

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, EXCISE TAX

REG-115559-23, page 1082.

This document contains proposed regulations that would provide guidance on how taxpayers will report liability for the excise tax imposed on manufacturers, producers, or importers of certain designated drugs. The proposed regulations affect manufacturers, producers, and importers of designated drugs that sell such drugs during certain statutory periods. The proposed regulations also would except such tax from semimonthly deposit requirements.

ADMINISTRATIVE, INCOME TAX

Notice 2023-69, page 1079.

Notice 2023-69 provides guidance on certain charitable relief to aid victims of the Hawaii wildfires that began on August 8, 2023. Under employer sponsored leave-based donation programs, employees may elect to forgo vacation, sick, or personal leave in exchange for cash payments made by the employer to tax-exempt entities described in § 170(c) of the code that provide aid to victims of the Hawaii wildfires. This notice provides that an employee making the election to forgo such leave will not be treated as having constructively received gross income or wages and cannot claim a charitable contribution deduction under § 170. The employer may deduct the cash payments as business expenses or charitable contributions if the employer otherwise meets the respective requirements of either § 162 or § 170 of the Internal Revenue Code.

Bulletin No. 2023-42
October 16, 2023

INCOME TAX

Notice 2023-65, page 1067.

This notice provides guidance on the new energy efficient home credit under § 45L of the Internal Revenue Code, as amended by § 13304 of Public Law 117-169, 136 Stat. 1818, 1952 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). The amendments made by § 13304 of the IRA apply to qualified new energy efficient homes (qualified homes) acquired after December 31, 2022. The guidance provided in this notice addresses the person that is eligible for the credit, determining the applicable amount of the credit, energy saving requirements, certification requirements, and substantiation requirements. This notice also obsoletes Notice 2008-35, 2008-1 C.B. 647, and Notice 2008-36, 2008-1 C.B. 650, for qualified homes acquired after December 31, 2022.

Notice 2023-67, page 1074.

This notice explains the circumstances under which the four-year replacement period under section 1033(e)(2) is extended for livestock sold on account of drought. The Appendix to this notice contains a list of counties that experienced exceptional, extreme, or severe drought conditions during the 12-month period ending August 31, 2023. Taxpayers may use this list to determine if any extension is available.

Rev. Proc. 2023-35, page 1079.

This revenue procedure provides that a redemption of money market fund shares will not be treated as part of a wash sale under § 1091 of the Internal Revenue Code.

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.

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Part III

Section 45L New Energy Efficient Home Credit

Notice 2023-65

SECTION 1. PURPOSE

This notice provides guidance on the new energy efficient home credit under § 45L of the Internal Revenue Code (Code), as amended by § 13304 of Public Law 117-169, 136 Stat. 1818, 1952 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA).¹ The amendments made by § 13304 of the IRA apply to qualified new energy efficient homes acquired after December 31, 2022. The guidance provided in this notice addresses: (i) the person that is eligible for the credit, (ii) determining the applicable amount of the credit, (iii) energy saving requirements, (iv) certification requirements, and (v) substantiation requirements. This notice also obsoletes Notice 2008-35, 2008-1 C.B. 647, and Notice 2008-36, 2008-1 C.B. 650, which remain applicable for purposes of former § 45L.²

SECTION 2. BACKGROUND

.01 Former § 45L

(1) For purposes of the general business credit under § 38, the new energy efficient home credit under § 45L (§ 45L credit) has been a current year business credit since former § 45L and § 38(b)(23) were enacted by § 1332(a) and (b) of the Energy Policy Act of 2005, Public Law 109-58, 119 Stat. 594, 1024 (August 8, 2005).

(2) Former § 45L(a)(1) provided that, for purposes of § 38, in the case of an “eligible contractor” (defined in former § 45L(b)(1)), the new energy efficient home credit under former § 45L for the taxable year is the “applicable amount” (determined under former § 45L(a)(2)) for each “qualified new energy efficient home” (defined in former § 45L(b)(2))

that is constructed by an eligible contractor and “acquired” (as defined in former § 45L(b)(4)) by a person from such eligible contractor for use as a residence during the taxable year. Former § 45L(c) provided the energy saving requirements that a dwelling unit must have met to be a qualified new energy efficient home, as certified using the method and in the form provided under former § 45L(d). If a credit was allowed under former § 45L in connection with any expenditure for any property, former § 45L(e) provided for certain adjustments to the basis of such property for purposes of subtitle A of the Code. In addition, former § 45L(f) provided that no expenditures taken into account under § 47 or § 48(a) could be taken into account under former § 45L.

(3) As originally enacted, former § 45L(g) provided that the new energy efficient home credit under former § 45L terminated with respect to any qualified new energy efficient home acquired after December 31, 2007. Prior to the IRA, former § 45L(g) was amended 10 times between 2006 and 2020 to extend the termination of the new energy efficient home credit, with the most recent extension terminating for any qualified new energy efficient home acquired after December 31, 2021.

.02 Section 45L as Amended by the IRA

(1) Section 13304 of the IRA amended former § 45L in two ways. First, § 13304(a) and (f) of the IRA retroactively extend the new energy efficient home credit under former § 45L for qualified new energy efficient homes acquired after December 31, 2021, and on or before December 31, 2022.

(2) Second, for qualified new energy efficient homes acquired after December 31, 2022, § 13304 of the IRA amends former § 45L in various respects. Specifically, § 13304 of the IRA:

(a) Changes the applicable amount of the § 45L credit determined under § 45L(a)(2),

(b) Sets new energy saving requirements under § 45L(c),

(c) Adds an exception to the required basis adjustment under § 45L(e),

(d) Redesignates § 45L(g) as § 45L(h) and adds a new § 45L(g) to provide certain prevailing wage requirements, and

(e) Amends newly redesignated § 45L(h) to allow the § 45L credit for qualified new energy efficient homes acquired on or before December 31, 2032.

(3) The IRA did not amend § 45L(a)(1), which continues to provide that, for purposes of § 38, in the case of an eligible contractor, the § 45L credit for the taxable year is the applicable amount for each qualified new energy efficient home that is constructed by an eligible contractor and acquired by a person from such eligible contractor for use as a residence during the taxable year.

(4) Section 45L(a)(2) provides that, for purposes of § 45L(a)(1), the “applicable amount” is:

(a) \$2,500, in the case of a dwelling unit that is eligible to participate in the Energy Star Residential New Construction Program or the Energy Star Manufactured New Homes Program and meets the requirements of § 45L(c)(1)(A) (and does not meet the requirements of § 45L(c)(1)(B)),

(b) \$5,000, in the case of a dwelling unit that is eligible to participate in the Energy Star Residential New Construction Program or the Energy Star Manufactured New Homes Program and meets the requirements of § 45L(c)(1)(B),

(c) \$500, in the case of a dwelling unit that is part of a building eligible to participate in the Energy Star Multifamily New Construction Program and meets the requirements of § 45L(c)(1)(A) (and does not meet the requirements of § 45L(c)(1)(B)), and

(d) \$1,000, in the case of a dwelling unit that is part of a building eligible to participate in the Energy Star Multifamily New Construction Program and meets the requirements of § 45L(c)(1)(B).

(5) Section 45L(b) provides certain definitions for purposes of § 45L. Section 45L(b)(1) defines the term “eligible contractor” as:

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

² All references to “former § 45L” in this notice refer to § 45L as applicable to qualified new energy efficient homes acquired on or before December 31, 2022.

(a) The person that constructed the qualified new energy efficient home, or

(b) In the case of a qualified new energy efficient home that is a manufactured home, the manufactured home producer of such home.

(6) Section 45L(b)(2) defines the term “qualified new energy efficient home” (qualified home) as a dwelling unit:

(a) Located in the United States,

(b) The construction of which is substantially completed after August 8, 2005, and

(c) That meets the energy saving requirements of § 45L(c).

(7) Section 45L(b)(3) provides that the term “construction” includes substantial reconstruction and rehabilitation and § 45L(b)(4) provides that the term “acquire” includes purchase.

(8) Section 45L(c) provides the energy saving requirements that a dwelling unit must meet to be a qualified home. Section 45L(c)(1)(A) generally provides that a dwelling unit meets the requirements of § 45L(c)(1)(A) if such dwelling unit meets the requirements of § 45L(c)(2) or (3) (whichever is applicable). A dwelling unit meets the requirements of § 45L(c)(1)(B) if such dwelling unit is certified as a “zero energy ready home” under the “zero energy ready home program” (ZERH program) of the U.S. Department of Energy (DOE) as in effect on January 1, 2023 (or any successor program determined by the Secretary of the Treasury or her delegate (Secretary)).

(9) A dwelling unit meets the requirements of § 45L(c)(2) if:

(a) In the case of a dwelling unit acquired before January 1, 2025, the dwelling unit meets the Energy Star Single-Family New Homes National Program Requirements 3.1, and the most recent Energy Star Single-Family New Homes Program Requirements applicable to the location of such dwelling unit (as in effect on the later of January 1, 2023, or January 1 of two calendar years prior to the date such dwelling unit was acquired),

(b) In the case of a dwelling unit acquired after December 31, 2024, the dwelling unit meets the Energy Star Single-Family New Homes National Program Requirements 3.2, and the most recent Energy Star Single-Family New Homes Program Requirements applicable

to the location of such dwelling unit (as in effect on the later of January 1, 2023, or January 1 of two calendar years prior to the date such dwelling unit was acquired), or

(c) The dwelling unit meets the most recent Energy Star Manufactured Home National Program Requirements as in effect on the later of January 1, 2023, or January 1 of two calendar years prior to the date such dwelling unit is acquired.

(10) A dwelling unit meets the requirements of § 45L(c)(3) if:

(a) The dwelling unit meets the most recent Energy Star Multifamily New Construction National Program Requirements (as in effect on either January 1, 2023, or January 1 of three calendar years prior to the date the dwelling unit was acquired, whichever is later), and

(b) The dwelling unit meets the most recent Energy Star Multifamily New Construction Regional Program Requirements applicable to the location of such dwelling unit (as in effect on either January 1, 2023, or January 1 of three calendar years prior to the date the dwelling unit was acquired, whichever is later).

(11) Section 45L(d)(1) provides that the certification described in § 45L(c) must be made in accordance with guidance prescribed by the Secretary, after consultation with the Secretary of Energy, and that such guidance is to specify procedures and methods for calculating energy and cost savings. Section 45L(d)(2) provides that any certification described in § 45L(c) must be made in writing in a manner that specifies in readily verifiable fashion the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their respective rated energy efficiency performance.

(12) Section 45L(e) provides that for purposes of subtitle A of the Code (except for purposes of determining the adjusted basis of any building under § 42, relating to the low-income housing credit), if a § 45L credit is allowed in connection with any expenditure for any property, the increase in the basis of such property that would (but for § 45L(e)) result from such expenditure must be reduced by the amount of the § 45L credit so determined. In addition, § 45L(f) provides that for purposes of § 45L, no expenditures taken into

account under § 47 or § 48(a) can be taken into account under § 45L.

