INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2024–3
January 16, 2024

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.

INCOME TAX

Notice 2024-10, page 406.

This notice provides additional interim guidance regarding the application of the new corporate alternative minimum tax (CAMT), as added to the Code by the Inflation Reduction Act of 2022. Specifically, the notice provides additional rules for determining the adjusted financial statement income (AFSI) of a U.S. Shareholder when a controlled foreign corporation (CFC) pays a dividend to the U.S. Shareholder or another CFC and modifies and clarifies the interim guidance provided in Notice 2023-64 regarding the applicable financial statement (AFS) of members of a tax consolidated group.

REG-107423 -23, page 411.

The notice of proposed rulemaking (NPRM) would implement the new section 45X advanced manufacturing production credit established by the Inflation Reduction Act of 2022 (IRA), Public Law 117-169. Section 45X provides a credit for the production (within the United States) and sale of eligible components and is designed to incentivize domestic production of certain green energy components including certain solar energy components, wind energy components, inverters, qualifying battery components, and applicable critical minerals. The proposed regulations would affect eligible taxpayers who produce and sell eligible components and intend to claim an advanced manufacturing production credit.

T.D. 9984, page 386.

These final regulations implement the Internal Revenue Code's de minimis error safe harbor exceptions for de minimis errors on information returns and payee statements, which treat erroneous information returns and payee statements as correct for certain penalty purposes if the errors are de minimis in amount. The final regulations prescribe the time and manner in which a payee may elect not to have the de minimis error safe harbor exceptions apply. The final regulations also update dollar amounts, definitions, and references in provisions relating to information return and payee statement penalties, to reflect statutory enactments that are not accounted for in the existing regulations.

Finding Lists begin on page ii.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

Part I

26 CFR 1.6045-1; 26 CFR 301.6721-0; 26 CFR 301.6721-1; 26 CFR 301.6722-1; 26 CFR 301.6724-1

T.D. 9984

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1 and 301

De Minimis Error Safe Harbor Exceptions to Penalties for Failure to File Correct Information Returns or Furnish Correct Payee Statements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations implementing statutory safe harbor rules that protect persons required to file information returns or to furnish payee statements from penalties under the Internal Revenue Code (Code) for failure to file correct information returns or furnish correct payee statements. The statutory safe harbor rules treat information returns and payee statements with erroneous dollar amounts as correct returns or statements for certain penalty purposes if the errors are de minimis in dollar amount. The final regulations also prescribe the time and manner in which a payee may elect not to have the statutory safe harbor rules apply. In addition, these final regulations update dollar amounts, definitions, and references in existing regulations relating to information return and payee statement penalties to reflect various statutory amendments to the Code that are not accounted for in the existing regulations. Finally, the final regulations provide rules relating to the reporting of basis of securities by brokers as this reporting relates to the de minimis error safe harbor rules. The final regulations affect persons required to either file information returns or to furnish payee statements (filers) and the recipients of payee statements (payees).

DATES: *Effective Date*: These regulations are effective on December 19, 2023.

Applicability Dates: For dates of applicability, *see* §§1.6045-1(d)(6)(ix) and (q), 301.6721-1(j), 301.6722-1(g), and 301.6724-1(o).

FOR FURTHER INFORMATION CONTACT: Alexander Wu at (202) 317-6845 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations to amend the Income Tax Regulations (26 CFR part 1) under section 6045(g) of the Code and the Procedure and Administration Regulations (26 CFR part 301) under sections 6721, 6722, and 6724 of the Code. In particular, the final regulations implement two statutory safe harbors that except certain de minimis errors in reporting correct dollar amounts on information returns and payee statements from the penalty for failure to file correct information returns imposed by section 6721 and the penalty for failure to furnish correct payee statements imposed by section 6722 (de minimis error safe harbor exceptions). The de minimis error safe harbor exceptions are found in sections 6721(c)(3) and 6722(c)(3), which were added to the Code by section 202 of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), enacted as division Q of the Consolidated Appropriations Act, 2016, Public Law 114-113, 129 Stat. 2242, 3076-78 (2015). Under sections 6721(c)(3) and 6722(c)(3), an error in a reported dollar amount generally is "de minimis" if the difference between any single amount reported in error and the correct amount required to be reported does not exceed $100. If such a difference is with respect to reporting an amount of tax withheld, the difference may not be more than $25.

On October 17, 2018, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-118826-16) in the *Federal Register* (83 FR 52726) containing proposed regulations to implement the de minimis error safe harbor exceptions, as well as to update dollar amounts, definitions, and references reflecting various statutory amendments to the Code that are not accounted for in provisions of existing regulations relating to information return and payee statement penalties (proposed regulations). The proposed regulations were issued following a notice announcing and describing regulations intended to be issued under sections 6721, 6722, and 6724. *See* Notice 2017-09, 2017-4 I.R.B. 542 (January 23, 2017).

The Treasury Department and the IRS received six written comments in response to the notice of proposed rulemaking. All of the written comments responding to the notice of proposed rulemaking are available at *https://www.regulations.gov* or upon request. Some comments merely expressed appreciation for the proposed regulations. No public hearing was requested or held. After consideration of the written comments, the proposed regulations are adopted as modified by this Treasury Decision.

Summary of Comments and Explanation of Revisions

This Summary of Comments and Explanation of Revisions section addresses the substantive comments in response to the notice of proposed rulemaking that disagreed with or requested clarification of the proposed regulations. See the Explanation of Provisions section of REG-118826-16 for a detailed explanation of the proposed regulations.

I. *Effect of the regulations on tax compliance*

One comment stated that the proposed regulations "will increase the amount of regulation we have when it comes to 'failure to file cases' in the US." The comment did not describe how the proposed regulations would increase the amount of regulation applicable to "failure to file cases." The Treasury Department and the IRS

note that the regulations implement statutory provisions providing certain protections to filers and payees, and the amount of regulation is only one of several factors that must be considered in implementing statutory provisions. The Treasury Department and the IRS further note that the safe harbor is generally intended to provide filers with relief from penalties that would otherwise accrue due to unintentional de minimis errors in reporting correct dollar amounts on information returns and payee statements. Accordingly, the final regulations do not adopt this comment.

II. *De minimis error safe harbor election*

A. *Applying the election to individual securities and individual accounts*

One comment requested a more efficient way to furnish correct payee statements generally. The commentator did not suggest a specific method for furnishing correct payee statements; nevertheless, the method for furnishing correct payee statements is beyond the scope of these regulations, which is limited to implementing the two de minimis error safe harbor exceptions and otherwise updating existing regulations for statutory changes. The final regulations therefore do not adopt this comment.

One comment disagreed with providing filers the option to choose whether to correct de minimis errors. The comment also stated that the de minimis threshold was too high and disagreed with the de minimis error safe harbor exceptions applying on a "per security" rather than a "per account" basis. The Treasury Department and the IRS note that sections 6721(c)(3) and 6722(c)(3) mandate the option for filers to choose whether to correct de minimis errors, subject to an election by a payee to override this option. Sections 6721(c)(3)(A) and 6722(c)(3)(A) also mandate the de minimis thresholds with specificity. The final regulations reflect these statutory requirements. The Treasury Department and the IRS further note that the statutory de minimis error safe harbor exceptions apply on a "per statement" basis. Section 6722(c)(3)(A) expressly provides that the de minimis error safe harbor exceptions apply "with respect to any payee statement." Further, section 6722(c)(3)(B) provides that the de minimis error safe harbor exceptions "shall not apply to any payee statement if the person to whom such statement is required to be furnished makes an election . . . with respect to such statement." To the extent that a statement relates only to a single security, the statute applies, in effect, on a "per security" basis. The statute allows for this outcome, and the final regulations accord with the plain reading of the statute.

One comment reiterated comments submitted in 2018 prior to the publication of the proposed regulations. This comment suggested that a payee's election to override the de minimis error safe harbor exceptions should apply on an account-by-account basis, rather than on a statement-by-statement basis. The comment questioned whether it was Congress's intent to require taxpayers to make separate elections for each payee statement. As stated in the preamble of the notice of proposed rulemaking, the comment's suggested rule would significantly limit a payee's options for making elections and is inconsistent with the statutory framework of sections 6721 through 6724, which generally impose a penalty on a per statement (or return) basis. However, a payee need not decide on elections individually for each payee statement associated with a single account or filer but may elect as to all payee statements or any combination of payee statements, with the election lasting indefinitely by default. As recognized in the notice of proposed rulemaking, nothing in the Code prohibits filers from providing corrected statements regardless of the de minimis error safe harbor exceptions or payee election. Thus, in drafting the PATH Act, Congress was aware that filers could provide corrections on an account-wide basis once a payee made an election with respect to a single type of payee statement associated with that account.

B. *Potential for inconsistencies in basis reporting*

A comment stated that the proposed regulations could cause inconsistencies in basis reporting that are contrary to congressional intent. The comment was specifically concerned with a situation in which a payee would elect to override the de minimis error safe harbor exceptions with respect to one form but not another corresponding form. For example, a payee could elect to override the safe harbor exception with respect to a Form 1099-DIV, *Dividends and Distributions*, but not elect to override the safe harbor exception with respect to a corresponding Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*, potentially resulting in inconsistently reported basis.

The Treasury Department and the IRS have determined that the text of proposed §1.6045-1(d)(6)(vii) should be amended to more clearly address this situation. Under the rule as modified by these final regulations, if a Form 1099-DIV is corrected because a payee elects to override the de minimis error safe harbor exceptions as applied to the Form 1099-DIV, then the adjusted basis reported on the corresponding Form 1099-B must be based on and consistent with the corresponding corrected dollar amount shown on the corrected Form 1099-DIV. After taking into account the corrected dollar amount shown on the corrected Form 1099-DIV, Form 1099-B should be corrected if there is an error on the Form 1099-B and that error is not de minimis. In any event, to avoid inconsistent reporting, the filer can always choose to correct the Form 1099-B, or the payee can elect to override the de minimis safe harbor exceptions with respect to the Form 1099-B.

The Treasury Department and the IRS note that the fact that Congress enacted the de minimis error safe harbor exceptions indicates Congress was aware that there might be minor inconsistencies in basis reporting and that the de minimis error safe harbor exceptions apply only for certain penalty purposes. The de minimis error safe harbor exceptions have no effect on the operation of those provisions of the Code that apply to determine the basis of property, such as section 1012 of the Code.

C. *Effective date of payee election*

Another comment requested the payee election be effective only on a prospective basis, citing administrative burden. The Treasury Department and the IRS note that the election is prospective in that a

filer is required to furnish corrected statements after the date the election is made by the payee, and an election, once made, is in effect until revoked. Any administrative burden as described by the comment is limited because the payee must elect no later than the later of 30 days after the date on which the payee statement is required to be furnished to the payee, or October 15 of the calendar year, to receive a correct payee statement required to be furnished in that calendar year. As discussed in the preamble to the proposed regulations, administrative burden is but one factor that must be considered. A competing consideration is the flexibility that Congress provided for payees to elect out of the de minimis error safe harbor exceptions. The Treasury Department and the IRS have determined that the proposed rules reflect a reasonable balancing of these considerations. Thus, the final regulations do not adopt this suggestion.

III. *Clarification of items in the proposed regulations and other guidance*

Two comments requested clarification that the term "tax withheld" in proposed §301.6722-1(d)(2) includes social security, Medicare, and Additional Medicare taxes. The definition in the proposed regulations referenced some of the more common types of taxes withheld but was not intended to be an exhaustive list of all Federal taxes considered to be "tax withheld." The use of the term "includes" in proposed §301.6722-1(d)(2) is based on the definition of "includes" in section 7701(c) of the Code, which provides that the term "includes" when used in a definition "shall not be deemed to exclude other things otherwise within the meaning of the term defined." Nevertheless, to resolve any ambiguity as to whether the term "tax withheld" includes social security, Medicare, and Additional Medicare taxes, the final regulations generally adopt the text of proposed §301.6722-1(d)(2) but modify the definition of "tax withheld" by adding a reference to section 3102 of the Code in §301.6722-1(d)(2).

One comment requested clarification on whether different taxes withheld and reported separately on an information return or payee statement are considered separately in determining whether the de minimis threshold is reached. To illustrate, the comment asked if errors on an employee's Form W-2, *Wage and Tax Statement*, in the amounts of $20 in Federal income tax withheld, $20 in Medicare tax withheld, and $7.41 in Additional Medicare tax withheld would be considered separately for de minimis threshold purposes. The definition of "de minimis error" in proposed §301.6722-1(d)(2) refers to "any single amount in error." Accordingly, if a payee statement does not require taxes withheld to be combined into a single amount for reporting purposes, then each single amount of tax required to be reported separately would be considered separately in determining whether an error is de minimis. To respond to the concern raised by this comment, the final regulations add new examples in §301.6722-1(d)(5)(iv) and (v) to illustrate this result and update the Table of Contents in §301.6721-0 relating to §301.6722-1(d)(5).

The comment also suggested that additional disclosures be provided in the General Instructions for Forms W-2 and W-3, *Transmittal of Wage and Tax Statements*. The comment correctly noted that the de minimis error safe harbor exceptions under sections 6721(c)(3) and 6722(c)(3) apply only for information return and payee statement penalty purposes, and do not apply for other purposes, including the requirement to pay and report employment taxes on Form 941, *Employer's QUARTERLY Federal Tax Return*. The comment suggested including a note of caution concerning the effect of incorrect information returns on other aspects of tax compliance. The Treasury Department and the IRS will consider revising the General Instructions for Forms W-2 and W-3. To respond to the concern raised by this comment, the final regulations add §§301.6721-1(e)(5) and 301.6722-1(d)(7), which state that the de minimis error safe harbor exceptions under sections 6721(c)(3) and 6722(c)(3) apply only for information return and payee statement penalty purposes, respectively, and not for other purposes, including requirements to pay and report taxes pursuant to provisions of the Code other than sections 6721 and 6722. The final regulations also add §§301.6721-1(e)(4) and 301.6722-1(d)(6) to make clear that, regardless of whether the de minimis error safe harbor exceptions provide an exception for not filing or furnishing the corrected statement, a filer may voluntarily file (1) a corrected information return if the corresponding payee statement is furnished concurrently, or (2) a corrected payee statement may be furnished voluntarily if the corresponding information return is filed concurrently.

Finally, proposed §301.6724-1(g) proposed to update the questions and answers in §301.6724-1(g) regarding the due diligence safe harbor as in effect on October 12, 2018, the date the proposed regulations were published in the *Federal Register*. The proposed changes updated the existing regulations to remove outdated references and to make numerous conforming amendments to reflect the addition and redesignation of paragraphs. No comments were received in response to the proposed changes to §301.6724-1(g). Nevertheless, the final regulations make non-substantive formatting changes to convert the outmoded questions and answers into more clearly stated rules.

Applicability Dates

The proposed regulations provided that the regulations generally would apply with respect to information returns required to be filed and payee statements required to be furnished on or after January 1 of the calendar year immediately following the date of publication of a Treasury decision adopting these rules as final regulations in the *Federal Register*.

However, the proposed regulations provided that proposed §301.6724-1(h) would apply with respect to information returns required to be filed and payee statements required to be furnished on or after January 1, 2017. The final regulations generally adopt the applicability dates proposed in the proposed regulations. However, because Notice 2017-09 was released to the public on January 4, 2017, the final regulations postpone the applicability date of §301.6724-1(h) by providing that §301.6724-1(h) applies with respect to information returns required to be filed and payee statements required to be furnished after January 4, 2017.

Effect on Other Documents

These final regulations under sections 6045(g), 6721, 6722, and 6724 supersede Notice 2017-09 with respect to information returns required to be filed and payee statements required to be furnished on or after January 1, 2024.

Special Analyses

I. *Regulatory Planning and Review*

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

II. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. These regulations implement the de minimis error safe harbor exceptions in sections 6721(c)(3) and 6722(c)(3) to the sections 6721 and 6722 penalties. Pursuant to section 6722(c)(3)(B), these regulations also provide for the time and manner for elections by payees that the de minimis error safe harbor exceptions not apply, including optional notifications by filers to provide for an alternative reasonable manner for the election. Finally, these regulations provide rules for revocations by payees of elections and record retention rules.

Although these regulations may affect a substantial number of small entities, the economic impact on these entities is not significant. The de minimis error safe harbor exceptions are expected to reduce the burden on all filers, including small entities, to file corrected information returns and furnish corrected payee statements because of de minimis errors. In those cases where payees opt to make a voluntary election for the de minimis error safe harbor exceptions to not apply to a payee statement, the expense of making the voluntary election will be borne by the payees, some of which may be small entities. However, any expense to make this voluntary election is expected to be minimal and therefore not have a significant economic impact.

Filers that are small entities receiving elections may incur costs in processing the elections, including initial costs in implementing systems or modifying existing systems to process elections, and subsequently in time incurred administering these systems. However, because section 6722(c)(3)(B) provides for a payee election, such costs flow from the statute regardless of these regulations. The Code and regulations have long required the filing of information returns and the furnishing of payee statements by filers. Accordingly, systems for filing information returns and furnishing payee statements are already in existence. Any costs incurred pursuant to these regulations in modifying those systems are not expected to be significant. These regulations provide clarity regarding the election process, which is expected to result in a more streamlined process for correcting payee statements.

Similarly, in those cases where payees opt to make a voluntary revocation of a prior voluntary election, the expense of making the voluntary revocation will be borne by the payees, some of which may be small entities. Any expense to make a voluntary revocation of a prior voluntary election is expected to be minimal and therefore not have a significant economic impact. Filers that are small entities receiving revocations will benefit from the resulting applicability of the de minimis error safe harbor exceptions, resulting in reduced burden to file corrected information returns and furnish corrected payee statements because of de minimis errors. Filers that are small entities receiving revocations may incur costs in processing the revocations similar to those incurred in processing elections; however, it is expected that systems implementing payee elections can be modified with minimal additional cost to account for revocations in addition to elections. Filers that are small entities choosing to provide the optional notification to payees regarding an alternative reasonable manner for making the election may incur costs in providing the notification. However, it is expected that filers will only provide optional notifications if they have determined that any cost in providing the notification is offset by a resulting economic benefit to the filer, such as a more cost-efficient election system. The record retention rules may also increase expenses for filers that are small entities; however, any added expenses are expected to be minimal given existing record retention systems.

Pursuant to section 7805(f), the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses. No comments were received from the Chief Counsel for Advocacy of the Small Business Administration.

III. *Paperwork Reduction Act*

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2301.

