22) *Total value of critical minerals* means the sum of the values of all appli-

cable critical minerals contained in a battery described in paragraph (a)(1) of this section.

(23) *Total value of qualifying critical minerals* means the sum of the values of all the qualifying critical minerals contained in a battery described in paragraph (a)(1) of this section.

(24) *Value*, with respect to property, means the arm's-length price that was paid or would be paid for the property by an unrelated purchaser determined in accordance with the principles of section 482 of the Code and regulations thereunder.

(25) *Value added*, with respect to recycling, extraction, or processing of an applicable critical mineral, means the increase in the value of the applicable critical mineral attributable to the relevant activity.

(d) *Excluded entities*. [IRS will address excluded entities in the final rule.]

(e) *Severability*. The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agencies' intention that the remaining provisions shall continue in effect.

(f) *Applicability date*. This section applies to new clean vehicles placed in service after April 17, 2023, for taxable years ending after April 17, 2023.

§1.30D-4 Special rules.

(a) *No double benefit*—(1) *In general*. Under section 30D(f)(2) of the Internal Revenue Code (Code), the amount of any deduction or other credit allowable under chapter 1 of the Code for a vehicle for which a credit is allowable under section 30D(a) must be reduced by the amount of the section 30D credit allowed for such vehicle (determined without regard to section 30D(c)).

(2) *Application to credit for previously-owned clean vehicles under section 25E*. A section 30D credit that has been allowed with respect to a vehicle in a taxable year before the year in which a credit under section 25E of the Code is allowable for that vehicle does not reduce the amount allowable under section 25E.

(3) *Application to credit for qualified clean vehicles under section 45W*. Pursuant to section 45W(d)(3) of the Code, no credit is allowed under section 45W with

respect to any vehicle for which a credit was allowed under section 30D.

(b) *Limitation based on modified adjusted gross income*—(1) *In general.* No credit is allowed under section 30D(a) for any taxable year if—

(i) The lesser of —

(A) The modified adjusted gross income of the taxpayer for such taxable year, or

(B) The modified adjusted gross income of the taxpayer for the preceding taxable year, exceeds

(ii) The threshold amount.

(2) *Threshold amount.* For purposes of paragraph (b)(1) of this section, the threshold amount applies to individual taxpayers based on the return filing status for the taxable year, as set forth in paragraphs (b) (2)(i) through (iii) of this section.

(i) In the case of a joint return or a surviving spouse (as defined in section 2(a) of the Code), the threshold amount is \$300,000,

(ii) In the case of a head of household (as defined in section 2(b) of the Code), the threshold amount is \$225,000.

(iii) In the case of a taxpayer not described in paragraph (b)(2)(i) or (ii) of this section, the threshold amount is \$150,000.

(3) *Modified adjusted gross income.* For purposes of section 30D(f)(10) and this paragraph (b), the term *modified adjusted gross income* means adjusted gross income (as defined in section 62 of the Code) increased by any amount excluded from gross income under section 911, 931, or 933 of the Code.

(4) *Special rule for change in filing status.* If the taxpayer's filing status for the taxable year differs from the taxpayer's filing status in the preceding taxable year, the taxpayer satisfies the limitation described in paragraph (b)(1) of this section if the taxpayer's modified AGI does not exceed the threshold amount in either

year based on the applicable filing status for that taxable year.

(5) *Application to taxpayers other than individuals*—(i) *In general.* Except as provided in paragraph (b)(4)(ii) of this section, the modified adjusted gross income limitation of this paragraph (b) does not apply in the case of a new clean vehicle placed in service by a corporation or other taxpayer that is not an individual for whom adjusted gross income is computed under section 62.

(ii) *Application to passthrough entities.* In the case of a new clean vehicle placed in service by a partnership or S corporation, where the section 30D credit is claimed by individuals who are direct or indirect partners of that partnership or shareholders of that S corporation, the modified adjusted gross income limitation of this paragraph (b) will apply to those partners or shareholders.

(c) *Multiple owners and passthrough entity ownership of a single vehicle*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, the amount of the section 30D credit attributable to a new clean vehicle may be claimed on only one tax return. In the event a new clean vehicle is placed in service by multiple owners, no allocation or proration of the section 30D credit is available.

(2) *Passthrough entities.* In the case of a new clean vehicle placed in service by a partnership or S corporation, while the partnership or S corporation is the vehicle owner, the section 30D 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).

(3) *Seller reporting*—(i) *In general.* The name and taxpayer identification number of the vehicle owner claiming the

section 30D credit must be listed on the seller's report pursuant to section 30D(d)(1)(H). The credit will be allowed only on the tax return of the owner listed in the seller's report.

(ii) *Passthrough entities.* In the case of a new clean vehicle placed in service by a partnership or S corporation, the name and tax identification number of the partnership or S corporation that placed the new clean vehicle in service must be listed on the seller's report pursuant to section 30D(d)(1)(H).

(4) *Example.* A married couple jointly purchases and places in service a new clean vehicle that qualifies for the section 30D credit and puts both of their names on the title. When the couple prepares to file their Federal income tax return, they choose to file using the married filing separately filing status. The section 30D credit may only be claimed by one of the spouses on that spouse's tax return, and the other spouse may not claim any amount of the section 30D credit with respect to that new clean vehicle. The spouse that claims the section 30D credit must be the same spouse listed on the seller report received pursuant to section 30D(d)(1)(H).

(d) *Severability.* The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agencies' intention that the remaining provisions shall continue in effect.

(e) *Applicability date.* This section applies to new clean vehicles placed in service after [DATE OF PUBLICATION OF FINAL RULE].

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

(Filed by the Office of the Federal Register March 31, 2023, 8:45 a.m., and published in the issue of the Federal Register for April 17, 2023, TBD FR TBD)

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.
FR—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 2022–27 through 2022–52 is in Internal Revenue Bulletin 2022–52, dated December 27, 2022.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2022–27 through 2022–52 is in Internal Revenue Bulletin 2022–52, dated December 27, 2022.

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