(13) Section 45L(g) adds a prevailing wage requirement that increases the amount of the § 45L credit allowed. Section 45L(g)(1) provides that in the case of a “qualifying residence” described in § 45L(a)(2)(B) meeting the prevailing wage requirements in § 45L(g)(2)(A), the § 45L credit amount allowed with respect to such residence is:

(a) \$2,500, in the case of a residence that meets the requirements of § 45L(c)(1)(A) (and does not meet the requirements of § 45L(c)(1)(B)), and

(b) \$5,000, in the case of a residence that meets the requirements of § 45L(c)(1)(B).

(14) The requirements set forth in § 45L(g)(2)(A) are that the taxpayer must ensure that any laborers and mechanics employed by the taxpayer, any contractor, or subcontractor in the construction of any qualified residence are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which the qualified residence is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code, commonly known as the Davis-Bacon Act. Section 45L(g)(2)(B) provides that rules similar to the rules of § 45(b)(7)(B), which pertains to the correction and penalty related to the failure to satisfy prevailing wage requirements, apply for purposes of the prevailing wage requirements under § 45L(g). Section 45L(g)(3) authorizes the Secretary to issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of § 45L(g), including regulations or other guidance that provides for requirements for recordkeeping or information reporting for purposes of administering the requirements of § 45L(g).

(15) As amended and redesignated by § 13304 of the IRA, § 45L(h) provides that § 45L is not applicable to any qualified home acquired after December 31, 2032.

.03 Guidance under Former § 45L

(1) On March 13, 2006, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published Notice

2006-27, 2006-1 C.B. 626, and Notice 2006-28, 2006-1 C.B. 628. Notice 2006-27 and Notice 2006-28 were updated by Announcement 2006-88, 2006-2 C.B. 910, published on November 13, 2006. Notice 2006-27 and Notice 2006-28, as updated, provided guidance on the calculation of a dwelling unit's heating and cooling energy consumption, and on the public list of software programs used to calculate energy consumption. Notice 2006-28 is specific to manufactured homes.

(2) On March 24, 2008, the Treasury Department and the IRS published Notice 2008-35, 2008-1 C.B. 647, and Notice 2008-36, 2008-1 C.B. 650. Notice 2008-35 and Notice 2008-36 superseded Notice 2006-27 and Notice 2006-28, respectively, by substantially republishing the guidance contained in those publications while clarifying the meaning of certain terms used in Notice 2006-27 and Notice 2006-28 and the process for removing software from the list of approved software. Notice 2008-36 is specific to manufactured homes. Because Notice 2008-35 and Notice 2008-36 provide guidance relating to former § 45L, this notice obsoletes Notice 2008-35 and Notice 2008-36 for qualified homes acquired after December 31, 2022. Notice 2008-35 and Notice 2008-36 remain applicable for qualified homes acquired on or before December 31, 2022.

.04 *Post-IRA § 45L Guidance*

(1) On October 24, 2022, the Treasury Department and the IRS published Notice 2022-48, 2022-43 I.R.B. 316, which included a request for comments on the amendments to § 45L by § 13304 of the IRA. Comments received in response to Notice 2022-48 were considered in the drafting of this notice.

(2) On November 30, 2022, the Treasury Department and the IRS published Notice 2022-61 in the *Federal Register* (87 F.R. 73580, corrected in 87 F.R. 75141 (Dec. 7, 2022); 2022-52 I.R.B. 560), which contains initial guidance with respect to the prevailing wage requirements under § 45L(g). On August 30, 2023, the Treasury Department and the IRS published a notice of proposed

rulemaking (REG-100908-23) in the *Federal Register* (88 F.R. 60018) providing proposed regulations that would add proposed rules to the Income Tax Regulations in 26 CFR part 1 related to the prevailing wage requirements, including under § 45L(g) as provided in proposed § 1.45L-3.

SECTION 3. DETERMINING THE APPLICABLE AMOUNT OF THE § 45L CREDIT

.01 *In General.* The § 45L credit for the taxable year is the applicable amount for each qualified home that is constructed by an eligible contractor and acquired by a person from such eligible contractor after December 31, 2022, and before January 1, 2033, for use as a residence during the taxable year for which the taxpayer is claiming the credit under § 45L. The eligible contractor is the taxpayer for purposes of the § 45L credit. See section 5.02 of this notice for the definition of an eligible contractor.

.02 *Applicable Amount for a Dwelling Unit Meeting the Single-Family Home Requirements under § 45L(c)(2)*

(1) *In General.* The applicable amount for a dwelling unit that is eligible to participate in the Energy Star Residential New Construction Program or the Energy Star Manufactured New Homes Program is:

(a) \$2,500, for a dwelling unit that meets the requirements of § 45L(c)(2) and does not meet the requirements of § 45L(c)(1)(B), or

(b) \$5,000, for a dwelling unit that meets the requirements of § 45L(c)(1)(B).

(2) *Eligible to Participate*

(a) A dwelling unit is eligible to participate in the Energy Star Residential New Construction Program if it meets the eligibility requirements provided for this program on the “About ENERGY STAR – Tax Credits for Home Builders” webpage (Energy Star Webpage)³ of the Environmental Protection Agency (EPA).

(b) A dwelling unit is eligible to participate in the Energy Star Manufactured New Homes Program if it meets the eligibility requirements provided for this program on the Energy Star Webpage.

.03 *Applicable Amount for a Dwelling Unit Meeting the Multifamily Home Requirements under § 45L(c)(3)*

(1) *In General.* Except as described in section 3.04 of this notice, the applicable amount for a dwelling unit that is part of a building eligible to participate in the Energy Star Multifamily New Construction Program is:

(a) \$500, for a dwelling unit that meets the requirements of § 45L(c)(3) and does not meet the requirements of § 45L(c)(1)(B), or

(b) \$1,000, for a dwelling unit that meets the requirements of § 45L(c)(1)(B).

(2) *Eligible to Participate.* A dwelling unit is part of a building eligible to participate in the Energy Star Multifamily New Construction Program if the building meets the eligibility requirements provided for this program on the Energy Star Webpage.

.04 *Increase in Applicable Amount for Multifamily Homes Meeting Prevailing Wage Requirements.* In the case of a dwelling unit that is part of a building eligible to participate in the Energy Star Multifamily New Construction Program and that meets the requirements of § 45L(c)(3) (and does not meet the requirements of § 45L(c)(1)(B)) and the prevailing wage requirements of § 45L(g)(2)(A) (Prevailing Wage Requirements), the applicable amount is \$2,500. In the case of a dwelling unit that is part of a building eligible to participate in the Energy Star Multifamily New Construction Program and that meets the requirements of § 45L(c)(1)(B) and the Prevailing Wage Requirements, the applicable amount is \$5,000. Guidance on the Prevailing Wage Requirements is provided in Notice 2022-61 and in the notice of proposed rulemaking (REG-100908-23) published in the *Federal Register* on August 30, 2023.

SECTION 4. ENERGY SAVING REQUIREMENTS

.01 *In General.* To meet the energy saving requirements of § 45L(c), a dwelling unit must meet the single-family home requirements of § 45L(c)(2) or the multifamily home requirements of § 45L(c)

³ Available at https://www.energystar.gov/about/federal_tax_credits/federal_tax_credit_archives/tax_credits_home_builders. Should this link become inactive, visit the current <https://www.energystar.gov> webpage for the requirements at issue.

(3) (whichever is applicable), or meet the zero energy ready home requirements of § 45L(c)(1)(B).

.02 Single-Family Home Requirements under § 45L(c)(2)

(1) *In General.* A dwelling unit meets the energy saving requirements of § 45L(c)(2) if:

(a) In the case of a dwelling unit acquired before January 1, 2025, the dwelling unit meets the Energy Star Single-Family New Homes National Program Requirements 3.1, and the most recent Energy Star Single-Family New Homes Program Requirements applicable to the location of such dwelling unit (as in effect on the later of January 1, 2023, or January 1 of two calendar years prior to the date the dwelling unit was acquired),

(b) In the case of a dwelling unit acquired after December 31, 2024, the dwelling unit meets the Energy Star Single-Family New Homes National Program Requirements 3.2, and the most recent Energy Star Single-Family New Homes Program Requirements applicable to the location of such dwelling unit (as in effect on the later of January 1, 2023, or January 1 of two calendar years prior to the date the dwelling unit was acquired), or

(c) The dwelling unit meets the most recent Energy Star Manufactured Home National Program Requirements as in effect on the later of January 1, 2023, or January 1 of two calendar years prior to the date such dwelling unit is acquired.

(2) Certification

(a) *In General.* As provided on the Energy Star Webpage, the Energy Star Single-Family New Homes National Program Requirements 3.1 and 3.2, the Energy Star Single-Family New Homes Program Requirements applicable to the location of such dwelling unit, and the Energy Star Manufactured Home National Program Requirements (together, the Energy Star Single-Family Home Program Requirements) each require a dwelling unit to be certified as part of meeting such requirements. A dwelling unit will be considered to meet these respective program requirements for purposes of § 45L(c)(2) if it is certified under the rules of such respective program requirements. See section 6 of this notice for more information on certification requirements.

(b) *Certification of Prior Versions through Later Versions.* As provided on the Energy Star Webpage, a dwelling unit certified under a currently effective version of one of the Energy Star Single-Family Home Program Requirements by definition also is certified under any prior version of the same program requirements. For example, a dwelling unit certified under the Energy Star Single-Family New Homes National Program Requirements 3.2 also is considered certified under the Energy Star Single-Family New Homes National Program Requirements 3.1. All effective versions of Energy Star Single-Family Home Program Requirements are provided on the Energy Star Webpage.

(c) *Deemed Certification of National and Regional Program Requirements.* As provided on the Energy Star Webpage, the EPA will deem a dwelling unit certified under certain Energy Star Single-Family New Homes National Program Requirements also to be certified under certain Energy Star Single-Family New Homes Regional Program Requirements, and vice versa. To determine which deemed certifications correspond to which Energy Star Program Requirements, see the Energy Star Webpage.

(3) *Energy Star Single-Family New Homes National Program Requirements.* Energy Star Single-Family New Homes National Program Requirements are provided on the Energy Star Webpage. As provided on the Energy Star Webpage, for purposes of § 45L(c)(2)(A)(ii), if a dwelling unit is not located in one of the States specified by the effective Energy Star Single-Family New Homes Regional Program Requirements, then the most recent Energy Star Single-Family New Homes Program Requirements applicable to the location of the dwelling unit will be the effective Energy Star Single-Family New Homes National Program Requirements.