The collection of information in these final regulations is in §301.6722-1(d)(3)(iii) regarding the payee election, (d)(3)(v)(B) regarding the filer notification, (d)(3)(vii) regarding the payee revocation, and (d)(4) regarding record retention. The information in final regulations §301.6722-1(d)(3)(iii) and (vii) will be used by payees to make and revoke elections and by filers to determine whether they are required to furnish corrected payee statements to payees and file corrected information returns with the IRS to avoid application of penalties under sections 6721 and 6722 of the Code. The information under final regulation §301.6722-1(d)(3)(v)(B) will be used to give filers and payees flexibility in establishing reasonable alternative manners for elections. And the information in final regulation §301.6722-1(d)(4) will be used by the IRS to determine whether filers are subject to penalties under sections 6721 and 6722. The collection of information in final regulations §301.6722-1(d)(3)(iii) regarding the payee election,

(d)(3)(v)(B) regarding the filer notification, and (d)(3)(vii) regarding the payee revocation is voluntary to obtain a benefit. The collection of information in final regulation §301.6722-1(d)(4) regarding record retention is mandatory. The likely respondents are individuals, state or local governments, farms, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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 26 U.S.C. 6103.

IV. *Unfunded Mandates Reform Act*

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

V. *Executive Order 13132: Federalism*

E.O. 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 E.O. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the E.O.

VI. *Congressional Review Act*

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

Drafting Information

The principal author of these regulations is Alexander Wu of the Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

Statement of Availability

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

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

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

Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amends 26 CFR parts 1 and 301 as follows:

PART 1—INCOME TAXES

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

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

* * * * *

Par. 2. Section 1.6045-1 is amended by:

1. Redesignating paragraph (d)(6)(vii) as paragraph (d)(6)(viii);
2. Adding a new paragraph (d)(6)(vii);
3. In newly redesignated paragraph (d)(6)(viii), designating *Examples 1* through *4* as paragraphs (d)(6)(viii)(A) through (D), respectively;
4. Redesignating newly designated paragraphs (d)(6)(viii)(A)(i) through (iii) as paragraphs (d)(6)(viii)(A)(*1*) through (*3*), respectively;
5. In newly designated paragraph (d)(6)(viii)(B), removing the language "*Example 1*" and adding "paragraph (d)(6)(viii)(A)(*1*) of this section (*Example 1*)" in its place;
6. Redesignating newly designated paragraphs (d)(6)(viii)(C)(i) and (ii) as paragraphs (d)(6)(viii)(C)(1) and (2);
7. Adding paragraph (d)(6)(ix); and
8. Revising paragraphs (k)(4), (l), and (q).

The additions and revisions read as follows:

§1.6045-1 Returns of information of brokers and barter exchanges.

* * * * *

(d) * * *

(6) * * *

(vii) *Treatment of de minimis errors*. For purposes of this section, a customer's adjusted basis generally must be determined by treating any incorrect dollar amount that is not required to be corrected by reason of section 6721(c)(3) or 6722(c)(3) as the correct amount. However, if a broker, upon identifying a dollar amount as incorrect, voluntarily or is required to file a corrected information return and furnish the corresponding corrected payee statement showing the correct dollar amount, then regardless of any provision under section 6721 or 6722, the adjusted basis for purposes of this section must be based on and consistent with the correct dollar amount as reported on the corrected information return and corrected payee statement.

* * * * *

(ix) *Applicability date*. Paragraph (d)(6)(vii) of this section applies with respect

to information returns required to be filed and payee statements required to be furnished on or after January 1, 2024.

* * * * *

(k) * * *

(4) *Cross-reference to penalty*. For provisions for failure to furnish timely a correct payee statement, *see* §301.6722-1 of this chapter (Procedure and Administration Regulations). *See* §301.6724-1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(l) *Use of magnetic media or electronic form*. *See* §301.6011-2 of this chapter for rules relating to filing information returns on magnetic media or in electronic form and for rules relating to waivers granted for undue hardship. A broker or barter exchange that fails to file a proper Form 1099 electronically, when required, may be subject to a penalty under section 6721 for each such failure. *See* paragraph (j) of this section.

* * * * *

(q) *Applicability dates*. Except as otherwise provided in paragraphs (d)(6)(ix), (m)(2)(ii), and (n)(12)(ii) of this section, and in this paragraph (q), this section applies on or after January 6, 2017. Paragraphs (k)(4) and (l) of this section apply with respect to information returns required to be filed and payee statements required to be furnished on or after January 1, 2024. (For rules that apply after June 30, 2014, and before January 6, 2017, *see* 26 CFR 1.6045-1, as revised April 1, 2016.)

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Par. 4. Section 301.6721-0 is amended by:

1. Revising the introductory text and the entries for §301.6721-1(b)(6) and (d)(4);
2. Redesignating the entries for §301.6721-1(e), (e)(1) and (2), (f), (f)(1) through (6), (g), and (g)(1) through (6) as entries for §301.6721-1(f), (f)(1) and (2), (g), (g)(1) through (6), (h), and (h)(1) through (6), respectively;
3. Adding entries for §301.6721-1(e), (e)(1) through (5), (i), and (j);
4. Redesignating the entries for §301.6722-1(d) and (d)(1) through (3) as the entries for §301.6722-1(e) and (e)(1) through (3);
5. Adding entries for §301.6722-1(d), (d)(1) through (7), (e)(4), (f), and (g);
6. In the entry for §301.6724-1(c)(4), removing "Internal Revenue Service" and adding "IRS" in its place;
7. Revising the entry for §301.6724-1(h);
8. Removing the entries for §301.6724-1(h)(1) and (2); and
9. Adding an entry for §301.6724-1(o).

The additions and revisions read as follows:

§301.6721-0 Table of Contents.

In order to facilitate the use of §§301.6721-1 through 301.6724-1, this section lists the paragraph headings contained in these sections.

§301.6721-1 Failure to file correct information returns.

* * * * *

(b) * * *

(6) Application to returns not due on January 31, February 28, or March 15.

* * * * *

(d) * * *

(4) Nonapplication to returns not due on January 31, February 28, or March 15.

(e) Safe harbor exception for certain de minimis errors.

(1) In general.

(2) Definition of de minimis error.

(3) Election to override the safe harbor exception.

(4) Voluntary corrections.

(5) Limitations on applicability.

* * * * *

(i) Adjustment for inflation.

(j) Applicability date.

§301.6722-1 Failure to furnish correct payee statements.

* * * * *

(d) Safe harbor exception for certain de minimis errors.

(1) In general.

(2) Definition of de minimis error.

(3) Election to override the safe harbor exception.

(4) Record retention.

(5) Examples.

(6) Voluntary corrections.

(7) Limitations on applicability.

(e) * * *

(4) Filer.

(f) Adjustment for inflation.

(g) Applicability date.

* * * * *

§301.6724-1 Reasonable cause.

* * * * *

(h) Reasonable cause safe harbor after election under section 6722(c)(3)(B).

* * * * *

(o) Applicability dates.

Par. 5. Section 301.6721-1 is amended by:

1. Revising paragraphs (a)(1) and (b)(1) and (2);
2. In paragraph (b)(3), removing "Internal Revenue Service" and adding "IRS" in its place;
3. Revising paragraph (b)(5) introductory text and (b)(5)(i) and (ii);
4. Revising paragraph (b)(6);
5. Revising paragraphs (c)(1), (c)(2)(iii), and (c)(3) introductory text;
6. In paragraph (c)(3), designating *Examples 1* through *3* as paragraphs (c)(3)(i) through (iii), respectively;
7. In newly designated paragraphs (c)(3)(i) through (iii), removing "Internal Revenue Service" and adding "IRS" in its place;
8. In newly designated paragraph (c)(3)(ii), removing the language "the error" and adding "The error" in its place;
9. Revising paragraph (d);
10. Redesignating paragraphs (e), (f), (g), and (h) as paragraphs (f), (g), (h), and (j), respectively;
11. Adding a new paragraph (e);
12. Revising newly redesignated paragraphs (f)(1) and (g)(1);
13. In newly redesignated paragraph (g)(3)(iii), removing "Internal Revenue Service" and adding "IRS" in its place;
14. Revising newly redesignated paragraphs (g)(4) through (6), (h)(1), and (h)(2)(x) and (xi);
15. Adding paragraphs (h)(2)(xii);

16. Revising newly redesignated paragraphs (h)(3)(xvii), (xviii), (xxiv), and (xxv);
17. Adding paragraphs (h)(3)(xxvi) and (xxvii);
18. Revising newly redesignated paragraphs (h)(4) and (6);
19. Adding paragraph (i); and
20. Revising newly redesignated paragraph (j).

The revisions and additions read as follows:

§301.6721-1 Failure to file correct information returns.

(a) * * *

(1) *General rule*. A penalty of $250 is imposed for each *information return* (as defined in section 6724(d)(1) and paragraph (h) of this section) with respect to which a *failure* (as defined in section 6721(a)(2) and paragraph (a)(2) of this section) occurs. No more than one penalty will be imposed under this paragraph (a)(1) with respect to a single information return even though there may be more than one failure with respect to such return. The total amount imposed on any person for all failures during any calendar year with respect to all information returns will not exceed $3,000,000. *See* paragraph (b) of this section for a reduction in the penalty if the failures are corrected within specified periods. *See* paragraph (c) of this section for an exception to the penalty for inconsequential errors or omissions. *See* paragraph (d) of this section for an exception to the penalty for a de minimis number of failures. *See* paragraph (e) of this section for a safe harbor exception for certain de minimis errors. *See* paragraph (f) of this section for lower limitations to the $3,000,000 maximum penalty. *See* paragraph (g) of this section for higher penalties if a failure is due to intentional disregard of the requirement to file timely correct information returns. *See* paragraph (i) of this section for inflation adjustments to penalty amounts. *See* §301.6724-1(a)(1) for waiver of the penalty for a failure that is due to reasonable cause.

* * * * *

(b) * * *

(1) *Correction within 30 days*. The penalty imposed under section 6721(a) for a failure to file timely or for a failure to include correct information will be $50 in lieu of $250 if the failure is corrected on or before the 30th day after the required filing date (corrected within 30 days). The total amount imposed on a person for all failures during any calendar year that are corrected within 30 days will not exceed $500,000.

(2) *Correction after 30 days but on or before August 1*. The penalty imposed under section 6721(a) for a failure to file timely or for a failure to include correct information will be $100 in lieu of $250 if the failure is corrected after the 30-day period described in paragraph (b)(1) of this section but on or before August 1 of the year in which the required filing date occurs (corrected after 30 days but on or before August 1). *See* paragraph (b)(6) of this section for an exception to the provisions of this paragraph (b)(2) for returns that are not due on January 31, February 28, or March 15. The total amount imposed on a person for all failures during any calendar year corrected after 30 days but on or before August 1 will not exceed $1,500,000.

* * * * *

(5) *Examples*. The provisions of paragraphs (a) and (b)(1) through (4) of this section may be illustrated by the following examples. These examples do not take into account any possible application of the de minimis exception under paragraph (d) of this section, the safe harbor exception for certain de minimis errors under paragraph (e) of this section, the lower small business limitations under paragraph (f) of this section, the penalty for intentional disregard under paragraph (g) of this section, adjustments for inflation under paragraph (i) of this section, or the reasonable cause waiver under §301.6724-1(a):

(i) *Example 1*. Corporation R fails to file timely 23,000 Forms 1099-MISC, *Miscellaneous Information*, for the 2023 calendar year. Of the forms filed, 5,000 are filed with correct information within 30 days, and 18,000 after 30 days but on or before August 1, 2024. For the same year R fails to file timely 400 Forms 1099-INT, *Interest Income*, which R eventually files on September 28, 2024, after the period for reduction of the penalty has elapsed. R is subject to a penalty of $100,000 for the 400 forms that were not filed by August 1 ($250 x 400 = $100,000), $1,500,000 for the 18,000 forms filed after 30 days ($100 x 18,000 = $1,800,000, limited to $1,500,000 under paragraph (b)(2) of this section), and $250,000 for the 5,000 forms filed within 30 days ($50 x 5,000 = $250,000), for a total penalty of $1,850,000.

(ii) *Example 2*. Corporation T fails to file timely 14,000 Forms 1099-MISC for the 2023 calendar year. T files the 14,000 Forms 1099-MISC on September 3, 2024. Because T does not correct the failure by August 1, 2024, T is subject to a penalty of $3,000,000, the maximum penalty under paragraph (a) of this section. Without the limitation of paragraph (a) of this section, T would be subject to a $3,500,000 penalty ($250 x 14,000 = $3,500,000).

* * * * *

(6) *Application to returns not due on January 31, February 28, or March 15*. For returns that are not due on January 31, February 28, or March 15 (for example, a Form 8300, *Report of Cash Payments Over $10,000 Received in a Trade or Business*), the penalty is $50 if the failure is corrected within 30 days. If the failure is corrected after 30 days, the penalty is $250 rather than $100. There is no period during which the penalty is reduced to $100 under paragraph (b)(2) of this section.

(c) * * *

(1) *In general*. An inconsequential error or omission is not considered a failure to include correct information. For purposes of this paragraph (c)(1), the term *inconsequential error or omission* means any failure that does not prevent or hinder the IRS from processing the return, from correlating the information required to be shown on the return with the information shown on the payee's tax return, or from otherwise putting the return to its intended use. *See* paragraph (h)(5) of this section for the definition of *payee*.

(2) * * *

(iii) Any monetary amounts, except as provided in paragraph (e) of this section. The IRS may, by administrative pronouncement, specify other types of errors or omissions that are never inconsequential.

(3) *Examples*. The provisions of this paragraph (c) may be illustrated by the following examples, which do not take into account any possible application of the penalty for intentional disregard under paragraph (g) of this section or the reasonable cause waiver under §301.6724-1(a):

* * * * *

(d) *Exception for a de minimis number of failures*—(1) *Requirements*. The penalty under paragraph (a) of this section is not imposed for a de minimis number of failures to include correct information if the filer corrects such failures on or before

August 1 of the year in which the required filing date occurs. *See* paragraph (d)(4) of this section for special rules relating to returns that are not due on January 31, February 28, or March 15.

(2) *Calculation of the de minimis exception*. The number of returns to which the de minimis exception in this paragraph (d) applies for any calendar year will not exceed the greater of 10 or one-half of one percent of the total number of all information returns the filer is required to file during the year. If the number of returns on which the filer fails to include correct information exceeds the number of returns to which the de minimis exception applies, the de minimis exception applies to those returns that will afford the filer the greatest reduction in penalty. The de minimis exception applies to failures to include correct information that exist after the application (if any) of the safe harbor exception for certain de minimis errors under paragraph (e) of this section and after the application (if any) of the waiver for reasonable cause under section 6724(a) and §301.6724-1. Returns to which the de minimis exception applies are treated as having been originally filed with correct information.

(3) *Examples*. The provisions of this paragraph (d) may be illustrated by the following examples. In each of the examples, the failures to file and to include correct information are subject to penalty under paragraph (a) of this section. The examples do not take into account any possible application of the safe harbor exception for certain de minimis errors under paragraph (e) of this section, the lower small business limitations under paragraph (f) of this section, the penalty for intentional disregard under paragraph (g) of this section, any adjustment for inflation under paragraph (i) of this section, or the reasonable cause waiver under §301.6724-1(a).

(i) *Example 1*. Corporation T files timely 10,000 Forms 1099-INT, *Interest Income*, for 2023 by February 28, 2024. The 10,000 forms are all the information returns that T is required to file during the 2024 calendar year. Of the forms filed, 70 contained incorrect information. T corrects the failures on July 12, 2024. No penalty is imposed for 50 of the failures (that is, the greater of 10 or .005 x 10,000 = 50) even though the total failures, 70, exceed the number to which the de minimis exception may apply. The $100 penalty under paragraph (b)(2) of this section is imposed, in lieu of $250, for the remaining 20 failures, which were corrected after 30 days but before August 1, resulting in a total penalty of $2,000 ($100 x 20 = $2,000).

(ii) *Example 2*. Corporation U files timely 9,500 Forms 1099-INT for 2023 by February 28, 2024. Fifty of these returns contain incorrect information with respect to which U files correct information on August 1, 2024. U also files 500 Forms 1099-INT for 2023 on August 30, 2024, after the required filing date. The 10,000 returns are all the information returns that U is required to file during the 2024 calendar year. The calculation of the de minimis exception is based on the 10,000 returns required to be filed during the 2024 calendar year even though 500 of the returns filed during the year were not filed timely. Therefore, the number of failures for which the de minimis exception applies is 50, and accordingly no penalty is imposed for the 50 Forms 1099-INT that were corrected on August 1. However, the $250 penalty under paragraph (a)(1) of this section is imposed for each failure to file timely (that is, the de minimis exception does not apply to this penalty for failure to file timely), resulting in a total penalty of $125,000 ($250 x 500 = $125,000).

(iii) *Example 3*. Corporation V files timely 9,950 Forms 1099-INT for 2023 by February 28, 2024. However, V fails to file timely 50 of its Forms 1099-INT. The 10,000 returns are all the information returns that V is required to file during the 2024 calendar year. Upon discovering the error, V files the 50 returns within 30 days of February 28, 2024. The 50 returns are complete and correct except that V fails to include the taxpayer identification numbers of the payees on the returns. V files corrected returns on August 1, 2024. Absent application of the de minimis exception, the penalty imposed for the failure to include correct information would be $5,000 ($100 x 50 = $5,000). Because the incorrect returns are corrected on August 1, the 50 forms are treated under the de minimis exception as originally filed with correct information, and therefore no penalty is imposed under paragraph (a) of this section for the failure to include correct information. Nevertheless, the penalty under paragraph (a) of this section is imposed for the failure to file timely the 50 returns because the de minimis exception does not apply to the penalty for the failure to file timely. Hence, a penalty of $2,500 ($50 x 50 = $2,500) is imposed.

(iv) *Example 4*. Corporation W files timely 100 Forms 1099-DIV and files an additional 50 Forms 1099-DIV late, but within 30 days of February 28, 2024. These are all the information returns that W was required to file during the 2024 calendar year. W discovers errors on 10 of the returns that were filed timely, and on 5 of the returns that were filed late. W corrects all the errors on August 1, 2024. The de minimis exception applies to 10 of the corrected returns. The exception will be allocated to the 10 returns that were filed timely with incorrect information, because that allocation is most favorable to W (that is, applying the exception to a return filed late with incorrect information would save W $50, by reducing the penalty on that return from $100 to $50, but applying the exception to a return filed timely would save W $100, by reducing the penalty on that return from $100 to $0). (*See* paragraph (b)(4) of this section.)

(4) *Nonapplication to returns not due on January 31, February 28, or March 15*. The exception for a de minimis number of failures provided in paragraph (d)(1) of this section does not apply to failures with respect to returns that are not due on January 31, February 28, or March 15 (for example, Forms 8300 reporting certain cash payments of $10,000 or more). Nevertheless, the returns that are not due on January 31, February 28, or March 15 are included in the total number of all information returns that the filer is required to file during a year for purposes of calculating the number of the returns subject to the de minimis exception under paragraph (d)(2) of this section.

(e) *Safe harbor exception for certain de minimis errors*—(1) *In general*. Except as provided in paragraph (e)(3) or (g)(4) of this section, the penalty under section 6721(a) and paragraph (a) of this section is not imposed for a failure described in section 6721(a)(2)(B) and paragraph (a)(2)(ii) of this section (failure to include correct information on information return) if the failure relates to an incorrect dollar amount and is a de minimis error. If the safe harbor in this paragraph (e) applies to an information return and the information return was otherwise correct and timely filed, no correction is required and, for purposes of this section, the information return is treated as having been filed with all of the correct required information.

(2) *Definition of de minimis error*. For the definition of *de minimis error*, *see* §301.6722-1(d)(2).

(3) *Election to override the safe harbor exception*. The safe harbor exception provided for by paragraph (e)(1) of this section does not apply to any information return if the incorrect dollar amount that would qualify as a de minimis error for purposes of this paragraph (e) relates to an amount with respect to which an election has been made (and has not been revoked) under section 6722(c)(3)(B) and §301.6722-1(d)(3). *See* §301.6722-1(d)(3) for additional rules relating to the election under section 6722(c)(3)(B) and §301.6722-1(d)(3), including rules relating to the revocation of the election and the inapplicability of the election to certain information. *See* §301.6724-1(h) for rules relating to waiver of the section 6721 penalty in cases where the safe harbor exception provided for by paragraph (e)

(1) of this section does not apply because of an election under §301.6722-1(d)(3).

(4) *Voluntary corrections*. Regardless of whether the de minimis error safe harbor in this paragraph (e) provides an exception for not filing a particular corrected information return, the corrected information return may be filed voluntarily if a corresponding payee statement reflecting the information shown on the corrected information return is concurrently furnished to the payee.

(5) *Limitations on applicability*. The safe harbor exception provided for by paragraph (e)(1) of this section applies only for the purposes of information return penalties under section 6721. Accordingly, this safe harbor exception applies to the reporting of amounts on information returns, including the reporting of the withholding of tax on information returns, but it does not apply for purposes of any underlying requirements to withhold or pay tax. Interest, penalties, and other additions to tax may be imposed under other sections for under-withholding or underpaying tax in any amount.

(f) * * *

(1) *In general*. If a person meets the *gross receipts test* (as defined in paragraph (f)(2) of this section) for any calendar year, the total amount of the penalty imposed on the person for all failures described in section 6721(a)(2) and paragraph (a)(2) of this section during the calendar year will not exceed $1,000,000. The total amount of the penalty imposed under paragraph (b)(1) of this section for failures corrected within 30 days will not exceed $175,000 for the calendar year. The total amount of the penalty imposed under paragraph (b)(2) of this section for failures corrected after 30 days but on or before August 1 will not exceed $500,000 for the calendar year.

* * * * *

(g) * * *

(1) *Application of section 6721(e)*. If a failure is due to intentional disregard of the requirement to file timely or to include correct information on a return as described in paragraph (h) of this section, the amount of the penalty imposed under paragraph (a) of this section must be determined under paragraph (g)(4) of this section.

* * * * *

(4) *Amount of the penalty*. If one or more failures to file timely or to include correct information are due to intentional disregard of the requirement to file timely or to include correct information, then, with respect to each failure determined under this paragraph (g)—

(i) Paragraphs (b), (d), (e), and (f) of this section will not apply;

(ii) The $3,000,000 limitation under paragraph (a) of this section will not apply, and the penalty under this paragraph (g) will not be taken into account in applying the $3,000,000 limitation (or any similar limitation under paragraph (b) or (f) of this section) to penalties not determined under this paragraph (g);

(iii) The penalty imposed under paragraph (a) of this section will be $500 or, if greater, the statutory percentage; and

(iv) The term *statutory percentage* means—

(A) In the case of a return other than a return required under section 6045(a), 6041A(b), 6050H, 6050I, 6050J, 6050K, 6050L, or 6050V, 10 percent of the aggregate dollar amount of the items required to be reported correctly;

(B) In the case of a return required to be filed by section 6045(a), 6050K, or 6050L, 5 percent of the aggregate dollar amount of the items required to be reported correctly;

(C) In the case of a return required to be filed under section 6050I(a), for any transaction (or related transactions), the greater of $25,000 or the amount of cash (within the meaning of section 6050I(d)) received in such transaction to the extent the amount of such cash does not exceed $100,000; or

(D) In the case of a return required to be filed under section 6050V, 10 percent of the value of the benefit of any contract with respect to which information is required to be included on the return.

(5) *Computation of the penalty; aggregate dollar amount of the items required to be reported correctly*. The aggregate dollar amount used in computing the penalty under this paragraph (g) is the amount that is not reported or is reported incorrectly. If the intentional disregard relates to a dollar amount, the statutory percentage is applied to the difference between the dollar amount reported and the amount required to be reported correctly. If the intentional disregard relates to any other item on the return, the statutory percentage is applied to the aggregate amount of items required to be reported correctly. In determining the aggregate amount of items required to be reported correctly, no item will be taken into account more than once. For example, if a filer willfully fails to file a Form 1099-INT, *Interest Income*, on which $800 of interest and $160 of Federal income tax withheld (that is, backup withholding) is required to be reported, only the $800 amount is taken into account in computing the penalty.

(6) *Examples*. The provisions of this paragraph (g) may be illustrated by the following examples, which do not take into account any adjustments for inflation under paragraph (i) of this section:

(i) *Example 1*. On December 1, 2023, Automobile dealer P receives $55,000 from an individual for the purchase of an automobile in a transaction subject to reporting under section 6050I. The individual presents documents to P that identify him as *John Doe*. However, P completes the Form 8300 (relating to cash payments over $10,000 received in a trade or business) and reflects the name of a cartoon character as the filer. Because P knew at the time of filing the Form 8300 that the filer's name was not the name of the cartoon character, he willfully failed to include correct information as described under paragraph (g)(2) of this section. Therefore, the penalty under paragraph (g)(4) of this section is imposed for the intentional disregard of the requirement to include correct information. The amount used in computing the penalty under paragraph (g)(5) of this section is $55,000 (that is, the amount required to be reported on the return with respect to which the payee is not correctly identified). The amount of the penalty determined under paragraph (g)(4)(iv)(C) of this section is $55,000 (that is, the greater of $25,000 or the amount of cash received in the transaction up to $100,000).

(ii) *Example 2*. On December 1, 2023, Individual B contacts his agent, F, to act as his intermediary in the purchase of an automobile. B gives F $20,000 and requests F to purchase the automobile in F's name, which F does. F prepares the Form 8300 as required under section 6050I, but in the area designated for the name of the filer, F writes *confidential*. Because F knew at the time the return was filed that it contained incomplete information, the penalty under paragraph (g)(4) of this section is imposed for the intentional disregard of the requirement to include correct information. The amount used in computing the penalty under paragraph (g)(5) of this section is $20,000 (that is, the amount required to be reported on the return with respect to which the payee is not correctly identified). The amount of the penalty determined under paragraph (g)(4)(iv)(C) of this section is $25,000 (that is, the greater of $25,000 or the amount of cash received in the transaction up to $100,000).

(iii) *Example 3*. Corporation M deliberately does not include $5,000 of dividends on a Form

1099-DIV, *Dividends and Distributions*, on which a total of $200,000 (including the $5,000 dividends) is required to be reported under section 6042(a). Because the failure was deliberate, M's failure is due to intentional disregard of the requirement to include correct information. Accordingly, the amount of the penalty imposed under paragraph (a) of this section is determined under paragraph (g)(4) of this section. Because the Form 1099-DIV is required to be filed under section 6042(a), under paragraph (g)(4)(iv)(A) of this section the amount of the penalty with respect to such failure is 10 percent of the aggregate dollar amount of the items that were required to be but that were not reported correctly. Under paragraph (g)(5) of this section, $5,000 is the difference between the dollar amount reported and the amount required to be reported correctly. Therefore, the amount of the penalty is $500 ($5,000 x 0.10 = $500).

(iv) *Example 4*. Form 8027, *Employer's Annual Information Return of Tip Income and Allocated Tips*, requires certain large food and beverage establishments to report certain information with respect to tips. The form requires (among other things) that the establishment report its gross receipts from food and beverage operations. Establishment A, in intentional disregard of the information reporting requirement, reported gross receipts of $1,000,000, when the correct amount was $1,500,000. The significance of the gross receipts reporting requirement is that section 6053(c)(3)(A) requires an establishment to allocate as tips among its employees the excess of 8 percent of its gross receipts over the aggregate amount reported by employees to the establishment as tips under section 6053(a). A's misstatement of its gross receipts caused A to show $80,000 on the Form 8027 as 8 percent of its gross receipts, rather than the correct amount of $120,000. A correctly reported the amount of tips reported to it by employees under section 6053(a) as $80,000. Thus, A reported the excess of 8 percent of its gross receipts over tips reported to it as zero, rather than as the correct amount of $40,000. The requirement of reporting gross receipts is considered merely a step in the computation of the excess of 8 percent of gross receipts over tips reported to A under section 6053(a), so that the penalty for intentional disregard will be $4,000 (that is, 10 percent of the difference between the $40,000 required to be reported as the excess of 8 percent of gross receipts over tips reported under section 6053(a), and the zero amount actually reported).

(h) * * *

(1) *Information return*. For purposes of this section, the term *information return* has the same meaning as *information return* as defined in section 6724(d)(1), including any statement described in paragraph (h)(2) of this section, any return described in paragraph (h)(3) of this section, and any other items described in paragraph (h)(4) of this section.

(2) * * *

(x) Section 408(i) (relating to reports with respect to individual retirement accounts or annuities on Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*);

(xi) Section 6047(d) (relating to reports by employers, plan administrators, etc., on Form 1099-R); or

(xii) Section 6035 (relating to basis information with respect to property acquired from decedents, generally Form 8971, *Information Regarding Beneficiaries Acquiring Property From a Decedent*, and the Schedule(s) A required to be filed along with it).

(3) * * *

(xvii) Section 1060(b) (relating to reporting requirements of transferors and transferees in certain asset acquisitions, generally reported on Form 8594, *Asset Acquisition Statement*), or section 1060(e) (relating to information required in the case of certain transfers of interests in entities);

(xviii) Section 4101(d) (relating to information reporting with respect to fuel oils);

* * * * *

(xxiv) Section 6055 (relating to information returns reporting minimum essential coverage);

(xxv) Section 6056 (relating to information returns reporting on offers of health insurance coverage by applicable large employer members);

(xxvi) Section 6050Y (relating to returns relating to certain life insurance contract transactions); or

(xxvii) Section 6050Z (relating to reports relating to long-term care premium statements).

(4) *Other items*. The term *information return* also includes any form, statement, or schedule required to be filed with the IRS under chapter 4 of the Internal Revenue Code (the Code) or with respect to any amount from which tax is required to be deducted and withheld under chapter 3 of the Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Code or any treaty obligation of the United States), including but not limited to Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, or Form 8805, *Foreign Partner's Information Statement of Section 1446 Withholding Tax*.

* * * * *

(6) *Filer*. For purposes of this section the term *filer* means a person that is required to file an information return as defined in paragraph (h)(1) of this section under the applicable information reporting section described in paragraphs (h)(2) through (4) of this section.

(i) *Adjustment for inflation*. Each of the dollar amounts under paragraphs (a), (b), (f) (other than paragraph (f)(2)), and (g) of this section and section 6721(a), (b), (d) (other than section 6721(d)(2)(A)), and (e) will be adjusted for inflation pursuant to section 6721(f).

(j) *Applicability date*. This section applies with respect to information returns required to be filed on or after January 1, 2024. *See* 26 CFR 301.6721-1, as revised April 1, 2023, for rules applicable prior to January 1, 2024.

Par. 6. Section 301.6722-1 is amended by:

1. Revising paragraphs (a)(1), (a)(2)(ii), and (b)(2)(i);
2. In paragraphs (b)(2)(ii) and (iii), removing the comma at the end of each paragraph and adding a semicolon in its place;
3. In paragraphs (b)(2)(iii) and (iv), removing "Internal Revenue Service" and adding "IRS" in its place;
4. Revising paragraph (b)(3) introductory text;
5. In paragraph (b)(3), designating *Examples 1* and *2* as paragraphs (b)(3)(i) and (ii); and
6. In newly designated paragraph (b)(3)(ii), removing the language "*Example 1*" and adding "paragraph (d)(3)(i) of this section (*Example 1*)" in its place;
7. Revising paragraph (c)(1);
8. Redesignating paragraphs (c)(2)(i) through (iii) as paragraphs (c)(2)(ii) through (iv);
9. Adding a new paragraph (c)(2)(i);
10. Revising newly redesignated paragraphs (c)(2)(ii) and (iii);
11. Redesignating paragraphs (d) and (e) as paragraphs (e) and (g);
12. Adding a new paragraph (d);
13. Revising newly redesignated paragraphs (e)(1), (e)(2) introductory text, and (e)(2)(xxxiii) and (xxxiv);
14. Adding paragraphs (e)(2)(xxxv) through (xxxviii);
15. In newly designated paragraph (e)(3):

i. Adding the language "or 4" after the language "chapter 3";
ii. Removing the language "generally" and adding the language "including but not limited to" in its place; and
iii. Removing the language "subject" and adding the language "Subject" in its place;

16. Adding paragraphs (e)(4) and (f); and
17. Revising newly redesignated paragraph (g).

The revisions and additions read as follows:

§301.6722-1 Failure to furnish correct payee statements.

(a) * * *

(1) *General rule*. A penalty of $250 is imposed for each *payee statement* (as defined in section 6724(d)(2) and paragraph (e)(2) of this section) with respect to which a *failure* (as defined in section 6722(a) and paragraph (a)(2) of this section) occurs. No more than one penalty will be imposed under this paragraph (a) with respect to a single payee statement even though there may be more than one failure with respect to such statement. However, the penalty will apply to failures on composite substitute payee statements as though each type of payment and other required information were furnished on separate statements. A *composite substitute payee statement* is a single document created by a filer to reflect several types of payments made to the same payee. The total amount imposed on any person for all failures during any calendar year with respect to all payee statements will not exceed $3,000,000. *See* section 6722(e) and paragraph (c) of this section for higher penalties if a failure is due to intentional disregard of the requirement to furnish timely correct payee statements. *See* paragraph (d) of this section for a safe harbor exception for certain de minimis errors. *See* paragraph (f) of this section for inflation adjustments to penalty amounts. *See* §301.6724-1(a)(1) for a waiver of the penalty for a failure that is due to reasonable cause.

(2) * * *

(ii) A failure to include all of the information required to be shown on a payee statement or the inclusion of incorrect information (failure to include correct information). A failure to furnish timely includes a failure to furnish a written statement to the payee in a statement mailing as required under sections 6042(c), 6044(e), 6049(c), and 6050N(b), as well as a failure to furnish the statement on a form acceptable to the Internal Revenue Service (IRS). Except as provided in paragraph (b) or (d) of this section, a failure to include correct information encompasses a failure to include the information required by applicable information reporting statutes or by any administrative pronouncements issued thereunder (such as regulations, revenue rulings, revenue procedures, or information reporting forms).

(b) * * *

(2) * * *

(i) A dollar amount, except as provided in paragraph (d) of this section;

* * * * *

(3) *Examples*. The provisions of this paragraph (b) may be illustrated by the following examples, which do not take into account any possible application of the penalty for intentional disregard under paragraph (c) of this section, the safe harbor exception for certain de minimis errors under paragraph (d) of this section, or the reasonable cause waiver under §301.6724-1(a):

* * * * *

(c) * * *

(1) *Application of section 6722(e)*. If a failure is due to intentional disregard of the requirement to furnish timely correct payee statements, the amount of the penalty must be determined under paragraph (c)(2) of this section. Whether a failure is due to intentional disregard of the requirement to furnish timely correct payee statements is based upon the facts and circumstances surrounding the failure. The facts and circumstances considered include those under §301.6721-1(g)(3), which will apply in determining whether a failure under this section is due to intentional disregard.

(2) * * *

(i) Paragraph (d) of this section will not apply;

(ii) The $3,000,000 limitation under paragraph (a) of this section will not apply and the penalty under this paragraph (c)(2) will not be taken into account in applying the $3,000,000 limitation to penalties not determined under this paragraph (c)(2);

(iii) The penalty imposed under paragraph (a) of this section will be $500 or, if greater, the statutory percentage; and

* * * * *

(d) *Safe harbor exception for certain de minimis errors*—(1) *In general*. Except as provided in paragraphs (c) and (d)(3) of this section, the penalty under section 6722(a) and paragraph (a) of this section is not imposed for a failure described in section 6722(a)(2)(B) and paragraph (a)(2)(ii) of this section (failure to include correct information on payee statement) if the failure relates to an incorrect dollar amount and is a de minimis error. If the safe harbor in this paragraph (d) applies to a payee statement and the payee statement was otherwise correct and timely furnished, no correction is required and, for purposes of this section, the payee statement is treated as having been furnished with all of the correct required information.

(2) *Definition of de minimis error*. For purposes of this paragraph (d), an error in a dollar amount is de minimis if the difference between any single amount in error and the correct amount is not more than $100, and, if the difference is with respect to an amount of tax withheld, it is not more than $25. For purposes of this paragraph (d)(2), tax withheld includes any amount required to be shown on an *information return* or *payee statement* (as defined in section 6724(d)(1) and (2), respectively) withheld under section 3102 or 3402, as well as any such amount required to be shown on such an information return or payee statement that is creditable under section 27, 31, 33, or 1474.

(3) *Election to override the safe harbor exception*—(i) *In general*. Except as provided in paragraphs (d)(3)(vi) and (vii) of this section, the safe harbor exception provided for by this paragraph (d) does not apply to any payee statement if the person to whom the statement is required to be furnished (the payee) makes an election that the safe harbor not apply with respect to the statement.

(ii) *Timing of election*. The payee must elect no later than the later of 30 days after the date on which the payee statement is required to be furnished to the payee, or October 15 of the calendar year, to receive

a correct payee statement required to be furnished in that calendar year without having the safe harbor under paragraph (d)(1) of this section apply. The date of an election is the date the election is received by the filer. For purposes of this section, the provisions of section 7502 relating to timely mailing treated as timely delivery apply in determining the date an election is considered to be received by the filer, treating delivery to the filer as if the filer were an agency, officer, or office under such section. The election will remain in effect for all subsequent years unless revoked under paragraph (d)(3)(vii) of this section.

(iii) *Manner for making the election*. Except as provided in paragraph (d)(3)(v) of this section, the payee must make the election by delivering the election in writing to the filer. Except as provided in paragraph (d)(3)(v) of this section, the written election must be made in writing on paper. The payee may deliver the election in person, by mail by United States Postal Service, or by a *designated delivery service* as defined under section 7502(f)(2). If the filer has not otherwise provided an address under paragraph (d)(3)(v) of this section, the payee must send the written election to the filer's address appearing on the payee statement furnished by the filer to the payee with respect to which the election is being made or as directed by that person upon appropriate inquiry by the payee. The written election must:

(A) Clearly state that the payee is making the election;

(B) Provide the payee's name, address, and *taxpayer identification number* (*TIN*) (as defined in section 7701(a)(41) of the Internal Revenue Code) to the filer;

(C) If the payee wants the election to apply only to specific types of statements, identify the type of payee statement(s) and account number(s), if applicable, to which the election applies (for example, Form 1099-DIV, *Dividends and Distributions*); and

(D) Provide any other information required by the IRS in forms, instructions, or publications.