(4) *Energy Star Single-Family New Homes Regional Program Requirements.* Energy Star Single-Family New Homes Regional Program Requirements are provided on the Energy Star Webpage. As provided on the Energy Star Webpage, for purposes of § 45L(c)(2)(A)(ii), if a dwelling unit is located in one of the States specified by the effective Energy Star Single-Family New Homes Regional

Program Requirements, then the most recent Energy Star Single-Family New Homes Program Requirements applicable to the location of a dwelling unit will be the Energy Star Single-Family New Homes Regional Program Requirements that apply to the dwelling unit. To determine which Energy Star Single-Family New Homes Regional Program Requirements are in effect on the later of January 1, 2023, or January 1 of two calendar years prior to the date the dwelling unit was acquired, see the Energy Star Webpage.

(5) *Energy Star Manufactured Home National Program Requirements.* Energy Star Manufactured Home National Program Requirements are provided on the Energy Star Webpage. To determine which Energy Star Manufactured Home National Program Requirements are in effect on the later of January 1, 2023, or January 1 of two calendar years prior to the date the dwelling unit is acquired, see the Energy Star Webpage.

(6) Examples

(a) *Example 1.* A dwelling unit meets the eligibility requirements provided for the Energy Star Residential New Construction Program on the Energy Star Webpage. The dwelling unit is not located in one of the States specified by the effective Energy Star Single-Family New Homes Regional Program Requirements, as provided on the Energy Star Webpage. The dwelling unit is certified in accordance with section 6 of this notice under the Energy Star Single-Family New Homes National Program Requirements 3.1. The eligible contractor sells the dwelling unit to a person for use as a residence on January 1, 2024. Under these facts, the dwelling unit meets the energy saving requirements of § 45L(c)(2).

(b) *Example 2.* The facts are the same as in Example 1, except that the dwelling unit is certified in accordance with section 6 of this notice under the Energy Star Single-Family New Homes National Program Requirements 3.2. Under these facts, the dwelling unit meets the energy saving requirements of § 45L(c)(2).

(c) *Example 3.* The facts are the same as in Example 1, except that: (i) the dwelling unit is located in one of the States specified by the effective Energy Star Single-Family New Homes Regional Program Requirements, and is certified in accordance with section 6 of this notice under the most recent of such program requirements (as in effect on January 1, 2023), as provided on the Energy Star Webpage, and (ii) the dwelling unit is deemed also to be certified under the Energy Star Single-Family New Homes National Program Requirements 3.1, as provided on the Energy Star Webpage. Under these facts, the dwelling unit meets the energy saving requirements of § 45L(c)(2).

.03 Multifamily Home Requirements under § 45L(c)(3)

(1) *In General.* A dwelling unit meets the energy saving requirements of § 45L(c)(3) if such dwelling unit meets:

(a) The most recent Energy Star Multifamily New Construction National Program Requirements (as in effect on either January 1, 2023, or January 1 of three calendar years prior to the date the dwelling unit was acquired, whichever is later), and

(b) The most recent Energy Star Multifamily New Construction Regional Program Requirements applicable to the location of such dwelling unit (as in effect on either January 1, 2023, or January 1 of three calendar years prior to the date the dwelling unit was acquired, whichever is later).

(2) *Certification*

(a) *In General.* As provided on the Energy Star Webpage, the Energy Star Multifamily New Construction National Program Requirements and the Energy Star Multifamily New Construction Regional Program Requirements applicable to the location of such dwelling unit (together, the Energy Star Multifamily Home Program Requirements) each require a dwelling unit to be certified as part of meeting such requirements. A dwelling unit will be considered to meet these respective program requirements for purposes of § 45L(c)(3) if it is certified under the rules of such respective program requirements. See section 6 of this notice for more information on certification requirements.

(b) *Certification of Prior Versions through Later Versions.* As provided on the Energy Star Webpage, a dwelling unit certified under a currently effective version of one of the Energy Star Multifamily Home Program Requirements by definition also is certified under any prior version of the same program requirements. For example, a dwelling unit certified under the Energy Star Multifamily New Construction National Program Requirements Version 1.2 also is considered certified under the Energy Star Multifamily New Construction National Program Requirements Version 1.1.

(c) *Deemed Certification of National and Regional Program Requirements.* As

provided on the Energy Star Webpage, the EPA will deem a dwelling unit certified under certain Energy Star Multifamily New Construction National Program Requirements also to be certified under certain Energy Star Multifamily New Construction Regional Program Requirements, and vice versa. To determine which deemed certifications correspond to which Energy Star Program Requirements, see the Energy Star Webpage.

(3) *Energy Star Multifamily New Construction National Program Requirements.* Energy Star Multifamily New Construction National Program Requirements are provided on the Energy Star Webpage. To determine which Energy Star Multifamily New Construction National Program Requirements are in effect on either January 1, 2023, or January 1 of three calendar years prior to the date the dwelling unit was acquired, whichever is later, see the Energy Star Webpage.

(4) *Energy Star Multifamily New Construction Regional Program Requirements.* Effective Energy Star Multifamily New Construction Regional Program Requirements are provided on the Energy Star Webpage. As provided on the Energy Star Webpage, for purposes of § 45L(c)(3)(B), the Energy Star Multifamily New Construction Regional Program Requirements apply to a dwelling unit located in one of the States specified by the effective Energy Star Multifamily New Construction Regional Program Requirements. If a dwelling unit is not located in one of the States specified by the effective Energy Star Multifamily New Construction Regional Program Requirements, § 45L(c)(3)(B) does not apply. To determine which Energy Star Multifamily New Construction Regional Program Requirements are in effect on either January 1, 2023, or January 1 of three calendar years prior to the date the dwelling unit was acquired, whichever is later, see the Energy Star Webpage.

(5) *Examples*

(a) *Example 1.* A dwelling unit is part of a building that meets the eligibility requirements provided for the Energy Star Multifamily New Construction Program on the Energy Star Webpage. The dwelling unit is not located in one of the States specified by the

effective Energy Star Multifamily New Construction Regional Program Requirements, as provided on the Energy Star Webpage. The dwelling unit is certified in accordance with section 6 of this notice under the most recent Energy Star Multifamily New Construction National Program Requirements (as in effect on January 1, 2023). The eligible contractor sells the dwelling unit to a person for use as a residence on January 1, 2024. Under these facts, the dwelling unit meets the energy saving requirements of § 45L(c)(3).

(b) *Example 2.* The facts are the same as in Example 1, except that: (i) the dwelling unit is located in one of the States specified by the effective Energy Star Multifamily New Construction Regional Program Requirements, and is certified in accordance with section 6 of this notice under the most recent of such program requirements (as in effect on January 1, 2023), as provided on the Energy Star Webpage, and (ii) the dwelling unit is deemed also to be certified under the most recent Energy Star Multifamily New Construction National Program Requirements (as in effect on January 1, 2023), as provided on the Energy Star Webpage. Under these facts, the dwelling unit meets the energy saving requirements of § 45L(c)(3).

.04 *Zero Energy Ready Home Program Requirements under § 45L(c)(1)(B)*

(1) *In General.* A dwelling unit meets the energy saving requirements under § 45L(c)(1)(B) if such dwelling unit is certified as a zero energy ready home under the ZERH program established by the DOE as in effect on January 1, 2023 (or any successor program determined by the Secretary). ZERH program requirements, including effective dates and certification requirements by building type, are provided on the DOE webpage, “DOE Zero Energy Ready Home (ZERH) Program Requirements” (ZERH Webpage).⁴ See section 6 of this notice for more information on certification requirements.

(2) *ZERH Program in Effect; Determination of Successor Program.* For purposes of establishing the ZERH program in effect under § 45L(c)(1)(B), the Secretary has determined:

(a) That the program identified on the ZERH Webpage (or any successor DOE webpage) is in effect and that successor ZERH programs will be in effect as of the date indicated on the ZERH Webpage (or any successor DOE webpage), and

(b) That should the DOE cease identifying ZERH programs on the DOE webpage and instead provide successor ZERH programs in an alternative, publicly

⁴ Available at <https://www.energy.gov/eere/buildings/doe-zero-energy-ready-home-zerh-program-requirements>. Should this link become inactive, visit the current <https://www.energy.gov/webpage> provided for the requirements at issue.

available DOE source, that successor ZERH programs will be in effect as of the date indicated in the alternative, publicly available DOE source.

(3) *Example.* A dwelling unit is certified on December 23, 2023, in accordance with section 6 of this notice as a zero energy ready home under the ZERH program in effect on January 1, 2023 (as provided on the ZERH Webpage, and as determined by the effective dates provided under section 4.04 of this notice). The eligible contractor sells the dwelling unit to a person for use as a residence on July 30, 2024. Under these facts, the dwelling unit meets the energy saving requirements of § 45L(c)(1)(B).

SECTION 5. DEFINITIONS

.01 *Acquired.* The term “acquired” includes purchased. The IRS also will consider a qualified home that is leased by a person from an eligible contractor for use as a residence during the taxable year as “acquired” for purposes of § 45L(a)(1)(B). A qualified home is not acquired by a person from an eligible contractor if the eligible contractor retains the home for use as a residence. A qualified home that is a manufactured home may be acquired directly or indirectly from an eligible contractor. A qualified home that is a manufactured home is acquired indirectly from an eligible contractor for use as a residence if the person that produced the manufactured home sells it to an intermediary (for example, a dealer of manufactured homes) and the intermediary (or the last of multiple intermediaries) sells or leases the manufactured home to another person for use as a residence. See section 7.03 of this notice for a safe harbor permitting an eligible contractor to rely on a dealer’s statement concerning a sale by the dealer of manufactured homes.

.02 *Eligible Contractor.* An eligible contractor is the person that constructed the qualified home and owned and had a basis in the qualified home during its construction, or, in the case of a qualified home that is a manufactured home, the person that produced such home and owned and had a basis in such home during its production. For example, if a person that owns and has a basis in a qualified home during its construction hires a third-party contractor to construct the home, the person that hires the third-party contractor is the eligible contractor and the third-party contractor is not an eligible contractor.

.03 *Qualified New Energy Efficient Home; Qualified Home.* The terms “qualified new energy efficient home” and “qualified home” mean a dwelling unit located in the United States, the construction of which is substantially completed after August 8, 2005, that meets the energy saving requirements of § 45L(c) (see section 4 of this notice).

.04 *Qualifying Residence; Qualified Residence.* The terms “qualifying residence” and “qualified residence” used in § 45L(g)(1) and § 45L(g)(2)(A), respectively, each refer to a dwelling unit described in § 45L(a)(2)(B).

.05 *United States.* The term “United States” used in § 45L(b)(2)(A) means United States as defined in § 7701(a)(9), which includes only the States and the District of Columbia.

SECTION 6. CERTIFICATION

.01 *In General.* An eligible contractor must obtain any certification described in § 45L(c)(1) and sections 4.02(2), 4.03(2), and 4.04(1) of this notice with respect to a dwelling unit before claiming the § 45L credit. An eligible contractor is not required to file the certification with the return on which the credit is claimed, but should keep the certification as required under § 6001 (see section 7 of this notice for additional information on substantiation requirements). An eligible contractor must follow any procedures outlined in guidance and applicable forms and instructions provided by the IRS Commissioner with respect to § 45L. The guidance pertaining to certification in this notice was prepared after consultation with the Secretary of Energy in accordance with § 45L(d).