(iv) *Payee statements to which the election applies*. An election by a payee under paragraph (d)(3)(i) of this section applies to all types of payee statements the filer is required to furnish to the payee, unless the payee specifies otherwise on the election under paragraph (d)(3)(iii)(C) of this section.

(v) *Reasonable alternative manner for making the election in cases of notification by the filer*—(A) *In general*. If the filer satisfies the requirements of paragraph (d)(3)(v)(B) of this section, and provides for a reasonable alternative manner as described in paragraph (d)(3)(v)(E) of this section, a payee may decide to make the election under paragraph (d)(3)(i) of this section pursuant to that reasonable alternative manner.

(B) *Notification of payee of reasonable alternative manner for making election*. The filer may elect to provide notification to the payee of a reasonable alternative manner to make the election under paragraph (d)(3)(i) of this section, as described in paragraph (d)(3)(v)(E) of this section. To provide a valid notification under this paragraph (d)(3)(v)(B), the filer must provide notification to the payee that:

(*1*) Is in writing (either on paper or in electronic format);

(*2*) Is timely provided to the payee under paragraph (d)(3)(v)(D) of this section;

(*3*) Explains to the payee to whom that filer is required to furnish a payee statement of the payee's ability to elect, under paragraph (d)(3)(i) of this section, that the safe harbor exceptions for de minimis errors not apply, and of the payee's ability to choose to make the election using the default method under paragraph (d)(3)(iii) of this section;

(*4*) Provides an address to which the payee may send an election under paragraphs (d)(3)(i) and (iii) of this section;

(*5*) Provides any reasonable alternative manner or manners, as described in paragraph (d)(3)(v)(E) of this section, that the filer is making available for the payee to make the election under paragraph (d)(3)(i) of this section; and

(*6*) Describes the information required for making the election described by paragraphs (d)(3)(iii)(A) through (D) of this section. Solely for purposes of the reasonable alternative manner, the notification may provide that some or all of the information described in paragraph (d)(3)(iii)(B) of this section is not required and may provide that the provision of an account number as referenced in paragraph (d)(3)(iii)(C) of this section is required if the payee decides to use the reasonable alternative manner for the election.

(C) *Notification of revocation procedures*. A notification under this paragraph (d)(3)(v) may also provide the procedures for making a revocation of an election under paragraph (d)(3)(vii) of this section. Solely for purposes of the reasonable alternative manner, the notification may provide that some or all of the information described in paragraph (d)(3)(vii)(B) of this section is not required and may provide that the provision of an account number as referenced in paragraph (d)(3)(vii)(E) of this section is required if the payee decides to use a reasonable alternative manner for making a revocation.

(D) *Time for providing notification of reasonable alternative manner for making payee election*. A notification under this paragraph (d)(3)(v) will be timely under paragraph (d)(3)(v)(B)(*2*) of this section if:

(*1*) The notification is provided with, or at the time of, the furnishing of the payee statement; or

(*2*) The filer previously provided a valid notification under paragraph (d)(3)(v) of this section to the payee with, or at the time of, the furnishing of a payee statement associated with a particular account, in which case notification will be considered to have been timely provided with respect to subsequent payee statements associated with that particular account. If the filer wishes to provide for a different reasonable alternative manner than a previous reasonable alternative manner, the filer must provide new notification in compliance with the timeliness rule of paragraph (d)(3)(v)(D)(*1*) of this section, and must accept payee elections under the previous reasonable alternative manner for a period of at least 60 days after the receipt of the new notification by the payee.

(E) *Reasonable alternative manner*. A reasonable alternative manner described in a notification under paragraph (d)(3)(v)(B) of this section may include that a payee election under paragraph (d)(3)(i) of this section may be made electronically (for example, via email or website) or telephonically. The reasonable alternative manner may not impose any prerequisite, condition, or time limitation on, or other-

wise limit, the payee's ability to make an election under paragraph (d)(3)(iii) of this section, except as described in paragraphs (d)(3)(ii) and (iii) of this section; it may only offer a reasonable alternative manner or manners for making this election under this paragraph (d)(3)(v).

(vi) *Election not available for certain information*. The election to override the safe harbor exception provided for by paragraph (d)(3)(i) of this section is not available with respect to information that may not be altered under specific information reporting rules. *See*, for example, §1.6045-4(i)(5) of this chapter.

(vii) *Revocation of election*. The payee may revoke a prior election by submitting a revocation to the filer. The effect of a revocation of a prior election is that the safe harbor for certain de minimis errors will apply to the payee statements that the payee identifies and that are furnished or are due to be furnished after the revocation is received. The revocation will remain in effect until the payee makes a valid and timely election under paragraph (d)(3)(i) of this section. The date of a revocation is the date the revocation is received by the filer. For purposes of this section, the provisions of section 7502 relating to timely mailing treated as timely delivery apply in determining the date a revocation is considered to be received by the filer, treating delivery to the filer as if the filer were an agency, officer, or office under section 7502. The revocation must be made in the same manner or manners described for making the election, that is pursuant to either paragraph (d)(3)(iii) or (v) of this section, as the payee chooses if paragraph (d)(3)(v) of this section is applicable. Except as provided under paragraph (d)(3)(v)(B)(*6*) of this section, the revocation must:

(A) Clearly state that the payee is revoking the payee's prior election;

(B) Provide the payee's name, address, and TIN to the filer;

(C) Provide the name of the filer;

(D) Identify the type of payee statement(s) (for example, Form 1099-DIV) to which the revocation applies;

(E) Identify the account number(s), if applicable, to which the revocation applies; and

(F) Provide any other information required by the IRS in forms, instructions or publications.

(viii) *Reasonable cause*. *See* §301.6724-1(h) for rules relating to waiver of the section 6722 penalty in cases where the safe harbor exception provided for by paragraph (d)(1) of this section does not apply because of an election under paragraph (d)(3)(i) of this section.

(4) *Record retention*. To facilitate proof of compliance with reporting and other obligations under the internal revenue laws, filers must retain records of any election or revocation by the payee under paragraph (d)(3)(i) or (vii) of this section, respectively, and any notification made under paragraph (d)(3)(v) of this section for as long as the contents of the election, revocation, or notification may be material in the administration of any internal revenue law. For rules regarding record retention, *see* section 6001 and §1.6001-1 of this chapter. For additional procedures applicable to record retention in the context of electronic storage, *see* Rev. Proc. 97-22, 1997-1 C.B. 652, Rev. Proc. 98-25, 1998-1 C.B. 689, and any subsequently published guidance.

(5) *Examples*. The provisions of paragraphs (d)(1) through (4) of this section may be illustrated by the following examples, which do not address any possible application of the penalty for intentional disregard under paragraph (c) of this section or the reasonable cause waiver under §301.6724-1(a):

(i) *Example 1*—(A) *Facts*. Filer W is required to file with the IRS by February 28, 2024, and furnish to Payee E by February 15, 2024, Form 1099-B *Proceeds From Broker and Barter Exchange Transactions*, because W is a broker who sold stocks on behalf of E resulting in proceeds of $5,000 during calendar year 2023. W properly withheld an amount of $1,736 under applicable backup withholding rules because E failed to furnish E's TIN to W. On the Form 1099-B, W reports as follows: Box 1d, Proceeds, $4,900; and Box 4, Federal income tax withheld, $1,761. W otherwise correctly and timely files and furnishes the Form 1099-B. E does not make an election under paragraph (d)(3)(i) of this section.

(B) *Analysis*. The safe harbor exception for de minimis errors provided for by paragraph (d)(1) of this section applies, because the differences between each of the amounts reported in error and the correct amounts are not more than the applicable limits. The error in the dollar amount reported in Box 1d, Proceeds, is de minimis because the difference between the amount in error ($4,900) and the correct amount ($5,000) is not more than $100; it is exactly $100. The error in the dollar amount reported in Box 4, Federal income tax withheld, is de minimis because the $25 difference between the amount in error ($1,761) and the correct amount ($1,736) is not more than $25, the limit for an error with respect to an amount reported for tax withheld.

(ii) *Example 2*—(A) *Facts*. The facts are the same as in paragraph (d)(5)(i)(A) of this section (*Example 1*), except that Filer W reports $1,710 as the amount in Box 4, Federal income tax withheld.

(B) *Analysis*. The safe harbor exception for de minimis errors provided for by paragraph (d)(1) of this section does not apply because the Form 1099-B contains a failure that is not a de minimis error. The difference between the amount in error ($1,710) and the correct amount ($1,736) is $26, which is more than the $25 limit for de minimis errors with respect to an amount reported for tax withheld.

(iii) *Example 3*—(A) *Facts*. In 2024, Filer X provides Payee B with valid notification of a reasonable alternative manner under paragraph (d)(3)(v) of this section for making the payee election under paragraph (d)(3)(i) of this section. B timely elects pursuant to the reasonable alternative manner during 2024. B elects the reasonable alternative manner with respect to all payee statements that X is required to furnish to B. In January 2025, X decides to provide for a different, but also valid, reasonable alternative manner; X provides notification of this different reasonable alternative manner to B, and B receives notification of this different reasonable alternative manner, pursuant to paragraph (d)(3)(v)(B) of this section, on January 16, 2025. B decides to revoke B's prior election, with respect to the Forms 1099-DIV that X is required to furnish to B.

(B) *Analysis*. Under paragraph (d)(3)(vii) of this section, Payee B may provide the revocation to Filer X in any of three different manners. First, B may provide the revocation to X in the same manner as if B were making an election under the default manner of paragraph (d)(3)(iii) of this section; B may do so at any time. Second, having received notification from X of the different reasonable alternative manner on January 16, 2025, B may provide the revocation to X in the same manner as if B were making an election under the different reasonable alternative manner pursuant to paragraph (d)(3)(v) of this section. Third, because X previously provided notification of a reasonable alternative manner (2024 alternative) before providing notification of a different reasonable alternative manner on January 16, 2025 (2025 alternative), B may provide the revocation to X in the same manner as if B were making an election under the previous reasonable alternative manner (2024 alternative); B may do so for a period of 60 days after January 16, 2025, pursuant to paragraph (d)(3)(v)(D)(*2*) of this section.

(iv) *Example 4*—(A) *Facts*. In 2024, Filer Y furnishes, as required, a Form W-2, *Wage and Tax Statement*, to Payee C for wages paid in 2023. The correct version of this Form W-2, without any errors, de minimis or otherwise, would have reported $15,200 of Federal income tax withheld, $6,200 of social security tax withheld, $1,450 of Medicare tax withheld, and $6,000 of state income tax withheld. However, the Form W-2 that Y furnishes to C reports $15,180 of Federal income tax withheld, $6,180 of social security tax withheld, $1,430 of Medicare tax withheld, and $5,980 of state income tax withheld. The 2023 Form W-2 does not require reporting a sum total of tax withheld of all types. C does not make an election under paragraph (d)(3)(i) of this section.

(B) *Analysis*. For each of the four amounts of tax withheld, the difference between the amount of tax withheld that is reported on the Form W-2 and the correct amount is $20. Under paragraph (d)(2) of this section, each of these errors is a de minimis error because each is with respect to an amount of tax withheld and is not more than $25. If there are no other errors on the Form W-2, the safe harbor exception for de minimis errors provided for by paragraph (d)(1) of this section applies. The amounts of tax withheld are not combined in determining whether an error constitutes a de minimis error, if a combined amount is not required to be reported on the payee statement.

(v) *Example 5*—(A) *Facts*. In 2024, Filer Z furnishes, as required, a Form W-2 to Payee D for wages paid in 2023. The correct version of this Form W-2, without any errors, de minimis or otherwise, would have reported $15,200 of Federal income tax withheld, $6,200 of social security tax withheld, $1,450 of Medicare tax withheld, $6,000 of state income tax withheld, and no other taxes withheld. The Form W-2 that Z furnishes to D reports $15,170 of Federal income tax withheld, $6,220 of social security tax withheld, and the correct amount of Medicare tax withheld and state income tax withheld.

(B) A single amount of tax withheld reported on the Form W-2, specifically the amount of Federal income tax withheld, differs from the correct amount by more than $25. Under paragraph (d)(2) of this section, this error is not a de minimis error. Therefore, the safe harbor exception for de minimis errors provided for by paragraph (d)(1) of this section does not apply. It is irrelevant that the sum total of taxes withheld reported on the Form W-2 ($28,840) differs from the correct total of taxes withheld ($28,850) by less than $25.

(6) *Voluntary corrections*. Regardless of whether the de minimis error safe harbor in this paragraph (d) provides an exception for not furnishing a particular corrected payee statement, the corrected payee statement may be furnished voluntarily if a corresponding information return reflecting the information reported on the corrected payee statement is concurrently filed.

(7) *Limitations on applicability*. The safe harbor exception provided for by paragraph (d)(1) of this section applies only for the purposes of payee statement penalties under section 6722. Accordingly, this safe harbor exception applies to the reporting of amounts on payee statements, including the reporting of the withholding of tax on payee statements, but does not apply for purposes of any underlying requirements to withhold or pay tax. Interest, penalties, and other additions to tax may be imposed under other sections for under-withholding or underpaying tax in any amount.

(e) * * *

(1) *Payee*. *See* §301.6721-1(h)(5) for the definition of *payee*.

(2) *Payee statement*. For purposes of this section the term *payee statement* has the same meaning as *payee statement* as defined by section 6724(d)(2), including any statement required to be furnished under—

* * * * *

(xxxiii) Section 6055 (relating to information returns reporting minimum essential coverage);

(xxxiv) Section 6056 (relating to information returns reporting on offers of health insurance coverage by applicable large employer members);

(xxxv) Section 6035, other than a statement described in section 6724(d)(1)(D), (relating to basis information with respect to property acquired from decedents, generally Schedule A of Form 8971, *Information Regarding Beneficiaries Acquiring Property From a Decedent*);

(xxxvi) Section 6050Y(a)(2), 6050Y(b)(2), or 6050Y(c)(2) (relating to certain life insurance contract transactions);

(xxxvii) Section 6226(a)(2) (regarding statements relating to alternative to payment of imputed underpayment by a partnership) or under any other provision of this title that provides for the application of rules similar to section 6226(a)(2); or

(xxxviii) Section 6050Z (relating to reports relating to long-term care premium statements).

* * * * *

(4) *Filer*. For purposes of this section the term *filer* means a person that is required to furnish a *payee statement* as defined in paragraph (e)(2) and (3) of this section under the applicable information reporting section described in paragraph (e)(2) and (3) of this section.

(f) *Adjustment for inflation*. Each of the dollar amounts under paragraphs (a), (b), and (c) of this section and paragraphs (a), (b), (d)(1), and (e) of section 6722 will be adjusted for inflation pursuant to section 6722(f).

(g) *Applicability date*. This section applies with respect to payee statements required to be furnished on or after January 1, 2024. *See* 26 CFR 301.6722-1, as revised April 1, 2023, for rules applicable prior to January 1, 2024.

Par. 7. Section 301.6724-1 is amended by:

1. Revising paragraphs (a)(1) and (a)(2)(ii);
2. Designating the undesignated paragraph following paragraph (a)(2)(ii) as paragraph (a)(2)(iii) and revising newly designated paragraph (a)(2)(iii);
3. Revising paragraphs (b) introductory text and (b)(2)(i) and (ii);
4. Designating the undesignated paragraph following paragraph (b)(2)(ii) as paragraph (b)(3);
5. In paragraph (c)(1)(iii), adding "(IRS)" after "Internal Revenue Service";
6. Revising paragraph (c)(3)(ii);
7. In paragraphs (c)(4) and (c)(6)(ii), removing "Internal Revenue Service" and adding "IRS" in its place;
8. Revising paragraphs (e)(1) introductory text and (e)(1)(i) and the first sentence of paragraph (e)(1)(vi)(A);
9. Removing paragraph (e)(1)(vi)(E);
10. Redesignating paragraphs (e)(1)(vi)(F) and (G) as paragraphs (e)(1)(vi)(E) and (F) and revising newly redesignated paragraphs (e)(1)(vi)(E) and (F);
11. In paragraphs (e)(2)(i)(A) and (e)(2)(ii)(C) and (E), removing "Internal Revenue Service" and adding "IRS" in its place;
12. Revising paragraphs (f)(1) introductory text and (f)(1)(i);
13. In paragraph (f)(1)(ii), removing "Internal Revenue Service" and adding "IRS" in its place;
14. Revising paragraphs (f)(5)(i) and (ii), (g), (h), (k), (m) introductory text, and (m)(1);
15. In paragraphs (m)(2) and (3), removing the comma at the end of the paragraphs and adding a semicolon in its place;
16. In paragraph (n), removing "Internal Revenue Service" and adding "IRS" in its place; and
17. Adding paragraph (o).

The revisions and additions read as follows:

§301.6724-1 Reasonable cause.

(a) * * *

(1) *General rule*. The penalty for a failure relating to an *information reporting requirement* as defined in paragraph (j) of

this section is waived if the failure is due to reasonable cause and is not due to willful neglect.

(2) * * *

(ii) The failure arose from events beyond the filer's control (impediment), as described in paragraph (c) of this section.

(iii) Moreover, the filer must establish that the filer acted in a responsible manner, as described in paragraph (d) of this section, both before and after the failure occurred. Thus, if the filer establishes that there are significant mitigating factors for a failure but is unable to establish that the filer acted in a responsible manner, the mitigating factors will not be sufficient to obtain a waiver of the penalty. Similarly, if the filer establishes that a failure arose from an impediment but is unable to establish that the filer acted in a responsible manner, the impediment will not be sufficient to obtain a waiver of the penalty. *See* paragraph (g) of this section for the reasonable cause safe harbor for persons who exercise due diligence. *See* paragraph (h) of this section for the reasonable cause safe harbor after an election under section 6722(c)(3)(B) and §301.6722-1(d)(3).

(b) *Significant mitigating factors*. In order to establish reasonable cause under this paragraph (b), the filer must satisfy paragraph (d) of this section and must show that there are significant mitigating factors for the failure. *See* paragraph (c)(5) of this section for the application of this paragraph (b) to failures attributable to the actions of a filer's agent. The applicable mitigating factors include, but are not limited to—

* * * * *

(2) * * *

(i) Whether the filer has incurred any penalty under §301.6721-1, §301.6722-1, or §301.6723-1 in prior years for the failure; and

(ii) If the filer has incurred any such penalty in prior years, the extent of the filer's success in lessening its error rate from year to year.

* * * * *

(c) * * *

(3) * * *

(ii) The cost of filing on magnetic media or in electronic form was prohibitive as determined at least 45 days before the due date of the returns (without regard to extensions);

* * * * *

(e) * * *

(1) *In general*. A filer that is seeking a waiver for reasonable cause under paragraph (c)(6) of this section will satisfy paragraph (d)(2) of this section with respect to establishing that a failure to include a TIN on an information return resulted from the failure of the payee to provide information to the filer (that is, a missing TIN) only if the filer makes the initial and, if required, the annual solicitations described in this paragraph (e) (required solicitations). For purposes of this section, a number is treated as a *missing TIN* if the number does not contain nine digits or includes one or more alpha characters (a character or symbol other than an Arabic numeral) as one of the nine digits. A solicitation means a request by the filer for the payee to furnish a correct TIN. *See* paragraph (f) of this section for the rules that a filer must follow to establish that the filer acted in a responsible manner with respect to providing incorrect TINs on information returns. *See* paragraph (e)(1)(vi)(A) of this section for alternative solicitation requirements. *See* paragraph (g) of this section for the safe harbor due diligence rules.

(i) *Initial solicitation*. An initial solicitation for a payee's correct TIN must be made at the time an account is opened. The term *account* includes accounts, relationships, and other transactions. However, a filer is not required to make an initial solicitation under this paragraph (e)(1)(i) with respect to a new account if the filer has the payee's TIN and uses that TIN for all accounts of the payee. For example, *see* §31.3406(h)-3(a) of this chapter. If the account is opened in person, the initial solicitation may be made by oral or written request, such as on an account creation document. If the account is opened by mail, telephone, or other electronic means, the TIN may be requested through such communications. If the account is opened by the payee's completing and mailing an application furnished by the filer that requests the payee's TIN, the initial solicitation requirement is considered met. If a TIN is not received as a result of an initial solicitation, the filer may be required to make additional solicitations (annual solicitations).

* * * * *

(vi) * * *

(A) The solicitation requirements under this paragraph (e) do not apply to the extent an information reporting provision under which a *return*, as defined in paragraph (h) of §301.6721-1, is filed provides specific requirements relating to the manner or the time period in which a TIN must be solicited. * * *

* * * * *

(E) A filer is not required to make annual solicitations by mail on accounts with respect to which the filer has an undeliverable address, that is, where other mailings to that address have been returned to the filer because the address was incorrect and no new address has been provided to the filer.

(F) Except as provided in paragraphs (e)(1)(vi)(A) and (C) of this section, no more than two annual solicitations are required under this paragraph (e) in order for a filer to establish reasonable cause.

* * * * *

(f) * * *

(1) *In general*. A filer that is seeking a waiver for reasonable cause under paragraph (c)(6) of this section will satisfy paragraph (d)(2) of this section with respect to establishing that a failure resulted from incorrect information provided by the payee or any other person (that is, inclusion of an incorrect TIN) on an information return only if the filer makes the initial and annual solicitations described in this paragraph (f). *See* paragraph (e)(1) of this section for the definition of the term *solicitation*. *See* paragraph (f)(5)(i) of this section for alternative solicitation requirements. *See* paragraph (g) of this section for the safe harbor due diligence rules.

(i) *Initial solicitation*. An initial solicitation for a payee's correct TIN must be made at the time the account is opened. The term *account* includes accounts, relationships, and other transactions. However, a filer is not required to make an initial solicitation under this paragraph (f)(1)(i) with respect to a new account if the filer has the payee's TIN and uses that TIN for all accounts of the payee. For example, *see* §31.3406(h)-3(a) of this chapter. No additional solicitation is required after the

filer receives the TIN unless the IRS or, in some cases, a broker notifies the filer that the TIN is incorrect. Following such notification the filer may be required to make an annual solicitation to obtain the correct TIN as provided in paragraphs (f)(1)(ii) and (iii) of this section.

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(5) * * *

(i) The solicitation requirements under this paragraph (f) do not apply to the extent that an information reporting provision under which a *return*, as defined in §301.6721-1(h), is filed provides specific requirements relating to the manner or the time period in which a TIN must be solicited. In that event, the requirements of this paragraph (f) will be satisfied only if the filer complies with the manner and time period requirement under the specific information reporting provisions and this paragraph (f), to the extent applicable.

(ii) An annual solicitation is not required to be made for a year under this paragraph (f) with respect to an account if no payments are made to the account for such year or if no *return* as defined in §301.6721-1(h) is required to be filed for the account for such year.

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(g) *Due diligence safe harbor*—(1) *In general.* A filer may establish reasonable cause with respect to a failure relating to an information reporting requirement as described in paragraph (j) of this section if the filer exercises due diligence with respect to failures described in sections 6721 through 6723. Paragraphs (g)(2) through (7) of this section provide special rules on the exercise of due diligence with respect to TINs for an exception to a penalty under sections 6721 through 6723 for—

(i) A failure to provide a correct TIN on any—

(A) *Information return* as defined in §301.6721-1(h);

(B) *Payee statement* as defined in §301.6722-1(e)(2) and (3); or

(C) Document as described in §301.6723-1(a)(4); or

(ii) The failure merely to provide a TIN as described in §301.6723-1(a)(4)(ii).

(2) *General rule*. A filer is not subject to a penalty for failure to provide the payee's correct TIN on an information return, if the payee has certified, under penalties of perjury, that the TIN provided to the filer was the payee's correct TIN, and the filer included such TIN on the information return before being notified by the IRS (or a broker) that such TIN is incorrect.

(3) *Due diligence defined for accounts opened and instruments acquired after December 31, 1983*—(i) *In general*. For a filer of a reportable interest or dividend payment (other than in a window transaction) to be considered to have exercised *due diligence* in furnishing the correct TIN of a payee with respect to an account opened or an instrument acquired after December 31, 1983 (that is, an account or instrument that is not a pre-1984 account nor a window transaction), the filer must use a TIN provided by the payee under penalties of perjury on information returns filed with the IRS. Therefore, if a filer permits a payee to open an account without obtaining the payee's TIN under penalties of perjury and files an information return with the IRS with a missing or an incorrect TIN, the filer will be liable for the $250 penalty for the year with respect to which such information return is filed. However, in its administrative discretion, the IRS will not enforce the penalty with respect to a calendar year if the certified TIN is obtained after the account is opened and before December 31 of such year, provided that the filer exercises due diligence in processing such number, that is, the filer uses the same care in processing the TIN provided by the payee that a reasonably prudent filer would use in the course of the filer's business in handling account information such as account numbers and balances.

(ii) *Notification of incorrect TIN*. Once notified by the IRS (or a broker) that a number is incorrect, a filer is liable for the penalty for all prior years in which an information return was filed with that particular incorrect number if the filer has not exercised due diligence with respect to such years. A pre-existing certified TIN does not constitute an exercise of due diligence after the IRS or a broker notifies the filer that the number is incorrect unless the filer undertakes the actions described in §31.3406(d)-5(d)(2)(i) of this chapter with respect to accounts receiving reportable payments described in section 3406(b)(1) and reported on information returns described in sections 6724(d)(1)(A)(i) through (iv).

(iii) *Inadvertent processing*. A filer described in this paragraph (g)(3) is liable for the penalty if the filer obtained a certified TIN for a payee but inadvertently processed the TIN or name incorrectly on the information return unless the filer exercised that degree of care in processing the TIN and name and in furnishing it on the information return that a reasonably prudent filer would use in the course of the filer's business in handling account information, such as account numbers and account balances.

(4) *Instruments not transferred with assistance of broker*—(i) *In general*. If a filer files an information return with a missing or an incorrect TIN with respect to an instrument transferred without the assistance of a broker, the filer will be considered to have exercised due diligence with respect to a readily tradable instrument that is not part of a pre-1984 account with the filer if the filer records on its books a transfer in which the filer was not a party. This paragraph (g)(4)(i) applies until the calendar year in which the filer receives a certified TIN from the payee.

(ii) *Solicitation of TIN not required.* A filer described in paragraph (g)(4)(i) of this section is not required to solicit the TIN of a payee of an account with a missing TIN in order to be considered as having exercised due diligence in a subsequent calendar year under the rule set forth in paragraph (g)(4)(i) of this section.

(iii) *Payee provides incorrect TIN*. If a payee provides a TIN (whether or not certified) to a filer described in paragraph (g)(4)(i) of this section who records on its books a transfer in which it was not a party, the filer is considered to have exercised due diligence under the rule set forth in paragraph (g)(4)(i) of this section if the transfer is accompanied with a TIN provided that the filer uses the same care in processing the TIN provided by a payee that a reasonably prudent filer would use in the course of the filer's business in handling account information, such as account numbers and account balances. Thus, a filer will not be liable for the penalty if the filer uses the TIN provided by the payee on information returns that it files, even if the TIN provided by the payee is

later determined to be incorrect. However, a filer will not be considered as having exercised due diligence under paragraph (g)(4)(i) of this section after the IRS or a broker notifies the filer that the number is incorrect unless the filer undertakes the required additional actions described in paragraph (g)(2) of this section.

(5) *Filer incurred an undue hardship*—(i) *In general*. A filer of a post-1983 account or instrument is not liable for a penalty under section 6721(a) for filing an information return with a missing or an incorrect TIN if the IRS determines that the filer could have satisfied the due diligence requirements but for the fact that the filer incurred an undue hardship. An undue hardship is an extraordinary or unexpected event such as the destruction of records or place of business of the filer by fire or other casualty (or the place of business of the filer's agent who under a pre-existing written contract had agreed to fulfill the filer's due diligence obligations with respect to the account subject to the penalty and there was no means for the obligations to be performed by another agent or the filer). Undue hardship will also be found to exist if the filer could have met the due diligence requirements only by incurring an extraordinary cost.

(ii) *Only IRS makes undue hardship determinations*. A filer must obtain a determination from the IRS to establish that the filer satisfies the undue hardship exception to the penalty under section 6721(a) for the failure to include the correct TIN on an information return for the year with respect to which the filer is subject to the penalty. A determination of undue hardship may be established only by submitting a written statement to the IRS signed under penalties of perjury that sets forth all the facts and circumstances that make an affirmative showing that the filer could have satisfied the due diligence requirements but for the occurrence of an undue hardship. Thus, the statement must describe the undue hardship and make an affirmative showing that the filer either was in the process of exercising or stood ready to exercise due diligence when the undue hardship occurred. A filer may request an undue hardship determination by submitting a written statement to the address provided with the notice proposing penalty assessment (for example, Notice 972CG) or the notice of penalty assessment (for example, CP15 or CP215), or as otherwise directed by the IRS in forms, instructions, or publications.

(6) *Acquisitions of pre-1984 accounts or instruments*—(i) *In general*. A pre-1984 account or instrument of a filer that is exchanged for an account or instrument of another filer pursuant to a statutory merger of the other filer or the acquisition of the accounts or instruments of such filer is not transformed into a post-1983 account or instrument if the merger or acquisition occurs after December 31, 1983, because the exchange occurs without the participation of the payee.

(ii) *Establishing due diligence was exercised for accounts or instruments*. The acquiring taxpayer described in this paragraph (g)(6) may rely upon the business records and past procedures of the merged filer or the filer whose accounts or instruments were acquired in order to establish that due diligence has been exercised on the acquired pre-1984 and post-1983 accounts or instruments to avoid the penalty under section 6721(a) with respect to information returns that have been or will be filed.

(7) *Limited reliance on certain pre-2001 rules*. A filer may rely on the due diligence rules set forth in 26 CFR 35a.9999-1, 35a.9999-2, and 35a.9999-3 in effect prior to January 1, 2001 (*see* 26 CFR 35a.9999-1, 35a.9999-2, and 35a.9999-3, revised April 1, 1999), solely for the definitions of terms or phrases used in this paragraph (g).

(h) *Reasonable cause safe harbor after election under section 6722(c)(3)(B)*. A filer may establish reasonable cause with respect to a failure relating to an information reporting requirement as described in paragraph (j) of this section under this paragraph (h) if the failure is a result of an election under §301.6722-1(d)(3)(i) and the presence of a de minimis error or errors as described in sections 6721(c)(3) and 6722(c)(3) and §§301.6721-1(e) and 301.6722-1(d) on a filed information return or furnished payee statement. This paragraph (h) applies only if the safe harbor exceptions provided for by §301.6721-1(e)(1) or §301.6722-1(d)(1) would have applied, but for an election under §301.6722-1(d)(3)(i). To establish reasonable cause and not willful neglect under this paragraph (h), the filer must file a corrected information return or furnish a corrected payee statement, or both, as applicable, within 30 days of the date of the election under §301.6722-1(d)(3)(i). Where specific rules provide for additional time in which to furnish a corrected payee statement and file a corrected information return, the 30-day rule does not apply and the specific rules will apply. *See* for example §§31.6051-1(c) through (d) and 31.6051-2(b). If the filer rectifies the failure outside of this 30-day period, the determination of reasonable cause will be on a case-by-case basis.

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(k) *Examples*. The provisions of this section may be illustrated by the following examples:

(1) *Example 1*—(i) *Facts*. On August 1, 2023, Individual A, an independent contractor, establishes a relationship (account) with Institution L, which pays A amounts reportable under section 6041. When A opens the account L requests that A supply his TIN on the account creation document. A fails to provide his TIN. On October 2, 2023, L mails a solicitation for A's TIN that satisfies the requirement of paragraph (e)(1)(ii) of this section. A does not provide a TIN to L during 2023. L timely files an information return subject to section 6721, that does not contain A's TIN, for payments made during the 2023 calendar year with respect to A's account. A penalty is imposed on L, pursuant to §301.6721-1(a)(2), for L's failure to file a correct information return because A's TIN was not shown on the return. The penalty will be waived, however, if L establishes that the failure was due to reasonable cause as defined in this section.

(ii) *Analysis*. To establish reasonable cause under this section, L must satisfy both paragraphs (c)(6) and (d) of this section. The criteria for obtaining a waiver under paragraphs (c)(6) and (d) of this section are as follows:

(A) L acted in a responsible manner in attempting to satisfy the information reporting requirement as described in paragraph (d) of this section; and

(B) L demonstrates that the failure arose from events beyond L's control, as described in paragraph (c)(6) of this section.

(iii) *Analysis (continued)*. Pursuant to paragraph (d)(2) of this section, L may demonstrate that it acted in a responsible manner only by complying with paragraph (e) of this section. Paragraph (e) of this section requires a filer to request a TIN at the time the account is opened (the initial solicitation) and, if the filer does not receive the TIN at that time, to solicit the TIN on or before December 31 of the year the account is opened (for accounts opened before December) or January 31 of the following year (for accounts in the preceding December) (the annual solicitation). Because L has performed these solicitations within the time and in the manner prescribed by paragraph (e) of this section, L has acted in a responsible manner as described in paragraph (d) of this section. L satisfies paragraph (c)(6) of this section

because under the facts, L can show that the failure was caused by A's failure to provide a TIN, an event beyond L's control. As a result, L has established reasonable cause under paragraph (a)(2) of this section. Therefore, the penalty imposed under §301.6721-1(a)(2) for the failure on the 2023 information return is waived. *See* section 3406(a)(1)(A), which requires L to impose backup withholding on reportable payments to A if L has not received A's TIN.

(2) *Example 2*—(i) *Facts*. On August 1, 2023, Individual B opens an account with Bank M, which pays B interest reportable under section 6049. When B opens the account, M requests that B supply his TIN on the account creation document. B provides his TIN to M. On February 28, 2024, M includes the TIN that B provided on the Form 1099-INT, *Interest Income*, for the 2023 calendar year. In October 2024 the IRS, pursuant to section 3406(a)(1)(B), notifies M that the 2023 return filed for B contains an incorrect TIN. In April 2025 a penalty is imposed on M, pursuant to §301.6721-1(a)(2), for M's failure to file a correct information return for the 2023 calendar year, that is, the return did not contain B's correct TIN. The penalty will be waived, however, if M establishes that the failure was due to reasonable cause as defined in this section.

(ii) *Analysis*. To establish reasonable cause under this section, M must satisfy the criteria in both paragraphs (c)(6) and (d) of this section. Pursuant to paragraph (d)(2) of this section, M can demonstrate that it acted in a responsible manner only if M complies with paragraph (f) of this section. Paragraph (f) of this section requires a filer to request a TIN at the time the account is opened, an initial solicitation. Under paragraph (f)(4) of this section the initial solicitation relates to failures on returns filed for the year an account is opened. Because M performed the initial solicitation in 2023 in the time and manner prescribed in paragraph (f)(1)(i) of this section and reflected the TIN received from B on the 2023 return as required by paragraph (f)(1)(iv) of this section, M has acted in a responsible manner as described in paragraph (d) of this section. M satisfies paragraph (c)(6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide a correct TIN, an event beyond M's control. As a result, M has established reasonable cause under paragraph (a)(2) of this section. Therefore, the penalty imposed under §301.6721-1(a)(2) for the failure on the 2023 information return is waived. *See* section 3406(a)(1)(B), which requires M to impose backup withholding on reportable payments to B if M has not received B's correct TIN.

(3) *Example 3*—(i) *Table*.

Table 1 to Paragraph (k)(3)(i)

2023	**2/2024**	**10/2024**	**2/2025**
Account opened (solicits TIN)	2023 return filed	B-notice with respect to 2023 return	2024 return filed
4/2025	**10/2025**	**2/2026**	**4/2026**
6721 penalty notice for 2023 return	B-notice with respect to 2024 return	2025 return filed	6721 penalty notice for 2024

(ii) *Facts*. The facts are the same as in paragraph (k)(2)(i) of this section (*Example 2*). Under §31.3406(d)-5(d)(2)(i) of this chapter and paragraph (f)(3) of this section, within 15 days of the October 2024 notification of the incorrect TIN from the IRS, M solicits the correct TIN from B. B fails to respond. M timely files the return for 2024 with respect to the account setting forth B's incorrect TIN. In October 2025 the IRS notifies M, pursuant to section 3406(a)(1)(B), that the 2024 return contains an incorrect TIN. In April 2026, a penalty is imposed on M pursuant to §301.6721-1(a)(2) for M's failure to include B's correct TIN on the return for 2024. The penalty will be waived, if M establishes that the failure was due to reasonable cause as defined in this section.

(iii) *Analysis*. M must satisfy the reasonable cause criteria in paragraphs (c)(6) and (d) of this section. M may demonstrate that it acted in a responsible manner as required under paragraph (d) of this section only by complying with paragraph (f) of this section. Paragraph (f) of this section requires a filer to make an initial solicitation for a TIN when an account is opened. Further, a filer must make an annual solicitation for a TIN by mail within 15 business days after the date that the IRS notifies the filer of an incorrect TIN pursuant to section 3406(a)(1)(B). M made the initial solicitation for the TIN in 2023 and, after being notified of the incorrect TIN in October 2024, the first annual solicitation within the time and manner prescribed by §31.3406(d)-5(d)(2)(i) of this chapter and paragraphs (f)(1)(ii) and (f)(2) of this section. M acted in a responsible manner. M satisfies paragraph (c)(6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide his correct TIN, an event beyond M's control. As a result M has established reasonable cause under paragraph (a)(2) of this section. Therefore, the penalty imposed under §301.6721-1(a)(2) for the failure on the 2024 return is waived due to reasonable cause.

(4) *Example 4*—(i) *Table*.