.02 *Energy Star Certification Requirements.* Certification requirements for the effective Energy Star program are provided on the Energy Star Webpage.

.03 *ZERH Certification Requirements.* Certification requirements for the effective ZERH program are provided on the ZERH Webpage.

.04 *Eligible Certifier.* For purposes of the credit requirements in place prior to the enactment of the IRA, Notice 2008-35 and Notice 2008-36 provide that a certification must be prepared by an “eligible certifier.” Those notices do not apply for

purposes of any qualified homes acquired after December 31, 2022. For purposes of preparing the certification required under Energy Star and ZERH program requirements for qualified homes acquired after December 31, 2022, rules for the person eligible to issue a certification are under the respective Energy Star and ZERH program requirements.

.05 *Software Programs.* For purposes of the credit requirements in place prior to the enactment of the IRA, Notice 2008-35 and Notice 2008-36 include rules for approved software that may be used to calculate energy consumption for purposes of providing a certification. Those notices do not apply for purposes of any qualified homes acquired after December 31, 2022. For purposes of preparing the certification required under Energy Star and ZERH program requirements for qualified homes acquired after December 31, 2022, rules for the software to be used for purposes of providing a certification are under the respective Energy Star and ZERH program requirements.

.06 *Safe Harbor for Certification of Energy Star and ZERH under § 45L(d).* The IRS will deem a dwelling unit to meet any certification requirements under § 45L(d) if:

(1) In the case of a dwelling unit that meets the requirements of § 45L(c)(1)(A), it is certified under the rules of the Energy Star program requirements as provided in section 6.02 of this notice, or

(2) In the case of a dwelling unit that meets the requirements of § 45L(c)(1)(B), it is certified as a zero energy ready home under the ZERH program as provided in section 6.03 of this notice.

SECTION 7. SUBSTANTIATION

.01 *In General.* An eligible contractor claiming a credit under § 45L must meet the general recordkeeping requirements under § 6001 to substantiate that the requirements of § 45L have been met. Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records as the Secretary may from time to time prescribe. Section 1.6001-1(a) provides that any person subject to income tax under the Code, or any person required to file a return of information

with respect to income, must keep such permanent books of account or records as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information. Section 1.6001-1(e) provides that the books and records required by § 1.6001-1 must be retained so long as the contents thereof may become material in the administration of any internal revenue law.

.02 Minimum Requirements. To meet the substantiation requirements described in section 7.01 of this notice, an eligible contractor must retain, at a minimum:

(1) Any Energy Star or ZERH certification described in § 45L(c)(1) and section 6 of this notice including the date of such certification,

(2) If applicable, a dealer's statement described in section 7.03 of this notice, and

(3) Books or records sufficient to establish the following:

(a) The address of the qualified home, and that such home is located in the United States (see definition in section 5.05 of this notice),

(b) That the taxpayer is an eligible contractor as defined in section 5.02 of this notice,

(c) That the qualified home was acquired by a person from the eligible contractor for use as a residence during the taxable year for which the taxpayer is claiming the § 45L credit, and the name of the person that acquired it (except with respect to a manufactured home for which the eligible contractor retains a dealer's statement described in section 7.03 of this notice), and

(d) If applicable, that the prevailing wage requirements as described in section 3.04 of this notice with respect to a qualified home are met.

.03 Safe Harbor for Sales to Dealers

(1) *In General.* In the case of a manufactured home sold by an eligible contractor to a dealer of manufactured homes, the eligible contractor may rely on a statement by the dealer to establish the date on which a manufactured home was acquired, that it is located in the United States, and that it was acquired for use as a residence, if the eligible contractor retains the statement in accordance with the recordkeeping

requirements of § 6001 and section 7.01 of this notice.

(2) *Content of Statement.* The eligible contractor may not rely on the statement by the dealer unless the statement specifies the date of the retail sale of the manufactured home, that the dealer delivered the manufactured home to the purchaser at an address in the United States, and that the dealer has no knowledge of any information suggesting that the purchaser will use the manufactured home other than as a residence. The statement also must contain the following information:

(a) The name, address, and telephone number of the dealer.

(b) If the manufactured home was passed through any intermediaries between the initial purchase from the eligible contractor to the ultimate acquisition by the person that acquired the home for use as a residence, the name, address, and telephone number of each such intermediary.

(c) A declaration, applicable to the statement made by the dealer and any accompanying documents, signed by a person currently authorized to bind the dealer in such matters, in the following form:

"Under penalties of perjury, I declare that, to the best of my knowledge and belief, the facts presented with respect to this sale transaction are true, correct, and complete."

SECTION 8. PAPERWORK REDUCTION ACT

The Paperwork Reduction Act of 1995 (44 U.S.C. §§ 3501-3520) (PRA) requires a Federal Agency to obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

This notice contains recordkeeping requirements and third-party disclosures that are required to claim the § 45L credit. These collections of information generally would be used by the IRS for tax compliance purposes and by taxpayers to facilitate proper reporting and compliance. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the

collection of information displays a valid OMB control number.

The recordkeeping requirements provided in sections 6 and 7 of this notice are considered general tax records under § 1.6001-1. These records are required for the IRS to validate that eligible contractors have met the requirements of § 45L, including that a qualified home meets the energy saving requirements of § 45L(c). For PRA purposes, general tax records are already approved by OMB under control number 1545-0123 for business filers, control number 1545-0074 for individual filers, and control number 1545-1994 for trust/estate filers.

Sections 6 and 7 of this notice contain third-party disclosures to dealers of manufactured homes, and to the DOE and EPA for purposes of obtaining the certifications required to demonstrate that a dwelling unit meets the applicable Energy Star or ZERH program requirements. These certifications are included within the instructions for Form 8908, Energy Efficient Home Credit, which is approved by the OMB under control number 1545-1979.

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 § 6103.

SECTION 9. EFFECT ON OTHER DOCUMENTS

Notice 2008-35 and Notice 2008-36 are obsolete for any qualified home acquired after December 31, 2022.

SECTION 10. EFFECTIVE DATE

This notice applies to any qualified home acquired after December 31, 2022 and before January 1, 2033.

SECTION 11. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact the Office of Associate Chief Counsel (Passthroughs & Special

Industries) at (202) 317-6853 (not a toll-free number).

Extension of Replacement Period for Livestock Sold on Account of Drought

Notice 2023-67

SECTION 1. PURPOSE

This notice provides guidance regarding an extension of the replacement period under § 1033(e) of the Internal Revenue Code for livestock sold on account of drought in specified counties.

SECTION 2. BACKGROUND

.01 *Nonrecognition of Gain on Involuntary Conversion of Livestock.* Section 1033(a) generally provides for nonrecognition of gain when property is involuntarily converted and replaced with property that is similar or related in service or use. Section 1033(e)(1) provides that a sale or exchange of livestock (other than poultry) held by a taxpayer for draft, breeding, or dairy purposes in excess of the number that would be sold following the taxpayer's usual business practices is treated as an involuntary conversion if the livestock is sold or exchanged solely on account of drought, flood, or other weather-related conditions.

.02 *Replacement Period.* Section 1033(a)(2)(A) generally provides that gain from an involuntary conversion is recognized only to the extent the amount realized on the conversion exceeds the cost of replacement property purchased during the replacement period. If a sale or exchange of livestock is treated as an involuntary conversion under § 1033(e)(1) and is solely on account of drought, flood, or other weather-related conditions that result in the area being designated as eligible for assistance by the

federal government, § 1033(e)(2)(A) provides that the replacement period ends four years after the close of the first taxable year in which any part of the gain from the conversion is realized. Section 1033(e)(2)(B) provides that the Secretary may extend this replacement period on a regional basis for such additional time as the Secretary determines appropriate if the weather-related conditions that resulted in the area being designated as eligible for assistance by the federal government continue for more than three years. Section 1033(e)(2) is effective for any taxable year with respect to which the due date (without regard to extensions) for a taxpayer's return is after December 31, 2002.

SECTION 3. EXTENSION OF REPLACEMENT PERIOD UNDER § 1033(e)(2)(B)

Notice 2006-82, 2006-2 C.B. 529, provides for extensions of the replacement period under § 1033(e)(2)(B). If a sale or exchange of livestock is treated as an involuntary conversion on account of drought and the taxpayer's replacement period is determined under § 1033(e)(2)(A), the replacement period will be extended under § 1033(e)(2)(B) and Notice 2006-82 until the end of the taxpayer's first taxable year ending after the first drought-free year for the applicable region. For this purpose, the first drought-free year for the applicable region is the first 12-month period that (1) ends August 31; (2) ends in or after the last year of the taxpayer's four-year replacement period determined under § 1033(e)(2)(A); and (3) does not include any weekly period for which exceptional, extreme, or severe drought is reported for any location in the applicable region. The applicable region is the county that experienced the drought conditions on account of which the livestock was sold or exchanged and all counties that are contiguous to that county.

A taxpayer may determine whether exceptional, extreme, or severe drought is reported for any location in the

applicable region by reference to U.S. Drought Monitor maps that are produced on a weekly basis by the National Drought Mitigation Center. U.S. Drought Monitor maps are archived at <http://droughtmonitor.unl.edu/Maps/MapArchive.aspx>.

In addition, Notice 2006-82 provides that the Internal Revenue Service will publish in September of each year a list of counties¹ for which exceptional, extreme, or severe drought was reported during the preceding 12 months. Taxpayers may use this list instead of U.S. Drought Monitor maps to determine whether exceptional, extreme, or severe drought has been reported for any location in the applicable region.

The Appendix to this notice contains the list of counties for which exceptional, extreme, or severe drought was reported during the 12-month period ending August 31, 2023. Under Notice 2006-82, the 12-month period ended on August 31, 2023, is not a drought-free year for an applicable region that includes any county on this list. Accordingly, for a taxpayer who qualified for a four-year replacement period for livestock sold or exchanged on account of drought and whose replacement period is scheduled to expire at the end of 2023 (or, in the case of a fiscal year taxpayer, at the end of the taxable year that includes August 31, 2023), the replacement period will be extended under § 1033(e)(2) and Notice 2006-82 if the applicable region includes any county on this list. This extension will continue until the end of the taxpayer's first taxable year ending after a drought-free year for the applicable region.

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Lewis Saideman of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, please contact Mr. Saideman at (202) 317-7009 (not a toll-free call).

¹ While Notice 2006-82 uses the term "counties," this notice lists other applicable regions as well (e.g., boroughs, parishes, etc.).

APPENDIX

Alabama

Counties of Baldwin, Coffee, Colbert, Conecuh, Covington, Dale, Escambia, Geneva, Henry, Houston, Jackson, Lauderdale, Lawrence, Limestone, Madison, Marshall, Mobile, Monroe, Morgan, and Washington.

Arizona

Counties of Apache, Cochise, Coconino, Graham, Greenlee, La Paz, Mohave, Navajo, Pima, Santa Cruz, Yavapai, and Yuma.