Table 2 to Paragraph (k)(4)(i)

2023	**2/2024**	**10/2024**	**2/2025**
Account opened (solicits TIN)	2023 return filed	B-notice with respect to 2023 return	2024 return filed
4/2025	**10/2025**	**2/2026**	**4/2026**
6721 penalty notice for 2023 return	B-notice with respect to 2024 return	2025 return filed	6721 penalty notice for 2024 return

(ii) *Facts*. The facts are the same as in paragraph (k)(3)(ii) of this section (*Example 3*). M timely solicits B's TIN in October 2025, which B fails to provide. M files the return for 2025 with the incorrect TIN. In April 2027 the IRS informs M that the 2025 return contains an incorrect TIN. M does not solicit a TIN from B in 2026 and files a return for 2026 with B's incorrect TIN. M seeks a waiver of the penalty under §301.6721-1(a)(2) for reasonable cause.

(iii) *Analysis*. M must satisfy the reasonable cause criteria in paragraphs (c)(6) and (d) of this section. Because M made the initial and two annual solicitations as required by paragraph (f) of this section, M has demonstrated that it acted in a responsible manner and is not required to solicit B's TIN in 2026. *See* paragraph (f)(5)(vi) of this section. M satisfies paragraph (c)(6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide his correct TIN, an event beyond M's control. Therefore, M has established reasonable cause under paragraph (a)(2) of this section.

(5) *Example 5*—(i) *Facts*. In 2023, Mortgage Finance Company N lends money to C to purchase property in a transaction subject to reporting under section 6050H. As part of the transaction, C gives N a promissory note providing for repayment of principal and the payment of interest. At the time C incurs the obligation N requests C's TIN, as required under §1.6050H-2(f) of this chapter. C fails to provide the TIN as required by §1.6050H-2(f) of this chapter. N sends solicitations by mail in 2023 and 2024 for the missing TIN, which C fails to provide. However, for 2025 N fails to send the solicitation required by §1.6050H-2(f) of this chapter. N files returns for the 2023, 2024, and 2025 calendar years pursuant to section 6050H without C's TIN.

(ii) *Analysis*. Although N made the initial and the first annual solicitations in 2023 and the second annual solicitation in 2024, N did not solicit the TIN in 2025 as required under section 6050H, which requires continued annual solicitations until the TIN is obtained. Therefore, under paragraph (e)(1)(vi)(A) of this section the penalty imposed under §301.6721-1(a) for the 2025 information return is not waived.

(6) *Example 6*—(i) *Table*.

Table 3 to Paragraph (k)(6)(i)

10/2023	2/2024	10/2024	2/2025
Account opened. (solicits TIN)	2023 return filed	B-notice with respect to 2023 return	2024 return filed
4/2025	**10/2025**	**2/2026**	**4/2026**
6721 penalty notice for 2023 return	B-notice with respect to 2024 return	2025 return filed	6721 penalty notice for 2024 return

(ii) *Facts*. On October 2, 2023, Individual E opens an account with Institution R, which pays E amounts reportable under section 6049. When E opens the account, R requests that E supply his TIN on an account creation document, which E does. Pursuant to paragraph (f)(1)(iv) of this section, R uses the TIN furnished by E on the information return filed for the 2023 calendar year. In October 2024 the IRS notifies R, pursuant to section 3406(a)(1)(B), that the information return filed for E for the 2023 calendar year contained an incorrect TIN. At the time R receives this notification, E's account contains the incorrect TIN. On December 31, 2024, R telephones E pursuant to paragraphs (f)(2) and (e)(2)(ii) of this section and receives different TIN information from E. R uses this information on the return that it files timely for E for the 2024 calendar year, that is, in February 2025. In April 2025, the IRS notifies R, pursuant to §301.6721-1(a)(2), that the information return filed for the 2023 calendar year contains an incorrect TIN. The penalty will be waived, however, if R establishes the failure was due to reasonable cause as defined in this section.

(iii) *Analysis*. To establish reasonable cause under this section, R must satisfy the criteria in both paragraphs (c)(6) and (d)(2) of this section. Pursuant to paragraph (d)(2) of this section, R can demonstrate that it acted in a responsible manner only if it complies with paragraph (f) of this section. R solicited E's TIN at the time the account was opened (initial solicitation). Under paragraphs (d)(2) and (f)(4) of this section, the initial solicitation relates to failures on returns filed for the year in which an account is opened (that is, 2023) and for subsequent years until the calendar year in which the filer receives a notification of an incorrect TIN pursuant to section 3406. Because E failed to provide the correct TIN upon request, the failure arose from events beyond R's control as described in paragraph (c)(6) of this section. Therefore, the penalty with respect to the failure on the 2023 calendar year information return is waived due to reasonable cause.

(7) *Example 7*—(i) *Facts*. The facts are the same as in paragraph (k)(6)(ii) of this section (*Example 6*). In April 2026 the IRS notifies R, pursuant to §301.6721-1(a)(2), that the information return filed for the 2024 calendar year for E contained an incorrect TIN.

(ii) *Analysis*. To establish reasonable cause for the failure under this section, R must satisfy the criteria in both paragraphs (c)(6) and (d)(2) of this section. Pursuant to paragraph (d)(2) of this section, R may establish that it acted in a responsible manner only by complying with paragraph (f) of this section. Pursuant to paragraph (f)(1)(ii) of this section, R must make an annual solicitation after being notified of an incorrect TIN if the payee's account contains the incorrect TIN at the time of the notification. Paragraph (f)(3) of this section provides that if the filer is notified, pursuant to section 3406(a)(1)(B), the time and manner of making an annual solicitation is that required under §31.3406(d)-5(g)(1)(ii) of this chapter. Section 31.3406(d)-5(g)(1)(ii) of this chapter requires R to notify E by mail within 15 business days after the date of the notice from the IRS, which R failed to do. As a result, R has failed to act in a responsible manner with respect to the failure on the 2024 information return, and the penalty will not be waived due to reasonable cause.

(8) *Example 8*—(i) *Facts*. On January 31, 2024, Institution Q timely furnishes Form 1099-MISC, *Miscellaneous Information*, to Individual F. Also on January 31, 2024, Q timely files a corresponding Form 1099-MISC with the IRS. On March 15, 2024, Q becomes aware of de minimis errors (within the meaning of §301.6722-1(d)(2)) made on the Form 1099-MISC furnished to F and filed with the IRS. On March 20, 2024, F makes an election under §301.6722-1(d)(3)(i) with respect to the Form 1099-MISC that Q furnished to F. Q furnishes a corrected Form 1099-MISC to F and files a corrected Form 1099-MISC with the IRS by April 19, 2024, which date is 30 days from March 20, 2024.

(ii) *Analysis*. The election by F and the presence of de minimis errors on the Forms 1099-MISC make the penalties under sections 6721 and 6722 applicable to Q. *See* §§301.6721-1(e)(3) and 301.6722-1(d)(3). Q, however, rectified the failures within 30 days of March 20, 2024, the date F made the election under §301.6722-1(d)(3)(i) with respect to the Form 1099-MISC that Q furnished to F. Therefore, under paragraph (h) of this section, Q is considered to have established reasonable cause, and under section 6724 and paragraph (a)(1) of this section the penalties under sections 6721 and 6722 are waived.

(9) *Example 9*—(i) *Facts*. The facts are the same as in paragraph (k)(8)(i) of this section (*Example 8*), except that Q does not become aware of de minimis errors made on the Form 1099-MISC furnished to F and filed with the IRS until June 26, 2024. Additionally, Q furnishes the corrected Form 1099-MISC to F and files the corrected Form 1099-MISC with the IRS after June 26, 2024, but by July 26, 2024, which date is 30 days from June 26, 2024.

(ii) *Analysis*. As in the example in paragraph (k)(8) of this section, the election by F and the presence of de minimis errors on the Forms 1099-MISC make the penalties under sections 6721 and 6722 applicable to Q. Additionally, because Q did not furnish a corrected Form 1099-MISC to F and file a corrected Form 1099-MISC with the IRS within 30 days of the date of F's election under §301.6722-1(d)(3)(i), paragraph (h) of this section does not apply. However, Q may be able to demonstrate reasonable cause under the provisions of paragraph (a) of this section. As part of this demonstration, for example, Q may be able to demonstrate that Q acted in a responsible manner under paragraph (d)(1) of this section by rectifying the failure (that is, the de minimis errors) within 30 days of discovery.

* * * * *

(m) *Procedure for seeking a waiver*. In seeking an administrative determination that the failure was due to reasonable cause and not willful neglect, the filer must submit a written statement to the address provided with the notice proposing penalty assessment (for example, Notice 972CG) or the notice of penalty assessment (for example, CP15 or CP215), or as otherwise directed by the IRS in forms, instructions or publications. The statement must—

(1) State the specific provision under which the waiver is being requested, that is, paragraph (b) or under paragraphs (c)(2) through (6) or paragraph (h) of this section;

* * * * *

(o) *Applicability dates*—(1) *In general*. Except as provided in paragraphs (o)(2) and (3) of this section, this section applies with respect to information returns required to be filed and payee statements required to be furnished on or after January 1, 2024. *See* 26 CFR 301.6724-1, as revised April 1, 2023, for rules applicable prior to January 1, 2024, except as provided in paragraphs (o)(2) and (3) of this section.

(2) *Paragraph (g)*. Paragraph (g) of this section applies with respect to *information returns* as defined in section 6724(d)(1) required to be filed, *payee statements* as defined in section 6724(d)(2) required to

be furnished, and specified information as described in section 6724(d)(3) required to be reported on or after January 1, 2024. *See* 26 CFR 301.6724-1(g), as revised April 1, 2023, for rules applicable prior to January 1, 2024.

(3) *Paragraph (h)*. Paragraph (h) of this section applies with respect to information returns required to be filed and payee statements required to be furnished after January 4, 2017.

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

Approved: November 29, 2023.

Lily L. Batchelder,
Assistant Secretary of the Treasury (Tax Policy).

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Part III

Additional Interim Guidance Regarding the Application of the Corporate Alternative Minimum Tax under Sections 55, 56A, and 59 of the Internal Revenue Code

Notice 2024-10

SECTION 1. OVERVIEW

This notice provides additional interim guidance regarding the application of the new corporate alternative minimum tax (CAMT). The CAMT was added to the Internal Revenue Code (Code)[1] by the enactment of § 10101 of Public Law 117-169, 136 Stat. 1818, 1818-1828 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022 (IRA), effective for taxable years beginning after December 31, 2022. Notice 2023-7, 2023-3 I.R.B. 390, announced that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue proposed regulations (forthcoming proposed regulations) addressing the application of the CAMT. Notice 2023-7, Notice 2023-20, 2023-10 I.R.B. 523, and Notice 2023-64, 2023-40 I.R.B. 974, each provided interim guidance regarding the application of the CAMT and indicated that the Treasury Department and the IRS intend to issue forthcoming proposed regulations that would include proposed rules consistent with such interim guidance. Each of the notices further provided that taxpayers may rely on such interim guidance for taxable years ending on or before the date forthcoming proposed regulations are published in the Federal Register and, in any event, for any taxable year that begins before January 1, 2024. Notice 2023-42, 2023-26 I.R.B. 1085, provided relief from the addition to tax under § 6655 in connection with the application of the CAMT.

Section 2 of this notice provides a summary of relevant law and other information relevant to this notice. Section 3 of this notice provides additional interim guidance regarding the application of the CAMT to shareholders of controlled foreign corporations that taxpayers may rely on for Covered CFC Distributions received on or before the date forthcoming proposed regulations are published in the Federal Register and, regardless of when forthcoming proposed regulations are published in the Federal Register, for Covered CFC Distributions received before January 1, 2024. Section 4 of this notice modifies and clarifies the interim guidance provided in Notice 2023-64 regarding the application of the CAMT to an affiliated group of corporations filing a consolidated return for any taxable year (tax consolidated group). The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in, and modified and clarified by, sections 3 and 4 of this notice. Section 5 of this notice provides applicability dates and requirements for relying on the interim guidance provided in, and modified and clarified by, this notice until the issuance of forthcoming proposed regulations. Section 6 of this notice requests comments on the interim guidance provided in this notice. Section 7 of this notice describes the effect this notice has on other documents. Section 8 of this notice provides drafting and contact information.

SECTION 2. BACKGROUND

.01 *Overview of the CAMT*. Section 10101 of the IRA amended § 55 to impose the CAMT based on the "adjusted financial statement income" (AFSI) of an applicable corporation for taxable years beginning after December 31, 2022. A corporation is an applicable corporation subject to the CAMT for a taxable year if it meets the average annual AFSI test for one or more taxable years that (i) are before that taxable year, and (ii) end after December 31, 2021. Section 55(a) provides that, for the taxable year of an applicable corporation, the amount of CAMT imposed by § 55 equals the excess (if any) of (i) the tentative minimum tax for the taxable year, over (ii) the sum of the regular tax imposed by chapter 1 of the Code (chapter 1), within the meaning of § 55(c), for the taxable year plus the tax imposed under § 59A for the taxable year. Section 55(b)(2)(A) provides that, in the case of an applicable corporation, the *tentative minimum tax* for the taxable year is the excess of (i) 15 percent of AFSI for the taxable year (as determined under § 56A), over (ii) the CAMT foreign tax credit (CAMT FTC) for the taxable year (as determined under § 59(l)). In the case of any corporation that is not an applicable corporation, § 55(b)(2)(B) provides that the tentative minimum tax for the taxable year is zero. For additional background on the CAMT, see section 2 of Notice 2023-7 and section 2 of Notice 2023-64.

.02 *Definition of AFSI*. Section 56A(a) provides that, for purposes of §§ 55 through 59, the term *AFSI* means, with respect to any corporation for any taxable year, the net income or loss of the taxpayer set forth on the taxpayer's applicable financial statement (AFS) for that taxable year, adjusted as provided in § 56A.

.03 *AFSI adjustments with respect to shareholders of foreign corporations*.

(1) Section 56A(c)(2)(C) provides that, in the case of any corporation that is not included on a consolidated return with the taxpayer, AFSI of the taxpayer with respect to that other corporation is determined by only taking into account dividends received from that other corporation (reduced to the extent provided by the Secretary of the Treasury or her delegate (Secretary) in regulations or other guidance) and other amounts that are includible in gross income or deductible as a loss under chapter 1 (other than amounts required to be included under §§ 951 and 951A or such other amounts as provided by the Secretary) with respect to that other corporation.

(2) Section 56A(c)(3)(A) provides an adjustment to the AFSI of a taxpayer for any taxable year in which the taxpayer is a United States shareholder (within the meaning of § 951(b) or, if applicable, § 953(c)(1)(A)) (each such shareholder, a U.S. Shareholder) of one or more controlled foreign corporations (each within the meaning of § 957 or, if applicable,

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

§ 953(c)(1)(B)) (CFC). Under this rule, the AFSI of the taxpayer with respect to the CFC (as determined under § 56A(c)(2)(C)) is adjusted to also take into account the taxpayer's pro rata share (determined under rules similar to the rules under § 951(a)(2)) of items taken into account in computing the net income or loss set forth on the AFS (as adjusted under rules similar to those that apply in determining AFSI) of each CFC with respect to which the taxpayer is a U.S. Shareholder. The net income or loss of a CFC set forth on its AFS (as adjusted under rules similar to those that apply in determining AFSI) is referred to in this notice as *Adjusted Net Income or Loss*.

(3) In addition to the authority provided in § 56A(c)(2)(C) to reduce the amounts of dividends received by a corporation taken into account under § 56A(c)(2)(C), § 56A(c)(15) authorizes the Secretary to issue regulations or other guidance to provide for such adjustments to AFSI as necessary to carry out the purposes of § 56A, including adjustments to prevent the omission or duplication of any item.

(4) Taxpayers have expressed concern that, in certain cases, distributions by CFCs may result in earnings of CFCs being included in the AFSI of a U.S. Shareholder of the CFC more than once, and that this result may cause CFCs to defer making distributions until guidance is issued. Specifically, a duplication of items may result if the U.S. Shareholder includes in AFSI, under § 56A(c)(2)(C), the amount of a dividend received from earnings associated with Adjusted Net Income or Loss that the U.S. Shareholder includes in AFSI under § 56A(c)(3). Under § 56A(c)(3), a U.S. Shareholder includes in its AFSI items of an upper-tier CFC and a lower-tier CFC. A duplication of items may also result if the upper-tier CFC includes in Adjusted Net Income or Loss the amount of a dividend received from the lower-tier CFC from earnings associated with Adjusted Net Income or Loss that the U.S. Shareholder includes in AFSI under § 56A(c)(3) with respect to the lower-tier CFC. The guidance contained in section 3 of this notice is intended to address such potential duplication of items.

.04 *AFSI adjustments for tax consolidated groups*. Section 56A(c)(2)(B) provides that except as provided in regulations prescribed by the Secretary, if the taxpayer is part of a tax consolidated group, AFSI for such group for such taxable year takes into account items on the group's AFS that are properly allocable to members of such group. Section 6 of Notice 2023-64 provides guidance for determining the net income or loss and AFSI of a tax consolidated group when the financial results of all members of the tax consolidated group are included on a single consolidated AFS.

.05 *Determining an AFS*.

(1) For purposes of § 56A, the term AFS means, with respect to any taxable year, an AFS, as defined in § 451(b)(3) or as specified by the Secretary in regulations or other guidance, that covers that taxable year. See § 56A(b).

(2) Section 56A(c)(2)(A) provides that, if the financial results of a taxpayer are reported on the AFS for a group of entities (AFS Group), rules similar to the rules of § 451(b)(5) apply. Section 451(b)(5) provides that in such a situation, the AFS for the AFS Group is treated as the AFS of the taxpayer.

(3) Section 4 of Notice 2023-64 provides guidance for determining a taxpayer's AFS. Section 4.02 of Notice 2023-64 generally provides that the term AFS means the taxpayer's financial statement listed in section 4.02(1) of the notice that has the highest priority, including the priority within certain sections. Section 4.02(1) of the notice generally provides that the financial statements are, in order of descending priority: U.S. GAAP statements, IFRS statements, other government and regulatory statements, unaudited external statements, and lastly, the taxpayer's Federal income tax return or information return filed with the IRS.

(4) Section 4.02(5) of Notice 2023-64 provides guidance for determining a taxpayer's AFS when the financial results of the taxpayer are included in a financial statement, including a Federal income tax return, covering a group of entities (consolidated financial statement). Section 4.02(5)(a) generally provides that if a taxpayer's financial results are consolidated with the financial results of one or more other taxpayers on a consolidated financial statement, the taxpayer's AFS is the consolidated financial statement. However, if the taxpayer's financial results are also separately reported on a separate financial statement that is of equal or higher priority to the consolidated financial statement, then the taxpayer's AFS is the separate financial statement.