Arkansas

Counties of Arkansas, Ashley, Baxter, Benton, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Craighead, Crawford, Crittenden, Cross, Dallas, Desha, Drew, Faulkner, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Jefferson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Lonoke, Madison, Marion, Mississippi, Monroe, Montgomery, Nevada, Newton, Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Pulaski, Randolph, Saint Francis, Saline, Scott, Searcy, Sebastian, Sevier, Sharp, Stone, Union, Van Buren, Washington, White, Woodruff, and Yell.

California

Counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Los Angeles, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Orange, Placer, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Ventura, Yolo, and Yuba.

Colorado

Counties of Adams, Alamosa, Arapahoe, Baca, Bent, Cheyenne, Conejos, Costilla, Crowley, Custer, Delta, Denver, Dolores, Elbert, El Paso, Fremont, Garfield, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Larimer, Las Animas, Lincoln, Logan, Mesa, Moffat, Montezuma, Montrose, Morgan, Otero, Phillips, Prowers, Pueblo, Rio Blanco, Rio Grande, Routt, San Miguel, Sedgwick, Teller, Washington, Weld, and Yuma.

Connecticut

Counties of Fairfield, Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, and Windham.

Delaware

County of Sussex.

District of Columbia

District of Columbia.

Florida

Counties of Alachua, Baker, Bay, Bradford, Brevard, Broward, Calhoun, Charlotte, Citrus, Collier, Columbia, DeSoto, Dixie, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Holmes, Indian River, Jackson, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Liberty, Madison, Manatee, Marion, Martin, Miami-Dade, Monroe, Okaloosa, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Saint Lucie, Santa Rosa, Sarasota, Seminole, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington.

Georgia

Counties of Baker, Baldwin, Banks, Barrow, Berrien, Bibb, Bleckley, Brooks, Butts, Cherokee, Clarke, Clayton, Clinch, Cobb, Colquitt, Cook, Crawford, Dawson, Decatur, DeKalb, Douglas, Early, Echols, Elbert, Fannin, Forsyth, Franklin, Fulton, Gilmer, Grady, Greene, Gwinnett, Habersham, Hall, Hancock, Hart, Henry,

Houston, Jackson, Jasper, Jones, Lamar, Lanier, Laurens, Lincoln, Lowndes, Lumpkin, McDuffie, Madison, Miller, Mitchell, Monroe, Morgan, Murray, Newton, Oconee, Oglethorpe, Peach, Pickens, Pike, Pulaski, Putnam, Rabun, Rockdale, Seminole, Stephens, Taliaferro, Taylor, Thomas, Towns, Twiggs, Union, Upson, Walton, Warren, Washington, White, Wilkes, and Wilkinson.

Hawaii

Counties of Hawaii, Honolulu, Kalawao, Kauai, and Maui.

Idaho

Counties of Adams, Bannock, Bear Lake, Benewah, Blaine, Bonner, Bonneville, Boundary, Butte, Camas, Caribou, Cassia, Clearwater, Custer, Franklin, Fremont, Gooding, Idaho, Kootenai, Latah, Lemhi, Lewis, Lincoln, Minidoka, Nez Perce, Oneida, Owyhee, Power, Shoshone, Teton, Twin Falls, Valley, and Washington.

Illinois

Counties of Adams, Alexander, Bond, Boone, Brown, Bureau, Carroll, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Cook, Crawford, Cumberland, DeKalb, De Witt, Douglas, DuPage, Edgar, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Grundy, Hamilton, Hancock, Hardin, Henderson, Henry, Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Kane, Kankakee, Kendall, Knox, Lake, La Salle, Lee, Livingston, Logan, McDonough, McHenry, McLean, Macon, Madison, Marion, Marshall, Mason, Massac, Menard, Mercer, Monroe, Morgan, Moultrie, Ogle, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Rock Island, Saint Clair, Saline, Sangamon, Schuyler, Scott, Shelby, Stark, Stephenson, Tazewell, Union, Vermilion, Warren, Washington, Whiteside, Will, Williamson, Winnebago, and Woodford.

Indiana

Counties of Benton, Boone, Carroll, Cass, Clay, Clinton, DeKalb, Elkhart, Fayette, Fountain, Fulton, Hamilton, Hancock,

Harrison, Hendricks, Henry, Howard, Jasper, Johnson, LaGrange, Lake, LaPorte, Madison, Marion, Miami, Montgomery, Morgan, Newton, Noble, Owen, Parke, Perry, Porter, Pulaski, Putnam, Randolph, Shelby, Starke, Steuben, Sullivan, Tippecanoe, Tipton, Union, Vermillion, Vigo, Warren, Wayne, and White.

Iowa

Counties of Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Dallas, Davis, Decatur, Delaware, Des Moines, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Kossuth, Lee, Linn, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Polk, Pottawattamie, Poweshiek, Ringgold, Sac, Scott, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Winnebago, Winneshiek, Woodbury, Worth, and Wright.

Kansas

Counties of Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Butler, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Doniphan, Douglas, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Harvey, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Johnson, Kearny, Kingman, Kiowa, Labette, Lane, Leavenworth, Lincoln, Linn, Logan, Lyon, McPherson, Marion, Marshall, Meade, Miami, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush,

Russell, Saline, Scott, Sedgwick, Seward, Shawnee, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita, Wilson, Woodson, and Wyandotte.

Kentucky

Counties of Adair, Allen, Anderson, Ballard, Barren, Bath, Boone, Bourbon, Boyd, Boyle, Bracken, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Carroll, Carter, Casey, Christian, Clark, Crittenden, Daviess, Edmonson, Elliott, Estill, Fayette, Fleming, Franklin, Fulton, Gallatin, Garrard, Grant, Graves, Grayson, Green, Greenup, Hancock, Hardin, Harrison, Hart, Henry, Hickman, Hopkins, Jefferson, Jessamine, Kenton, Larue, Lawrence, Lee, Lewis, Lincoln, Livingston, Logan, Lyon, McCracken, McLean, Madison, Marion, Marshall, Mason, Meade, Menifee, Mercer, Metcalfe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Pendleton, Powell, Robertson, Rockcastle, Rowan, Scott, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Trimble, Union, Warren, Washington, Webster, Wolfe, and Woodford.

Louisiana

Parishes of Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Concordia, De Soto, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson, Jefferson Davis, Lafayette, Lafourche, La Salle, Livingston, Madison, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, Red River, Richland, Sabine, Saint Bernard, Saint Charles, Saint Helena, Saint James, Saint John the Baptist, Saint Landry, Saint Martin, Saint Mary, Saint Tammany, Tangipahoa, Tensas, Terrebonne, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Carroll, West Feliciana, and Winn.

Maine

Counties of Androscoggin, Cumberland, Knox, Lincoln, Sagadahoc, Waldo, and York.

Maryland

City of Baltimore. Counties of Anne Arundel, Baltimore, Carroll, Frederick, Harford, Howard, Montgomery, and Prince George's.

Massachusetts

Counties of Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Norfolk, Plymouth, Suffolk, and Worcester.

Michigan

County of Allegan, Barry, Branch, Cass, Clinton, Eaton, Genesee, Gogebic, Gratiot, Hillsdale, Ingham, Ionia, Jackson, Kent, Lake, Lapeer, Lenawee, Livingston, Macomb, Manistee, Mason, Missaukee, Monroe, Montcalm, Oakland, Ontonagon, Osceola, Saint Clair, Saint Joseph, Sanilac, Shiawassee, Washtenaw, Wayne, and Wexford.

Minnesota

Counties of Aitkin, Anoka, Becker, Beltrami, Benton, Big Stone, Blue Earth, Brown, Carlton, Carver, Cass, Chippewa, Chisago, Clay, Clearwater, Cottonwood, Crow Wing, Dakota, Dodge, Faribault, Fillmore, Freeborn, Goodhue, Grant, Hennepin, Houston, Hubbard, Isanti, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, McLeod, Marshall, Martin, Meeker, Mille Lacs, Morrison, Mower, Murray, Nicollet, Nobles, Norman, Olmsted, Otter Tail, Pine, Pipestone, Pope, Ramsey, Redwood, Renville, Rice, Rock, Roseau, Saint Louis, Scott, Sherburne, Sibley, Stearns, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Washington, Watonwan, Wilkin, Winona, Wright, and Yellow Medicine.

Mississippi

Counties of Adams, Amite, Bolivar, Claiborne, Coahoma, Copiah, Covington, DeSoto, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Holmes, Humphreys, Issaquena, Jackson, Jefferson, Jefferson Davis, Lafayette, Lamar, Lawrence, Leflore, Lincoln, Madison, Marion, Marshall, Panola, Pearl River, Perry, Pike, Pontotoc, Quitman, Rankin, Sharkey, Simpson, Smith, Stone, Sunflower, Tate, Tunica, Union, Walthall, Warren, Washington, Wilkinson, and Yazoo.

Missouri

Counties of Adair, Andrew, Atchison, Audrain, Barry, Barton, Bates, Benton, Bollinger, Boone, Buchanan, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cass, Cedar, Chariton, Christian, Clark, Clay, Clinton, Cole, Cooper, Crawford, Dade, Dallas, Daviess, DeKalb, Dent, Douglas, Dunklin, Franklin, Gasconade, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Iron, Jackson, Jasper, Jefferson, Johnson, Knox, Laclede, Lafayette, Lawrence, Lewis, Lincoln, Linn, Livingston, McDonald, Macon, Madison, Maries, Marion, Mercer, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Newton, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Platte, Polk, Pulaski, Putnam, Ralls, Randolph, Ray, Reynolds, Ripley, Saint Charles, Saint Clair, Sainte Genevieve, Saint Francois, Saint Louis, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Stone, Sullivan, Taney, Vernon, Warren, Washington, Wayne, Webster, and Wright.

Montana

Counties of Beaverhead, Blaine, Broadwater, Cascade, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, McCone, Madison, Meagher, Mineral, Missoula, Petroleum, Phillips, Pondera, Powell, Prairie, Ravalli,

Richland, Roosevelt, Sanders, Sheridan, Silver Bow, Teton, Toole, Valley, Wheatland, and Wibaux.

Nebraska

Counties of Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cass, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dakota, Dawes, Dawson, Deuel, Dixon, Dodge, Douglas, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lancaster, Lincoln, Logan, Loup, McPherson, Madison, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Sarpy, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Washington, Wayne, Webster, Wheeler, and York.

Nevada

City of Carson City. Counties of Churchill, Clark, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Storey, Washoe, and White Pine.

New Hampshire

Counties of Cheshire, Hillsborough, Merrimack, Rockingham, and Strafford.

New Jersey

Counties of Atlantic, Bergen, Cape May, Cumberland, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Passaic, Salem, Somerset, Sussex, and Union.

New Mexico

Counties of Bernalillo, Catron, Chaves, Cibola, Colfax, Curry, DeBaca, Dona Ana, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San

Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Union, and Valencia.

New York

Counties of Bronx, Columbia, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Ulster, and Westchester.

North Carolina

Counties of Cherokee, Clay, Graham, Jackson, Macon, Swain, and Transylvania.

North Dakota

Counties of Barnes, Benson, Billings, Bottineau, Bowman, Burke, Burleigh, Cass, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Griggs, Hettinger, Kidder, LaMoure, Logan, McHenry, McIntosh, McKenzie, McLean, Mountrail, Nelson, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill, Walsh, Ward, Wells, and Williams.

Ohio

Counties of Adams, Brown, Clermont, Darke, Preble, Scioto, and Williams.

Oklahoma

Counties of Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Choctaw, Cimarron, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Custer, Delaware, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Major, Marshall, Mayes, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Roger Mills, Rogers, Seminole, Sequoyah, Stephens, Texas, Tillman, Tulsa, Wagoner, Washington, Washita, Woods, and Woodward.

Oregon

Counties of Baker, Benton, Clackamas, Clatsop, Crook, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Malheur, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler, and Yamhill.

Pennsylvania

Counties of Lancaster and York.

Rhode Island

Counties of Bristol, Kent, Newport, Providence, and Washington.

South Carolina

Counties of Abbeville, Anderson, Greenville, Laurens, McCormick, Oconee, Pickens, and Spartanburg.

South Dakota

Counties of Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hand, Hanson, Hutchinson, Jackson, Jerauld, Kingsbury, Lake, Lawrence, Lincoln, Lyman, McCook, McPherson, Marshall, Meade, Mellette, Miner, Minnehaha, Moody, Oglala Lakota, Pennington, Roberts, Sanborn, Spink, Stanley, Todd, Tripp, Turner, Union, Walworth, Yankton, and Ziebach.

Tennessee

Counties of Bedford, Benton, Bledsoe, Blount, Bradley, Cannon, Carroll, Chester, Coffee, Davidson, Decatur, DeKalb, Dyer, Franklin, Gibson, Giles, Grundy, Hamilton, Hardin, Henderson, Henry, Hickman, Houston, Humphreys, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Loudon, McMinn, McNairy, Madison, Marion, Marshall, Meigs, Monroe, Montgomery, Moore, Obion, Perry, Polk, Rhea, Roane, Rutherford, Sequatchie, Shelby, Stewart, Sumner, Tipton, Van

Buren, Warren, Wayne, Weakley, White, Williamson, and Wilson.

Texas

Counties of Anderson, Andrews, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brazos, Brewster, Briscoe, Brooks, Brown, Burlson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Carson, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harris, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, Lamar, Lamb, Lampasas, La Salle, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, McCulloch, McLennan, McMullen, Madison, Marion, Martin, Mason, Matagorda, Maverick, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Motley, Nacogdoches, Navarro, Newton, Nolan, Nueces, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Potter, Presidio, Randall, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Trinity, Tyler, Upton,

Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Yoakum, Young, Zapata, and Zavala.

Utah

Counties of Beaver, Box Elder, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, Salt Lake, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Washington, Wayne, and Weber.

Vermont

County of Windham.

Virginia

City of Falls Church. Counties of Accomack, Clarke, Fairfax, Fauquier, Frederick, Loudoun, Northampton, Rappahannock, Shenandoah, and Warren.

Washington

Counties of Asotin, Benton, Chelan, Clallam, Columbia, Cowlitz, Franklin, Garfield, Grays Harbor, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, Okanogan, Pacific, Pend Oreille, Pierce, San Juan, Skagit, Skamania, Snohomish, Stevens, Thurston, Wahkiakum, Walla Walla, Whatcom, Whitman, and Yakima.

West Virginia

County of Jefferson.

Wisconsin

Counties of Adams, Ashland, Barron, Bayfield, Brown, Buffalo, Burnett, Calumet, Chippewa, Clark, Columbia, Crawford, Dane, Dodge, Douglas, Dunn, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Langlade, Lincoln, Manitowoc, Marathon, Marquette, Milwaukee, Monroe, Oneida, Outagamie, Ozaukee, Pepin, Pierce, Polk, Portage, Price, Racine, Richland, Rock, Rusk, Saint Croix, Sauk, Sawyer, Sheboygan, Taylor,

Vernon, Vilas, Walworth, Washburn, Washington, Waukesha, Waupaca, Waushara, Winnebago, and Wood.

Wyoming

Counties of Albany, Campbell, Carbon, Converse, Fremont, Goshen, Laramie, Lincoln, Niobrara, Park, Platte, Sublette, Sweetwater, Teton, Uinta, and Weston.

Federated States of Micronesia

State of Kapingamarangi.

Republic of the Marshall Islands

Atoll of Wotje.

Commonwealth of Puerto Rico

Municipalities of Aibonito, Arecibo, Barranquitas, Camuy, Cayey, Cidra, Coamo, Guayama, Hatillo, Isabela, Lares, Orocovis, Quebradillas, Salinas, San Sebastian, Utuado, and Villalba.

United States Virgin Islands

Islands of Saint Croix, Saint John, and Saint Thomas.

Treatment of Amounts Paid to Section 170(c) Organizations under Employer Leave-Based Donation Programs to Aid Victims of the Hawaii Wildfires that Began on August 8, 2023 (2023 Hawaii Wildfires).

Notice 2023-69

TREATMENT OF LEAVE-BASED DONATION PAYMENTS

In response to the extreme need for charitable relief for victims of wildfires

beginning on August 8, 2023, in the State of Hawaii (2023 Hawaii Wildfires), employers may have adopted or may be considering adopting leave-based donation programs. This notice provides guidance under the Internal Revenue Code (Code)¹ on the federal income and employment tax treatment of cash payments made by employers under leave-based donation programs for the relief of victims of the 2023 Hawaii Wildfires. This guidance is similar to the guidance provided in Notice 2001-69, 2001-46 IRB 491, as modified and superseded by Notice 2003-1, 2003-2 IRB 257, regarding charitable relief following the September 11, 2001, terrorist attacks.

EMPLOYER LEAVE-BASED DONATION PROGRAMS

Under employer leave-based donation programs, employees can elect to forgo vacation, sick, or personal leave in exchange for their employers making cash payments to charitable organizations described in section 170(c) (section 170(c) organizations). Cash payments made by an employer to section 170(c) organizations under an employer leave-based donation program are referred to as “employer leave-based donation payments.”

TREATMENT OF QUALIFIED EMPLOYER LEAVE-BASED DONATION PAYMENTS

Employer leave-based donation payments made by an employer before January 1, 2025, to section 170(c) organizations to aid victims of the 2023 Hawaii Wildfires (qualified employer leave-based donation payments) will not be treated as gross income or wages (or compensation, as applicable) of the employees of the employer. Similarly, employees electing or with an opportunity to elect to forgo leave that funds the qualified employer leave-based donation payments will not be treated as having constructively received gross income or wages (or compensation, as applicable). Employers should not include the amount of qualified

employer leave-based donation payments in Box 1, 3 (if applicable), or 5 of the electing employees’ Forms W-2. Electing employees are not eligible to claim charitable contribution deductions under section 170 for the value of the forgone leave that funds qualified employer leave-based donation payments.

An employer may deduct qualified employer leave-based donation payments under the rules of section 170 or the rules of section 162 if the employer otherwise meets the respective requirements of either section of the Code.

DRAFTING INFORMATION

For further information, please contact Clara L. Raymond of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 317-4718 (not a toll-free number).

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also: Part I, §§ 1091; 1.446-7.)

Rev. Proc. 2023-35

SECTION 1. PURPOSE

This revenue procedure amplifies and supersedes Rev. Proc. 2014-45, 2014-34 I.R.B. 388, which describes circumstances in which the Internal Revenue Service (IRS) will not treat a redemption of shares in a money market fund (MMF) as part of a wash sale for purposes of section 1091 of the Internal Revenue Code (Code).¹ This revenue procedure expands the scope of Rev. Proc. 2014-45 in response to final rules adopted by the Securities and Exchange Commission (SEC) on July 12, 2023, which amend Rule 2a-7 under the Investment Company Act of 1940 (1940 Act), 17 CFR § 270.2a-7 (2023 Amendments). See *Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers; Technical Amendments to Form N-CSR and Form N-1A, Investment Company Act Release No. 34959* (July

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Code.

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

12, 2023), 88 F.R. 51404 (Aug. 3, 2023) (2023 SEC Release).

SECTION 2. BACKGROUND

.01 Money Market Funds

(1) An investment company that is registered under the 1940 Act and that meets the requirements of Rule 2a-7 under the 1940 Act is permitted to hold itself out as an MMF. MMFs have historically sought to keep stable (typically at \$1.00) the prices at which their shares are distributed, redeemed, and repurchased. The securities that Rule 2a-7 permits an MMF to hold generally result in no more than minimal fluctuations in the value of an MMF's portfolio as determined on a per-share basis.

(2) Prior to amendments in 2014, Rule 2a-7 generally permitted an MMF to compute its price per share by using either or both of (a) the amortized cost method of valuation, and (b) the penny-rounding method of pricing. Under the amortized cost method of valuation, an MMF's net asset value per share (NAV) was determined by valuing the fund's portfolio securities at their acquisition cost, adjusted for amortization of premium or accretion of discount. Under the penny-rounding method of pricing, an MMF's NAV was rounded to the nearest one percent in computing the MMF's share price. These methods were intended to enable MMFs to maintain stable share prices under most circumstances.

(3) Final rules adopted by the SEC in 2014 generally bar the use of the amortized cost method of valuation and the use of the penny-rounding method of pricing, except by government MMFs and retail MMFs² (2014 Amendments). See *Money Market Fund Reform; Amendments to Form PF, Investment Company Act Release No. 31166* (July 23, 2014), 79 F.R. 47735 (Aug. 14, 2014). An MMF that is neither a government MMF nor a retail MMF must value its portfolio securities using market-based factors and compute its price per share by rounding the fund's NAV to a minimum of the fourth decimal place (or, for an MMF with a share price other than \$1.0000, an equivalent or greater level of

precision). 17 CFR § 270.2a-7(c)(1)(ii). An MMF that uses market factors to value its securities and uses basis point rounding to price its shares for purposes of distribution, redemption, and repurchase (floating-NAV MMF) has a share price that is likely to change frequently, but usually within a narrow range because of the limited types of investments that an MMF may hold. A government MMF or retail MMF that continues to use the amortized cost method and penny rounding (stable-NAV MMF) can maintain a constant share price under most market conditions.

(4) The fact that stable-NAV MMFs maintain a constant share price simplifies the taxation of their shareholders. Because shareholders acquire shares from the fund for \$1.00/share, have bases of \$1.00/share, and redeem those shares for the same amount, they realize no gain or loss on those redemptions. On the other hand, shareholders in floating-NAV MMFs typically redeem shares for amounts slightly different from the amounts for which those shares were issued to them. Section 2.02(4) and (5) of this revenue procedure describe prior guidance intended to reduce tax compliance burdens associated with gains and losses on shares in floating-NAV MMFs.