(5) Section 4.02(5)(b) of Notice 2023-64 provides two exceptions to the guidance in section 4.02(5)(a) that would prioritize the use of the taxpayer's separate financial statement over a consolidated financial statement. Relevant to this notice is the first exception in section 4.02(5)(b)(i) of Notice 2023-64, which provides that a corporation that is a member of a tax consolidated group must use as its AFS the consolidated financial statement that contains the financial results of all members of the tax consolidated group, regardless of whether the corporation's financial results are also reported on a separate financial statement that is of equal or higher priority to the consolidated financial statement.

(6) The exception in section 4.02(5)(b)(i) of Notice 2023-64 was premised on the understanding that the financial results of all of the members of a tax consolidated group would be included in a single consolidated financial statement that is not a Federal income tax return. The Treasury Department and the IRS have become aware of circumstances in which not all members of a tax consolidated group are included in a single consolidated financial statement that is not a Federal income tax return. In this situation, section 4.02(5)(b)(i) of Notice 2023-64 could be read to permit the tax consolidated group to use its consolidated Federal income tax return as its AFS because there is no higher priority consolidated financial statement that includes all members of the group. The Treasury Department and the IRS have determined that this result would frustrate the purpose of the CAMT. The definition of an AFS was broadened to include a Federal income tax return for those entities that do not have a financial statement that meets the criteria in sections 4.02(1)(a) through (d) of Notice 2023-64 but that are relevant to determine the AFSI of a corporation for purposes of determining whether that corporation is an applicable corporation or has a CAMT liability. This AFS category was not intended to be used by a corporation that otherwise has a financial statement that meets the crite-

ria in sections 4.02(1)(a) through (d) of Notice 2023-64. The modifications and clarifications contained in section 4 of this notice are intended to prevent this result and are consistent with the original intent of the exception.

(7) In addition, the guidance in section 4.02(5)(b)(i) of Notice 2023-64 is not entirely clear concerning which consolidated financial statement is the AFS of a member of a tax consolidated group when the member has more than one consolidated financial statement. The modifications and clarifications to Notice 2023-64 contained in section 4 of this notice also provide guidance for determining the AFS of a member of a tax consolidated group in such a situation.

SECTION 3. COVERED CFC DISTRIBUTIONS RECEIVED FROM CONTROLLED FOREIGN CORPORATIONS

.01 *Purpose*. This section 3 provides interim guidance regarding Covered CFC Distributions (as defined in section 3.02 of this notice) that may result in earnings of CFCs being included in AFSI of a U.S. Shareholder more than once. This section 3 does not provide guidance regarding the treatment of distributions received from a CFC that are not Covered CFC Distributions, dispositions of stock of a CFC (including the treatment of dividends under § 1248), or any other amounts that may relate to ownership of stock of a CFC. The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 3.

.02 *Covered CFC Distributions*. For purposes of this section 3, a *Covered CFC Distribution* means a distribution received with respect to stock of a CFC to the extent it is a dividend (within the meaning of § 316), determined without taking into account § 959(d).

.03 *Treatment of Covered CFC Distributions received by a U.S. Shareholder of the distributing CFC*. In determining the amount included in AFSI under § 56A(c)(2)(C) of a U.S. Shareholder of a CFC resulting from a Covered CFC Distribution received with respect to stock of the CFC, AFSI of the U.S. Shareholder is determined by—

(1) Disregarding any items reported on the U.S. Shareholder's AFS resulting from the receipt of the Covered CFC Distribution; and

(2) Including the U.S. Shareholder's items of income and deduction under chapter 1 (for this purpose, taking into account § 959(d) and excluding §§ 56A and 78) resulting from the receipt of the Covered CFC Distribution.

.04 *Treatment of Covered CFC Distributions received by a CFC from another CFC*. In determining the Adjusted Net Income or Loss of a CFC for purposes of § 56A(c)(3) resulting from a Covered CFC Distribution received with respect to stock of another CFC, Adjusted Net Income or Loss of the recipient CFC is determined by—

(1) Disregarding any items reported on the recipient CFC's AFS resulting from the receipt of the Covered CFC Distribution; and

(2) Including the recipient CFC's items of income under chapter 1 (excluding § 56A) resulting from the receipt of the Covered CFC Distribution, determined without regard to any exclusion under chapter 1 (for example, § 954(b)(4)), and then reduced to the extent the Covered CFC Distribution is excluded from—

(a) Both—

(i) The recipient CFC's foreign personal holding company income under § 954(c)(3) (relating to certain income received from related persons) or § 954(c)(6) (relating to certain amounts received from related CFCs); and

(ii) The recipient CFC's gross tested income under § 1.951A-2(c)(1)(iv) (relating to dividends received from related persons); or

(b) The recipient CFC's gross income under § 959(b).

SECTION 4. MODIFICATIONS AND CLARIFICATIONS TO AFS GUIDANCE IN SECTIONS 4 AND 6 OF NOTICE 2023-64

.01 *Purpose*. This section 4 modifies and clarifies interim guidance provided in sections 4.02(5)(b) and 6.02 of Notice 2023-64 and provides additional interim guidance regarding the application of sections 5 and 6 of Notice 2023-64 in light of such modifications and clarifications. The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 4. Solely for formatting purposes, section 4.02 of this notice also redesignates section 4.02(5)(b)(ii) of Notice 2023-64 as section 4.02(5)(b)(v) of Notice 2023-64 and restates it for completeness. Unless otherwise provided, the definitions in Notice 2023-64 apply for purposes of this section 4.

.02 *Modifications and clarifications to section 4.02(5)(b) of Notice 2023-64*. Section 4.02(5)(b) of Notice 2023-64 is modified and clarified to read as follows:

(b) *Exceptions to use of Separate AFS*.

(i) *Tax Consolidated AFS Member has only one Consolidated AFS that contains the financial results of all Tax Consolidated AFS Members*. Except as provided in section 4.02(5)(b)(v) of this notice, if a Tax Consolidated AFS Member, as defined in section 6.03(1) of this notice, has only one Consolidated AFS described in section 4.02(1)(a) through (d) of this notice that contains the financial results of all the Tax Consolidated AFS Members, the Tax Consolidated AFS Member must use that Consolidated AFS as its AFS, regardless of whether the Tax Consolidated AFS Member's financial results also are reported on—

(A) A Separate AFS that is of equal or higher priority to that Consolidated AFS; or

(B) A different Consolidated AFS that contains the financial results of some, but not all, Tax Consolidated AFS Members, and that is of equal or higher priority to that Consolidated AFS.

(ii) *Tax Consolidated AFS Member has more than one Consolidated AFS that contains the financial results of all Tax Consolidated AFS Members*. Except as provided in section 4.02(5)(b)(v) of this notice, if a Tax Consolidated AFS Member, as defined in section 6.03(1) of this notice, has more than one Consolidated AFS described in section 4.02(1)(a) through (d) of this notice that contains the financial results of all Tax Consolidated AFS Members, the Tax Consolidated AFS Member must use as its AFS the Consolidated AFS with the highest priority under section 4.02(1)(a) through (d) of this notice that contains the financial results

of all Tax Consolidated AFS Members, regardless of whether the Tax Consolidated AFS Member's financial results also are reported on—

(A) A Separate AFS that is of equal or higher priority to that Consolidated AFS; or

(B) A different Consolidated AFS that contains the financial results of some, but not all, Tax Consolidated AFS Members, and that is of equal or higher priority to that Consolidated AFS.

(iii) *Tax Consolidated AFS Member has only one Consolidated AFS that contains its results but does not contain results of all Tax Consolidated AFS Members*. Except as provided in section 4.02(5)(b)(v) of this notice, if a Tax Consolidated AFS Member, as defined in section 6.03(1) of this notice, is not described in section 4.02(5)(b)(i) or (ii) of this notice and has only one Consolidated AFS described in section 4.02(1)(a) through (d) of this notice that contains its financial results and the financial results of some, but not all, Tax Consolidated AFS Members, the Tax Consolidated AFS Member must use that Consolidated AFS as its AFS, regardless of whether the Tax Consolidated AFS Member's financial results also are reported on a Separate AFS that is of equal or higher priority to that Consolidated AFS.

(iv) *Tax Consolidated AFS Member has more than one Consolidated AFS that contains its results but does not contain results of all Tax Consolidated AFS Members*. Except as provided in section 4.02(5)(b)(v) of this notice, if a Tax Consolidated AFS Member, as defined in section 6.03(1) of this notice, is not described in section 4.02(5)(b)(i) or (ii) of this notice and has more than one Consolidated AFS described in section 4.02(1)(a) through (d) of this notice that contains its financial results and the financial results of some, but not all, Tax Consolidated AFS Members, the Tax Consolidated AFS Member must use as its AFS the Consolidated AFS that contains its financial results and the financial results of the greatest number of Tax Consolidated AFS Members (if there is more than one such Consolidated AFS, the Tax Consolidated AFS Member must use the Consolidated AFS from among them with the highest priority under section 4.02(1)(a) through (d) of this notice), regardless of whether the Tax Consolidated AFS Member's financial results also are reported on—

(A) A Separate AFS that is of equal or higher priority to that Consolidated AFS; or

(B) A different Consolidated AFS that contains the financial results of fewer Tax Consolidated AFS Members, and that is of equal or higher priority to that Consolidated AFS.

(v) *Members of a FPMG*. If a Taxpayer is a member of a FPMG and if the FPMG Common Parent (as defined in section 2.04(3) of this notice) prepares a Consolidated AFS (FPMG Consolidated AFS) that includes the Taxpayer, the Taxpayer must use the FPMG Consolidated AFS, regardless of whether the Taxpayer's financial results also are reported on a Separate AFS that is of equal or higher priority to the FPMG Consolidated AFS.

.03 *Modification to section 6.02 of Notice 2023-64*. The cross-reference provided in section 6.02 of Notice 2023-64 is modified and clarified to read as follows:

.02 *Priority of Consolidated AFS*. For rules regarding the priority of the Consolidated AFS of a Tax Consolidated Group, *see* section 4.02(5)(b)(i) through (iv) of this notice.

.04 *Application of Sections 5 and 6 of Notice 2023-64*. If after the application of section 4.02(5)(b)(i) through (iv) of Notice 2023-64, as modified and clarified by this notice, the AFS of each Tax Consolidated AFS Member is not the same Consolidated AFS, then for purposes of applying sections 5 and 6 of Notice 2023-64, the Tax Consolidated Group must combine the financial results reflected on the different AFSs of the Tax Consolidated AFS Members to form one Consolidated AFS that is treated as the AFS of the Tax Consolidated Group (Tax Consolidated Group AFS). For purposes of the preceding sentence, the financial results of each Tax Consolidated AFS Member may not be included in the Tax Consolidated Group AFS more than once, and the Tax Consolidated Group must make any AFS Consolidation Entries described in section 5.02(3)(c)(iii) of Notice 2023-64 not otherwise reflected in the AFS of any member that would have been made if such a Tax Consolidated Group AFS had otherwise been prepared.

SECTION 5. APPLICABILITY DATES AND RELIANCE

.01 *Section 3 of this notice*. Taxpayers may rely on the interim guidance described in section 3 of this notice for Covered CFC Distributions received on or before the date forthcoming proposed regulations are published in the Federal Register. However, regardless of when forthcoming proposed regulations are published in the Federal Register, a taxpayer may rely on the interim guidance described in section 3 of this notice for Covered CFC Distributions received before January 1, 2024.

.02 *Section 4 of this notice*. Taxpayers may rely on the interim guidance described in section 4.02(5)(b) of Notice 2023-64, as modified by section 4.02 of this notice, section 6.02 of Notice 2023-64, as modified by section 4.03 of this notice, and section 4.04 of this notice for taxable years ending before the date forthcoming proposed regulations are published in the Federal Register. However, regardless of when forthcoming proposed regulations are published in the Federal Register, a taxpayer may rely on the interim guidance described in section 4.02(5)(b) of Notice 2023-64, as modified by section 4.02 of this notice, section 6.02 of Notice 2023-64, as modified by section 4.03 of this notice, and section 4.04 of this notice for any taxable year beginning before January 1, 2024. A taxpayer may not rely on the unmodified text of sections 4.02(5)(b)(i) or 6.02 of Notice 2023-64 for any tax return filed on or after December 15, 2023.

SECTION 6. REQUEST FOR COMMENTS

.01 *Comments regarding interim guidance provided in this notice*. The Treasury Department and the IRS request comments on any questions arising from the interim guidance provided in this notice.

.02 *Procedures for Submitting Comments*.

(1) *Deadline*. Written comments should be submitted by January 15, 2024. Consideration will be given, however, to

any written comment submitted after January 15, 2024, if such consideration will not delay the issuance of forthcoming proposed regulations.

(2) *Form and manner*. The subject line for the comments should include a reference to Notice 2024-10. All commenters are strongly encouraged to submit comments electronically. However, comments may be submitted in one of two ways:

(a) Electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (type IRS-2023-0064 in the search field on the *www.regulations.gov* homepage to find this notice and submit comments); or

(b) By mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2024-10), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C., 20044.

(3) *Publication of comments*. The Treasury Department and the IRS will publish for public availability any comment submitted electronically and on paper to the IRS's public docket on *www.regulations.gov*.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Sections 4 and 6 of Notice 2023-64 are modified and clarified.

SECTION 8. DRAFTING AND CONTACT INFORMATION

The principal authors of this notice are Madeline Padner of the Office of the Associate Chief Counsel (Income Tax and Accounting) and Dylan Steiner of the Office of the Associate Chief Counsel (International). Other personnel from the Treasury Department and the IRS participated in its development. For further information regarding section 3 of this notice, contact Mr. Steiner at (202) 317-5477 (not a toll-free number). For further information regarding all other aspects of this notice, contact Ms. Padner at (202) 317-6313 (not a toll-free number).

Part IV

Section 45X Advanced Manufacturing Production Credit

REG-107423-23

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: This document contains proposed regulations to implement the advanced manufacturing production credit established by the Inflation Reduction Act of 2022 to incentivize the production of eligible components within the United States. Eligible components include certain solar energy components, wind energy components, inverters, qualifying battery components, and applicable critical minerals. The proposed regulations would affect eligible taxpayers who produce and sell eligible components and intend to claim the benefit of an advanced manufacturing production credit, including by making elective payment or credit transfer elections. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments must be received by February 13, 2024.

A public hearing on this proposed regulation has been scheduled for February 22, 2024, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by February 13, 2024. If no outlines are received by February 13, 2024, the public hearing will be cancelled.

Requests to attend the public hearing must be received by 5 p.m. ET on February 20, 2024. The public hearing will be made accessible to people with disabilities. Requests for special assistance during the public hearing must be received by 5 p.m. ET on February 16, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG-107423-23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the "Comments and Public Hearing" section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG-107423-23), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Mindy Chou, John Deininger, or Alexander Scott at (202) 317-6853 (not a toll-free number); concerning submissions of comments or the public hearing, Vivian Hayes at (202) 317–6901 (not a toll-free number) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to implement section 45X of the Internal Revenue Code (Code). Section 45X was added to the Code on August 16, 2022, by section 13502(a) of Public Law 117-169, 136 Stat. 1818, 1971, commonly referred to as the Inflation Reduction Act of 2022 (IRA). Section 13502(c) of the IRA provides that section 45X applies to components produced and sold after December 31, 2022.

I. *Overview of Section 45X*

Section 45X(a)(1) provides that, for purposes of the general business credit under section 38 of the Code, the advanced manufacturing production credit (section 45X credit) for any taxable year is an amount equal to the sum of the credit amounts determined under section 45X(b) with respect to each eligible component, as defined in section 45X(c)(1), which is produced by the taxpayer, and during the taxable year, sold by such taxpayer to an unrelated person. Section 45X(a)(2) provides that any eligible component produced and sold by the taxpayer is taken into account only if the production and sale is in a trade or business of the taxpayer.

Section 45X(a)(3) provides rules regarding the sale of components to an unrelated person, and generally provides a special rule that, for purposes of section 45X(a), treats a taxpayer as selling a component to an unrelated person if that component is sold to the unrelated person by a person related to the taxpayer. Under section 45X(a)(3)(B), if a taxpayer makes an election in the form and manner prescribed by the Secretary of the Treasury or her delegate (Secretary), a sale of components by the taxpayer to a related person will be treated as if made to an unrelated person for purposes of section 45X(a) (Related Person Election). As a condition of, and prior to, a taxpayer making the Related Person Election, the Secretary may require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, or any improper or excessive credit amount.

Section 45X(b)(1)(A) through (M) and section 45X(b)(2) set forth the credit amounts for each type of eligible component, which amounts, except for purposes of determining the credit amount for any applicable critical mineral, are subject to phase out rules set forth in section 45X(b)(3). For any eligible component (except applicable critical minerals) sold after December 31, 2029, the credit amount for such component equals the product of the amount determined under section 45X(b)(1) for such component multiplied by the applicable phase out percentage under sec-

tion 45X(b)(3)(B)(i) through (iv). In the case of an eligible component sold during calendar year 2030, 2031, and 2032, the phase out percentages are 75 percent, 50 percent, and 25 percent, respectively. In the case of an eligible component sold after December 31, 2032, the phase out percentage is zero percent. Thus, current law provides no section 45X credit after 2032 for eligible components other than for applicable critical minerals.

Section 45X(b)(4) provides capacity limitations used to compute the credit amount for eligible battery cells and battery modules under sections 45X(b)(1)(K)(ii) and (L)(ii). To compute the credit for these eligible components, section 45X(b)(4)(A) provides that the capacity determined with respect to a battery cell or battery module must not exceed a capacity-to-power-ratio of 100:1. Section 45X(b)(4)(B) defines the term "capacity-to-power-ratio" as the ratio of the capacity of a battery cell or battery module to the maximum discharge amount of such cell or module.

Section 45X(c)(1)(A) defines the term "eligible component" to mean any solar energy component, any wind energy component, any inverter described in section 45X(c)(2)(B) through (G), any qualifying battery component, and any applicable critical mineral. Section 45X(c)(1)(B) clarifies that the term "eligible component" does not include any property that is produced at a facility if the basis of any property that is part of such facility is taken into account for purposes of the qualifying advanced energy project credit allowed under section 48C after August 16, 2022 (the date of enactment of the IRA).

Section 45X(c)(2)(A) generally defines an "inverter" as an end product that is suitable to convert direct current (DC) electricity from one or more solar modules or certified distributed wind energy systems into alternating current (AC) electricity. Section 45X(c)(2)(B) through (G) define the following different types of eligible inverters: central inverter, commercial inverter, distributed wind inverter, microinverter, residential inverter, and utility inverter.

Section 45X(c)(3)(A) defines a "solar energy component" as a solar module, photovoltaic cell, photovoltaic wafer, solar grade polysilicon, torque tube, structural fastener, or polymeric backsheet. Section 45X(c)(3)(B) defines these different types of eligible solar energy components as well as the term "solar tracker."

Section 45X(c)(4)(A) defines a "wind energy component" as blades, nacelles, towers, offshore wind foundations, and related offshore wind vessels. Section 45X(c)(4)(B) defines these different types of eligible wind energy components.