(5) The 2014 Amendments also *permitted* an MMF to institute a liquidity fee if certain liquid assets of the MMF fall below a specified percentage of the MMF's total assets. If those liquid assets fall below another (lower) specified percentage, the 2014 Amendments generally *required* the MMF to institute a liquidity fee, unless the MMF's board of directors (including a majority of the directors who are not interested persons of the fund) determines that imposing such a fee is not in the best interests of the MMF. When an MMF has a liquidity fee in effect, the fee reduces the proceeds received by all redeeming shareholders. Government MMFs were generally exempt from the requirements of the liquidity fee provisions but were permitted to institute liquidity fees on the same terms.

.02 Wash Sale Rules

(1) Section 1091(a) disallows a loss realized by a taxpayer on a sale or other

disposition of shares of stock or securities if, within a period beginning 30 days before and ending 30 days after the date of such sale or disposition, the taxpayer acquires (by purchase or by an exchange on which the entire amount of gain or loss is recognized by law), or enters into a contract or option to so acquire, substantially identical stock or securities (unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business).

(2) If a taxpayer acquired property and that acquisition resulted in the disallowance of a loss under section 1091(a), then under section 1091(d), the taxpayer's basis in the property so acquired equals the basis of the stock or securities disposed of at a loss, increased or decreased to take into account any difference between the price at which the replacement property was acquired and the price at which the original stock or securities were disposed of.

(3) As mentioned above, a shareholder may realize a loss upon a redemption of shares in an MMF in certain circumstances. For example, the share price of a floating-NAV fund may have declined below the price at which the shareholder acquired shares, or an MMF may impose a liquidity fee on redemptions. Because many MMF shareholders engage in frequent redemptions and purchases of MMF shares (for example, because of sweep arrangements and automatic reinvestments of distributions), a shareholder that realizes a loss on a redemption of MMF shares will often acquire shares in that MMF within 30 days before or after the redemption.

(4) When the 2014 Amendments required certain MMFs to become floating-NAV MMFs, the Department of the Treasury (Treasury Department) and the IRS published guidance to mitigate in two ways the administrative burdens associated with gains and losses on those MMF shares, including those associated with wash sales.

(a) First, § 1.446-7 provides a simplified method of accounting for gain or loss on MMF shares (NAV method). Under the

² A government MMF is an MMF that "invests 99.5 percent or more of its total assets in cash, government securities, and/or repurchase agreements that are collateralized fully." 17 CFR § 270.2a-7(a)(14). A retail MMF is an MMF that "has policies and procedures reasonably designed to limit all beneficial owners of the fund to natural persons." 17 CFR § 270.2a-7(a)(21).

NAV method, a taxpayer's gain or loss on shares in an MMF is based on the change in the aggregate value of the taxpayer's shares during a computation period and on the net amount of purchases and redemptions during the computation period. Because no gain or loss is determined for particular redemptions under the NAV method, no redemption implicates the wash sale rules. The NAV method applies to floating-NAV MMFs and stable-NAV MMFs. *See* § 1.446-7(a).

(b) Second, Rev. Proc. 2014-45 provided that the IRS will not treat a redemption of a share of a floating-NAV MMF as a part of a wash sale. Thus, Rev. Proc. 2014-45 provided relief from the wash sale rules for shareholders in floating-NAV MMFs not using the NAV method, but it did not extend the relief to stable-NAV MMFs.

.03 2023 Amendments

(1) The 2023 Amendments eliminate from Rule 2a-7 any link between an MMF's liquid assets and the MMF's ability (or obligation) to institute liquidity fees. Under Rule 2a-7(c)(2)(i), as amended, any MMF other than a government MMF must institute a liquidity fee (not to exceed two percent of the value of the shares redeemed) if the MMF's board of directors, including a majority of the directors who are not interested persons of the MMF, determines that a liquidity fee is in the best interests of the MMF.³ A government MMF is permitted to impose liquidity fees on the same terms. The SEC intends to increase the resilience of MMFs by providing a mechanism to allocate liquidity costs to redeeming investors in times of stress while avoiding incentives for preemptive redemptions associated with liquidity fee triggers based on liquidity levels or other criteria investors might predict. *See* 2023 SEC Release, 88 F.R. at 51411.

(2) The provisions of the 2023 Amendments relating to liquidity fees are effective on October 2, 2023. These amendments provide a six-month compliance date for the discretionary liquidity fee provisions described in section 2.03(1) of this revenue procedure. Affected MMFs, however, including government MMFs, may begin to rely on those provisions after the October 2, 2023, effective date. *See* 2023 SEC Release, 88 F.R. at 51452.

(3) Thus, after October 2, 2023, *any* MMF may impose a liquidity fee based solely on a determination of its board of directors. Thus, in some situations, the board of a stable-NAV MMF may determine that such a fee is in the best interests of the MMF and so impose it on redemptions of the MMF's shares. For a redeeming shareholder that has not adopted the NAV method (which is the case for almost all shareholders in stable-NAV MMFs), the fee will result in a loss on the redemption. Moreover, because stable-NAV MMFs are outside the scope of Rev. Proc. 2014-45, there is no current impediment to the application of the section 1091 wash sale rules to that loss.

(4) The Treasury Department and the IRS intend this revenue procedure to reduce undue tax compliance burdens resulting from the 2023 Amendments. Because of the constant value of shares in stable-NAV MMFs, the frequency with which many taxpayers continuously acquire and redeem shares in these MMFs, and the administrative and compliance burdens that would flow from applying section 1091 to these transactions, it is in the interest of sound tax administration to extend to these shares the relief that Rev. Proc. 2014-45 already provides to shares in floating-NAV MMFs. Accordingly, the

IRS will not treat as part of a wash sale a redemption of a share in *any* MMF.

SECTION 3. SCOPE

This revenue procedure applies to a redemption of one or more shares in an MMF.

SECTION 4. APPLICATION

If a redemption is within the scope of section 3 of this revenue procedure and results in a loss, the IRS will not treat the redemption as part of a wash sale. Therefore, section 1091(a) will not disallow the deduction for the resulting loss in the year realized and section 1091(d) will not cause the basis of any property to be determined by reference to the basis of the redeemed shares.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2014-45 is amplified and superseded for redemptions of shares in MMFs after October 2, 2023.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for redemptions of shares in MMFs after October 2, 2023.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Vanessa Mekpong of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Vanessa Mekpong on (202) 317-6842 (not a toll-free number).

³ The 2023 Amendments also require certain MMFs to impose liquidity fees based on levels of net redemptions. The MMFs subject to that rule, institutional prime MMFs and institutional tax-exempt MMFs, are floating-NAV MMFs. Accordingly, Rev. Proc. 2014-45 currently provides wash sale relief for transactions in their shares.

Part IV

Excise Tax on Designated Drugs; Procedural Requirements

REG-115559-23

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would provide guidance on how taxpayers will report liability for the excise tax imposed on manufacturers, producers, or importers of certain designated drugs. The proposed regulations affect manufacturers, producers, and importers of designated drugs that sell such drugs during certain statutory periods. The proposed regulations also would except such tax from semimonthly deposit requirements.

DATES: Written or electronic comments and requests for a public hearing must be received by December 1, 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 via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-115559-23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “**Comments and Requests for a Public Hearing**” section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS’s public docket. Send paper submissions to: CC:PA:LPD:PR (REG-115559-23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, contact Jacob W. Peeples, James S. Williford, or Michael H. Beker at (202) 317-6855 (not a toll-free number); concerning the submission of comments and/or requests for a public hearing, contact Vivian Hayes by phone at (202) 317-5306 (not a toll-free number) or by email at publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations that would amend the Excise Tax Procedural Regulations (26 CFR part 40) and add a new part 47 to 26 CFR chapter 1 to contain the “**Designated Drugs Excise Tax Regulations**” related to the excise tax imposed by section 5000D of the Internal Revenue Code (Code) on certain sales by manufacturers, producers, or importers of designated drugs (section 5000D tax).

Section 5000D, added to chapter 50A of the Code by section 11003 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), imposes an excise tax on the sale by the manufacturer, producer, or importer (taxpayer) of any designated drug during a day that falls within a period described in section 5000D(b). Because chapter 50A is a new chapter of the Code, the existing regulations that prescribe the procedural rules applicable to most excise taxes do not apply to chapter 50A.

Notice 2023-52 (2023-35 I.R.B. 650) announces that the Treasury Department and the IRS intend to propose regulations addressing substantive and procedural issues related to the section 5000D tax. These proposed regulations address return filing and other procedural requirements related to the section 5000D tax as set forth in Notice 2023-52. The Treasury Department and the IRS will issue a separate notice of proposed rulemaking to address substantive issues related to the section 5000D tax.

Explanation of Provisions

I. *Proposed Amendments to 26 CFR part 40*

These proposed regulations would apply the Excise Tax Procedural Regulations in 26 CFR part 40 to excise taxes imposed by chapter 50A of the Code (and thus to the section 5000D tax), with some limited exceptions.

A. *Proposed amendments to §40.0-1*

Section 40.0-1(a) provides generally that the regulations in part 40 set forth administrative rules relating to the excise taxes imposed by chapters 31 through 34, 36, 38, 39, and 49 of the Code. Proposed §40.0-1(a) would amend that provision by adding chapter 50A of the Code to the list of Code chapters subject to the part 40 regulations.

B. *Proposed amendments to §40.6011(a)-1*

Section 40.6011(a)-1(a)(1) provides that the return of tax to which part 40 applies must be made on Form 720, *Quarterly Federal Excise Tax Return*, according to the instructions applicable to the form. Section 40.6011(a)-1(a)(2) provides, in part, that a return must be filed for the first calendar quarter in which liability for tax is incurred (or tax must be collected and paid over) and for each subsequent calendar quarter, whether or not liability is incurred (or tax must be collected and paid over) during that subsequent quarter, until a final return under §40.6011(a)-2 is filed.

Proposed §40.6011(a)-1(d) would provide that a return that reports liability imposed by section 5000D must be made for a period of one calendar quarter, and that a return must be filed for each calendar quarter in which liability for the section 5000D tax is incurred. Therefore, under these proposed regulations, taxpayers would be required to report any section 5000D tax liability on Form 720; however, taxpayers would not be required to file subsequent returns for quarters in

which they incur no section 5000D tax liability.

C. Proposed amendments to §40.6302(c)-1

Section 40.6302(c)-1(a) provides that except as provided by statute or by §40.6302(c)-1(e), each person required under §40.6011(a)-1(a)(2) to file a quarterly return must make a deposit of tax for each semimonthly period (as defined in §40.0-1(c)) in which tax liability is incurred. Section 40.6302(c)-1(e) provides a list of taxes that are excepted from the semimonthly deposit requirement.

Proposed §40.6302(c)-1(e)(1)(vi) would add the section 5000D tax to the list of taxes that are excepted from the semimonthly deposit requirement. Therefore, under these proposed regulations, taxpayers with section 5000D tax liability would not be required to make semimonthly deposits of the section 5000D tax.

II. Proposed Addition of 26 CFR part 47

In addition to proposing the addition of a new part 47 to 26 CFR chapter 1, proposed §47.5000D-1 would provide an introductory provision under part 47 that would designate 26 CFR part 47 as the “Designated Drugs Excise Tax Regulations.”

Proposed Applicability Dates

These proposed regulations, once adopted as final regulations in a Treasury Decision published in the **Federal Register**, are proposed to apply to calendar quarters beginning on or after October 1, 2023. Taxpayers may rely on these proposed regulations for such returns beginning on October 1, 2023, and before the date that a Treasury Decision published in the **Federal Register** adopts these regulations as final regulations.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866

(June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The collections of information contained within these proposed regulations will be submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3507(d)). See 5 CFR 1320.11. The Treasury Department and the IRS request comments on the information collection burdens related to the proposed regulations. Commenters are strongly encouraged to submit public comments electronically. Written comments and recommendations for the proposed information collection should be sent to <https://www.reginfo.gov/public/do/PRAMain>, with copies to the IRS. To find this particular information collection, select “Currently under Review - Open for Public Comments” and then use the search function. Submit electronic submissions for the proposed information collection to the IRS via email at pra.comments@irs.gov (indicate REG-115559-23 in the subject line). Comments on the collection of information must be received by December 1, 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 (see below);

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.

The collections of information in these proposed regulations relate to reporting and recordkeeping requirements that will allow section 5000D taxpayers to meet their tax reporting obligations. The collections of information would generally be used by the IRS for tax compliance purposes and by taxpayers to facilitate proper tax reporting and compliance. The reporting and recordkeeping requirements are covered within the form and instructions for Form 720. IRS is seeking OMB approval on the statutorily required revisions to the form. Therefore, collection requirements will be submitted to OMB under control number 1545-0023.

Because the section 5000D tax is a new tax that has never been reported to the IRS, the Treasury Department and the IRS do not have historical data on the number of affected taxpayers. The Centers for Medicare and Medicaid Services (CMS) has selected 10 drugs for price negotiation for initial price applicability year 2026. CMS will select for negotiation a limited number of drugs for each initial price applicability year after that, as outlined in the IRA. Further, manufacturers, producers, and importers of such drugs may or may not become subject to section 5000D tax liability. Based on the foregoing, the IRS estimates that there will be between 0 and 50 taxpayers during the next 3 years.

If a taxpayer has a section 5000D tax liability, it would be required to file Form 720 to report such liability. Form 720 is a quarterly return. A taxpayer would only be required to file Form 720 during calendar quarters in which the taxpayer has a section 5000D tax liability. Therefore, a taxpayer that has a section 5000D tax liability in one calendar quarter but not in subsequent calendar quarters would only be required to file one Form 720.

The respondents with regard to the section 5000D tax are manufacturers, producers, and importers of certain drugs. The Treasury Department and the IRS estimate the annual burden of the collections of information as follows (these estimates, which are for PRA purposes only, are based on the high end of the range of possible taxpayers and the high end of the range of the frequency of responses, in which a taxpayer would have tax liability in all four calendar quarters):

Estimated frequency of responses: Quarterly.

Estimated number of responses: 50.

Estimated burden time per respondent: 6.9 hours.

Estimated total annual reporting burden: 1,380 hours.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. Books or records relating to a collection of information must be retained if 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.

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. This certification is based on the fact that the section 5000D tax is imposed only when certain drug manufacturers, producers, and importers sell certain drugs during periods described in section 5000D(b). The periods described in section 5000D(b) relate to benchmarks in the Medicare Drug Price Negotiation Program, which involves only certain drugs with high Medicare expenditures. If any section 5000D tax liability arises, the taxpayers will primarily not be small entities. As noted earlier, data is not readily available about the number of taxpayers affected, but the number is likely to be limited, in part due to the limited number of drugs selected for the Drug Price Negotiation Program in any particular year. In addition, these proposed regulations will assist taxpayers in meeting their tax reporting obligations by providing clarity on how to report section 5000D tax liability, which will make it easier for taxpayers to comply with section 5000D. Therefore, these proposed regulations will not create additional obligations for, or impose a significant economic impact on, small entities, and a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. Notwithstanding this

certification, the Treasury Department and the IRS welcome comments on the impact of these proposed regulations on small entities.

IV. *Section 7805(f)*

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

V. *Unfunded Mandates Reform Act*

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

V. *Executive Order 13132: Federalism*

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

Statement of Availability of IRS Documents

The IRS Notice cited in this preamble is published in the Internal Revenue Bulletin

(or Cumulative Bulletin) and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

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** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at <https://www.regulations.gov> or upon request.

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

Drafting Information

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

List of Subjects

26 CFR Part 40

Excise taxes, Reporting and record-keeping requirements.

26 CFR Part 47

Excise taxes.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR chapter I, subchapter D, as follows:

**PART 40—EXCISE TAX
PROCEDURAL REGULATIONS**

Paragraph 1. The authority citation for part 40 continues to read in part as follows:

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

Par. 2. Section 40.0-1 is amended by revising paragraphs (a) and (e) to read as follows:

§40.0-1 Introduction.

(a) *In general.* The regulations in this part are designated the *Excise Tax Procedural Regulations*. The regulations in this part set forth administrative provisions relating to the excise taxes imposed by chapters 31 through 34, 36, 38, 39, 49, and 50A of the Internal Revenue Code (Code) (except for the chapter 32 tax imposed by section 4181 (firearms tax) and the chapter 36 taxes imposed by sections 4461 (harbor maintenance tax) and 4481 (heavy vehicle use tax)), and to floor stocks taxes imposed on articles subject to any of these taxes. Chapter 31 relates to retail excise taxes; chapter 32 to manufacturers' excise taxes; chapter 33 to taxes imposed on communications services and air transportation services; chapter 34 to taxes imposed on certain insurance policies; chapter 36 to taxes imposed on transportation by water; chapter 38 to environmental taxes; chapter 39 to taxes imposed on registration-required obligations; chapter 49 to taxes imposed on indoor tanning services; and chapter 50A to taxes imposed on designated drugs. References in this part to taxes also include references to the fees imposed by sections 4375 and 4376 of the Code. See parts 43, 46 through 49, and 52 of this chapter for regulations related to the imposition of tax.

* * * * *

(e) *Applicability dates--(1) Paragraph (a).* Paragraph (a) of this section applies to returns required to be filed under §40.6011(a)-1 for calendar quarters beginning on or after October 1, 2023. For rules that apply before October 1, 2023, see 26 CFR part 40, revised as of April 1, 2023.

(2) *Paragraphs (b) and (c).* Paragraphs (b) and (c) of this section apply to returns for calendar quarters beginning after March 31, 2013. For rules that apply before March 31, 2013, see 26 CFR part 40, revised as of April 1, 2012.

(3) *Paragraph (d).* Paragraph (d) of this section applies to returns for calendar quarters beginning on or after January 19, 2021. For rules that apply before January 19, 2021, see 26 CFR part 40, revised as of April 1, 2020.

Par. 3. Section 40.6011(a)-1 is amended by:

1. Revising the first sentence of paragraph (a)(2)(i).
2. Adding paragraphs (d) and (e).

The revision and additions read as follows:

§40.6011(a)-1 Returns.

(a) * * *

(2) * * *

(i) * * * Except as provided in paragraphs (b) through (d) of this section, the return must be made for a period of one calendar quarter. * * *

* * * * *

(d) *Tax on designated drugs.* A return that reports liability imposed by section 5000D must be made for a period of one calendar quarter. A return must be filed for each calendar quarter in which liability for the tax imposed by section 5000D is incurred. There is no requirement that a return be filed for a calendar quarter in which there is no liability imposed by section 5000D.

(e) *Applicability dates--(1) Paragraph (a)(2)(i).* Paragraph (a)(2)(i) of this section applies to returns filed for calendar quarters beginning on or after October 1, 2023. For rules that apply before October 1, 2023, see 26 CFR part 40, revised as of April 1, 2023.

(2) *Paragraph (c).* See paragraph (c)(2) of this section.

(3) *Paragraph (d).* Paragraph (d) of this section applies to returns filed for calendar quarters beginning on and after October 1, 2023.

Par. 4. Section 40.6302(c)-1 is amended by:

1. Revising paragraphs (e)(1)(iv) and (v).
2. Adding paragraph (e)(1)(vi).
3. Revising paragraph (f).

The revisions and addition read as follows:

§40.6302(c)-1 Deposits.

* * * * *

(e) * * *

(1) * * *

(iv) Sections 4375 and 4376 (relating to fees on health insurance policies and self-insured insurance plans);

(v) Section 5000B (relating to indoor tanning services); and

(vi) Section 5000D (relating to designated drugs).

* * * * *

(f) *Applicability dates--(1) Paragraphs (a) through (d).* Paragraphs (a) through (d) of this section apply to deposits and payments made after March 31, 2013. For rules that apply before March 31, 2013, see 26 CFR part 40, revised as of April 1, 2012.

(2) *Paragraph (e).* Paragraph (e) of this section applies to calendar quarters beginning on or after October 1, 2023. For rules that apply before October 1, 2023, see 26 CFR part 40, revised as of April 1, 2023.

Par. 5. Add part 47 to read as follows:

**PART 47—DESIGNATED DRUGS
EXCISE TAX REGULATIONS**

Sec.

47.5000D-0 Table of contents.

47.5000D-1 Introduction.

47.5000D-2 - 47.5000D-3 [Reserved]

Authority: 26 U.S.C. 7805.

Section 47.5000D-1 also issued under 26 U.S.C. 5000D.

§47.5000D-0 Table of contents.

This section lists the table of contents for §§47.5000D-1 through 47.5000D-3.

§47.5000D-1 Introduction.

(a) In general.

(b) Applicability date.

§§47.5000D-2 and 47.5000D-3
[Reserved]

§47.5000D-1 Introduction.

(a) *In general.* The regulations in this part are designated the *Designated Drugs Excise Tax Regulations*. The regulations in

this part relate to the tax imposed by section 5000D of the Internal Revenue Code. See part 40 of this chapter for regulations relating to returns, payments, and other procedural rules applicable to this part.

(b) *Applicability date.* This section applies to returns filed for calendar quarters beginning on or after October 1, 2023.

§§47.5000D-2 - 47.5000D-3 [Reserved]

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register September 27, 2023, 11:15 a.m., and published in the issue of the Federal Register for October 02, 2023, 88 FR 67690)

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 2023–27 through 2023–52 is in Internal Revenue Bulletin 2023–52, dated December 27, 2023.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2023–27 through 2023–52 is in Internal Revenue Bulletin 2023–52, dated December 27, 2023.

Internal Revenue Service

Washington, DC 20224

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INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at www.irs.gov/irb/.

We Welcome Comments About the Internal Revenue Bulletin

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (www.irs.gov) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.