Section 45X(c)(5)(A) defines a "qualifying battery component" as electrode active materials, battery cells, and battery modules. Section 45X(c)(5)(B) defines these different types of qualifying battery components.

Section 45X(c)(6) provides the following list of 50 minerals that if converted or purified to specified purities are considered an "applicable critical mineral" for purposes of the section 45X credit: aluminum, antimony, arsenic, barite, beryllium, bismuth, cerium, cesium, chromium, cobalt, dysprosium, erbium, europium, fluorspar, gadolinium, gallium, germanium, graphite, hafnium, holmium, indium, iridium, lanthanum, lithium, lutetium, magnesium, manganese, neodymium, nickel, niobium, palladium, platinum, praseodymium, rhodium, rubidium, ruthenium, samarium, scandium, tantalum, tellurium, terbium, thulium, tin, titanium, tungsten, vanadium, ytterbium, yttrium, zinc, and zirconium.

Section 45X(d) provides special rules that are applicable to the section 45X credit. Section 45X(d)(1) provides that persons are treated as related to each other if they would be treated as a single employer under the regulations prescribed under section 52(b) of the Code. Section 52(b) generally provides that trades or businesses that are partnerships, trusts, estates, corporations, or sole proprietorships under common control are members of a controlled group and are treated as a single employer. *See* §1.52-1(b). Section 52(b) requires the regulations under section 52(b) to be based on principles similar to the principles that apply for purposes of section 52(a), which generally provides that corporations that are members of a controlled group of corporations are treated as a single employer. Section 52(a) provides that a controlled group of corporations is defined with reference to section 1563(a) of the Code. Section 52(b) and §1.52-1 provide rules similar to those under section 52(a), but with certain modifications to account for different types of ownership interests.

Section 45X(d)(2) provides that sales of eligible components are taken into account under section 45X only for eligible components that are produced within the United States (including continental shelf areas described in section 638(1) of the Code), or a U.S. territory (including continental shelf areas described in section 638(2)). (For purposes of this document, the term "U.S. territory" has the meaning of the term "possession" as defined in section 638(2).) Section 45X(d)(3) directs the Secretary to promulgate regulations adopting rules similar to the rules of section 52(d) to apportion credit amounts between estates or trusts and their beneficiaries on the basis of the income of the estates or trusts allocable to each, and to pass-thru any apportioned credit amounts to the beneficiaries. Section 45X(d)(4) provides that for purposes of the section 45X credit, a person is treated as having sold an eligible component to an unrelated person if such component is integrated, incorporated, or assembled into another eligible component that is sold to an unrelated person.

II. *Notice 2022-47*

On October 24, 2022, the Treasury Department and the IRS published Notice 2022-47, 2022-43 I.R.B. 312. The notice requested general comments on issues arising under section 45X, as well as specific comments concerning: (1) definitions (including the definitions of eligible components); (2) the Related Person Election; (3) capacity-to-power ratios for battery cells or battery modules; (4) credit amount for components used in systems of varying capacity; (5) offshore wind vessels; (6) applicable critical minerals; and (7) apportionment and pass-thru of credit amounts to beneficiaries of estates or trusts. The Treasury Department and the IRS received over 300 comments from industry participants and other stakeholders. The Treasury Department and the IRS appreciate the commenters' interest and engagement on

these issues. These comments have been carefully considered in the preparation of these proposed regulations.

III. *Notices 2023-18 and 2023-44*

On March 6, 2023, the Treasury Department and the IRS published Notice 2023-18, 2023-10 I.R.B. 508, to establish the qualifying advanced energy projects program (section 48C(e) program). On June 20, 2023, the Treasury Department and the IRS published Notice 2023-44, 2023-25 I.R.B. 924, to provide additional guidance on the section 48C(e) program, including rules for the interaction between sections 45X and 48C. The rules regarding the interaction between sections 45X and 48C provided in Notices 2023-18 and 2023-44 have been incorporated into these proposed regulations and upon finalization of this rulemaking, section 5.05 of Notice 2023-18 and section 3 of Notice 2023-44 will be superseded.

Explanation of Provisions

I. *Overview of Proposed Regulations*

Consistent with section 45X(a)(1), these proposed regulations would provide that for purposes of section 38, the section 45X credit for any taxable year is an amount equal to the sum of the credit amounts determined under section 45X(b) with respect to each eligible component, as defined in section 45X(c), produced by the taxpayer, and, during the taxable year, sold by that taxpayer to an unrelated person. Consistent with section 45X(a)(2), only eligible components that are produced and sold in a trade or business of the taxpayer are taken into account for purposes of the section 45X credit.

These proposed regulations are organized into four sections, proposed §§1.45X-1 through 1.45X-4. Proposed §1.45X-1 would provide general rules applicable to the section 45X credit, including the definition of the term "produced by the taxpayer" for both primary and secondary production. Primary production involves producing an eligible component using non-recycled materials while secondary production involves producing an eligible component using recycled materials. Proposed §1.45X-2 would provide rules for sales to unrelated persons through a person related to the taxpayer, including the rules for a taxpayer to make an election to treat sales of eligible components to related persons (Related Person Election) as if made to unrelated persons. Proposed §1.45X-3 would provide definitions and credit amounts for certain eligible components, including solar energy components, wind energy components, inverters, and qualifying battery components, and phase-out rules. Proposed §1.45X-4 would provide definitions and credit amounts for applicable critical minerals that are eligible components.

II. *General rules applicable to the advanced manufacturing production credit*

A. *Overview*

Proposed §1.45X-1(a) would provide an overview of the general rules regarding the advanced manufacturing production credit under section 45X.

B. *Credit amount*

Proposed §1.45X-1(b) would explain how to calculate the amount of the credit provided under section 45X for any taxable year.

C. *Definition of produced by the taxpayer*

Proposed §1.45X-1(c) would define the term "produced by the taxpayer" for both primary and secondary production. Proposed §1.45X-1(c)(1) would provide the general definition of the term. Proposed §1.45X-1(c)(1)(i) would state that partial transformation that does not result in a substantial transformation of inputs into a complete and distinct eligible component is not included in the definition of "produced by the taxpayer." Proposed §1.45X-1(c)(1)(ii) would state that neither minor assembly of constituent inputs nor superficial modification of a final eligible component are included in the definition of "produced by the taxpayer." Proposed §1.45X-1(c)(1)(iii) would provide examples illustrating the definition of "produced by the taxpayer." Proposed §1.45X-1(c)(2) would provide a special rule for applying the definition of "produced by the taxpayer" for solar grade polysilicon, electrode active materials, and applicable critical minerals.

Proposed §1.45X-1(c)(3)(i) would state that the taxpayer claiming a section 45X credit with respect to an eligible component must be the person that performs the actual production activities that bring about a substantial transformation resulting in the eligible component and that sells such eligible component to an unrelated person. Proposed §1.45X-1(c)(3)(ii)(A) would provide that if the production of an eligible component is performed in whole or in part subject to a contract that is a contract manufacturing arrangement, then the party to such contract that may claim the section 45X credit with respect to such eligible component, provided all other requirements in section 45X are met, is the taxpayer that performs the actual production activities that bring about a substantial transformation resulting in the eligible component. This proposed rule is intended to provide an administrable rule that provides taxpayers clarity and certainty in determining which taxpayer may claim the section 45X credit in a contract manufacturing arrangement.

Proposed §1.45X-1(c)(3)(ii)(B) would define the term "contract manufacturing arrangement" to mean any agreement providing for the production of an eligible component if the agreement is entered into before the production of the eligible component to be delivered under the contract is completed. Proposed §1.45X-1(c)(3)(ii)(B) would further provide that a routine purchase order for off-the-shelf property is not treated as a contract manufacturing arrangement for purposes of proposed §1.45X-1(c)(3). Proposed §1.45X-1(c)(3)(ii)(B) would also provide that an agreement will be treated as a routine purchase order for off-the-shelf property if the contractor is required to make no more than de minimis modifications to the property to tailor it to the customer's specific needs, or if at the time the agreement is entered into, the contractor knows or has reason to know that the contractor can satisfy the agreement out of existing stocks or nor-

mal production of finished goods. This definition of the term "routine purchase order" is based on the definition found in §1.263A-2(a)(1)(ii)(B)(2)(ii). The Treasury Department and the IRS request comments on whether this definition should be further clarified or modified.

Proposed §1.45X-1(c)(3)(iii) would explain the special rule allowing parties to a contract manufacturing arrangement to agree on which party to the contract will claim the section 45X credit for eligible components produced subject to such contract. Proposed §1.45X-1(c)(3)(iv) would explain the certification requirements for the special rule. Proposed §1.45X-1(c)(3)(v) would provide examples illustrating the application of the special rule.

Proposed §1.45X-1(c)(4)(i) would explain the requirements for the timing of production and sale of eligible components. Proposed §1.45X-1(c)(4)(ii) would provide an example illustrating the application of these requirements.

D. *Produced in the United States*

Proposed §1.45X-1(d)(1) would state that sales are taken into account for purposes of the section 45X credit only for eligible components produced within the United States, as defined in section 638(1) of the Code, or a United States territory, which for purposes of section 45X has the meaning of the term "possession" provided in section 638(2) of the Code. Proposed §1.45X-1(d)(2) would clarify that constituent elements, materials and subcomponents used in the production of eligible components are not subject to the domestic production rule. It would also be permissible for elements, materials, and subcomponents used in the production of eligible components to be recycled rather than newly created elements, materials, and subcomponents.

E. *Production and sale in a trade or business*

Proposed §1.45X-1(e) would state that an eligible component must be produced and sold in a trade or business of the taxpayer, with the term "trade or business" defined as a trade or business within the meaning of section 162 of the Code.

F. *Integrated, incorporated, or assembled*

Proposed §1.45X-1(f)(1) would state that a taxpayer is treated as having produced and sold an eligible component to an unrelated person if such component is integrated, incorporated, or assembled into another eligible component that is then sold to an unrelated person. This proposed rule would further define the term "integrated, incorporated, or assembled" to mean the production activities by which eligible components that are constituent elements, materials, or subcomponents are substantially transformed into another complete and distinct eligible component functionally different from that which would result from mere assembly or superficial modification of the eligible components used as elements, materials or subcomponents and other elements, materials or subcomponents. Proposed §1.45X-1(f)(2)(i) would clarify that a taxpayer may claim a section 45X credit for each eligible component the taxpayer produces and sells to an unrelated person, including any eligible component the taxpayer produces that was used as a constituent element, material, or subcomponent and integrated, incorporated, or assembled into another complete and distinct eligible component or another complete and distinct product that the taxpayer also produces and sells to an unrelated person. Proposed §1.45X-1(f)(2)(ii) would provide an example of the credit eligibility of a sale of a product with incorporated eligible components to an unrelated person.

G. *Interaction between sections 48C and 45X*

Proposed §1.45X-1(g)(1) would, consistent with section 45X(c)(1)(B), provide that for purposes of section 45X, an eligible component must be produced at a section 45X facility and does not include any property (produced property) that is produced at a facility if the basis of any property that is part of the production unit that produces the produced property is eligible property that is included in a section 48C facility and is taken into account for purposes of a credit allowed under section 48C (section 48C credit) after August 16, 2022. Proposed §1.45X-1(g)(2)(i) would define a section 45X facility to include all tangible property that comprises an independently functioning production unit that produces one or more eligible components. Proposed §1.45X-1(g)(2)(ii) would provide that a production unit is comprised of the tangible property that substantially transforms material inputs to complete the production process of an eligible component. Proposed §1.45X-1(g)(3)(i) would define a section 48C facility to include all eligible property included in a qualifying advanced energy project for which a taxpayer receives an allocation of section 48C credits and claims such credits after August 16, 2022. Proposed §1.45X-1(g)(3)(ii) would define eligible property included in a section 48C facility. Proposed §1.45X-1(g)(4) would provide examples to illustrate the application of these rules.

H. *Pass-thru from estates and trusts*

The Treasury Department and the IRS intend to provide rules addressing how the section 45X credit applies in the case of pass-thru from estates and trusts. The Treasury Department and the IRS request comments on how such rules should be implemented and whether there are any special considerations for estates and trusts claiming the section 45X credit. Proposed §1.45X-1(h) is reserved for this purpose.

I. *Anti-abuse rule*

Proposed §1.45X-1(i)(1) provides a general anti-abuse rule that would make the section 45X credit unavailable in extraordinary circumstances in which, based on a consideration of all the facts and circumstances, the primary purpose of the production and sale of an eligible component is to obtain the benefit of the section 45X credit in a manner that is wasteful, such as discarding, disposing of, or destroying the eligible component without putting it to a productive use.

In cases where the cost of producing certain eligible components is less than the amount of the section 45X credit that would be available, the Treasury Department and the IRS are concerned that taxpayers may have an incentive to produce such components solely for the purpose of exploiting the section 45X credit in a man-

ner that is inconsistent with a purpose of section 45X, which is to provide an incentive to produce eligible components that contribute to the development of secure and resilient supply chains. Producing and selling eligible components with the primary purpose of obtaining the benefit of the section 45X credit in a wasteful manner would not satisfy the requirement for the eligible component to be produced and sold in a trade or business of the taxpayer under section 45X(a)(2) in certain circumstances. Proposed §1.45X-1(i)(2) would provide an example illustrating this anti-abuse rule.

III. *Sale to an unrelated person*

Proposed §1.45X-2(a) would state the general rule that the amount of the section 45X credit for any taxable year is equal to the sum of the credit amounts determined under section 45X(b) (and described in §§1.45X-3 and 1.45X-4) with respect to each eligible component that is produced by the taxpayer and, during the taxable year, sold by the taxpayer to an unrelated person (as defined in section 45X(a)(3) and described in §1.45X-2(b)(3)).

A. *Definitions*

Section 45X(d)(1) provides that persons are treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). Proposed §1.45X-2(b) would provide definitions of the terms "person," "related person," and "unrelated person" for purposes of the section 45X credit.

B. *Special rule for sale to related person*

Section 45X(a)(3)(A) provides a special rule for purposes of section 45X that a taxpayer is treated as selling components to an unrelated person if such component is sold to such person by a person related to the taxpayer. Proposed §1.45X-2(c) would provide this rule and an example to illustrate its application.

C. *Related person election*

Section 45X(a)(3)(B)(i) provides that at the election of the taxpayer (in such form and manner as the Secretary may prescribe), a sale of components by such taxpayer to a related person is treated as if made by the taxpayer to an unrelated person for purposes of section 45X(a) (Related Person Election). Thus, the Related Person Election is only available if an eligible component is sold by a taxpayer to a related person. The Related Person Election is not available if a taxpayer does not actually sell the eligible component to another person, for example, if an eligible component is transferred between a person and an entity that is not regarded as separate from the person under §301.7701-3 of the Procedure and Administration Regulations (26 CFR part 301) or between divisions of a single corporation. Section 45X(a)(3)(B)(ii) provides that as a condition of, and prior to, any election described in clause (i), the Secretary may require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, or any improper or excessive amount determined under section 45X(a)(1).

Proposed §1.45X-2(d)(1) would provide that the Related Person Election must be made in the form and manner prescribed in guidance. The term "guidance" is defined as guidance published in the **Federal Register** or Internal Revenue Bulletin, as well as administrative guidance such as forms, instructions, publications, or other guidance on the IRS.gov website. *See* §§601.601 and 601.602 of the Statement of Procedural Rules (26 CFR part 601). For members of a consolidated group (as defined in §1.1502-1(h)), the election is made by each member, in the manner set forth in proposed §1.45X-2(d)(3)(ii). In addition, if a member of a consolidated group sells eligible components to another member of the group, the selling member may make the Related Person Election to claim the section 45X credit in the taxable year of sale. Proposed §1.45X-2(d)(1) would also provide that as a condition of, and prior to, a taxpayer making a Related Person Election, the Secretary may require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, or any improper or excessive credit amount determined under section 45X(a)(1).

Proposed §1.45X-2(d)(2) would provide the time and manner for a taxpayer to make the Related Person Election. Proposed §1.45X-2(d)(2)(i) would state that a taxpayer must make an affirmative Related Person Election annually in the form and manner prescribed in guidance (currently Form 7207, *Advanced Manufacturing Production Credit*, and its instructions), and filed with the taxpayer's timely filed original Federal income tax return, including extensions. Proposed §1.45X-2(d)(2)(i) would also provide that the Related Person Election will be applicable to all sales of eligible components to related persons by the taxpayer for each trade or business that the taxpayer engages in during the taxable year that resulted in a credit claim and for which the taxpayer has made the Related Person Election. Proposed §1.45X-2(d)(2)(ii) would provide the required information to make a Related Person Election.

Proposed §1.45X-2(d)(3) would describe the scope and effect of the Related Person Election and provide that a separate Related Person Election must be made with respect to related person sales made by a taxpayer in each eligible trade or business of the taxpayer. Proposed §1.45X-2(d)(3) would also provide that a Related Person Election applies to all sales to related persons (including between members of the same consolidated group, notwithstanding the rules provided in §1.1502-13) of eligible components produced by the taxpayer during the taxable year for which that election is made and is irrevocable for that taxable year. Additionally, proposed §1.45X-2(d)(3) would provide that a Related Person Election applies solely for purposes of the section 45X credit, the provisions of proposed §§1.45X-1 through 1.45X-4, and so much of sections 6417 and 6418 and the regulations under sections 6417 and 6418 related to the section 45X credit.

Proposed §1.45X-2(d)(3)(ii) and (iii) would apply the provisions of proposed §1.45X-2(d)(2) and (d)(3)(i) to consolidated groups and partnerships. Proposed §1.45X-2(d)(3)(ii) would apply the provisions of proposed §1.45X-2(d)(2) and (d)(3)(i) to consolidated groups by providing that for a trade or business

of a consolidated group (as defined in §1.1502-1(h)), a Related Person Election is made by the agent for the group on behalf of the member claiming the section 45X credit and filed with the group's timely filed original Federal income tax return, including extensions, with respect to each trade or business that the consolidated group conducts. *See* §1.1502-77 (providing rules regarding the status of the common parent as agent for its members). A separate election must be filed on behalf of each member claiming the section 45X credit, and each election must include the name and employer identification number (EIN) of the agent for the group and the member on whose behalf the form is being filed.

Proposed §1.45X-2(d)(3)(iii) would apply the provisions of proposed §1.45X-2(d)(2) and (d)(3)(i) to partnerships by stating that an election for a partnership must be filed with the partnership's timely filed original Federal income tax return, including extensions, with respect to each trade or business that the partnership conducts. Additionally, proposed §1.45X-2(d)(3)(iii) provides that an election by a partnership does not apply to any trade or business conducted by a partner outside the partnership.

Proposed §1.45X-2(d)(4) would provide an anti-abuse rule for the Related Person Election that is necessary for preventing duplication, fraud, or any improper or excessive amount of the section 45X credit. This anti-abuse rule would make the Related Person Election unavailable in extraordinary cases where a taxpayer seeks to use the Related Person Election to exploit the section 45X credit in an improper and wasteful manner or sell defective components to a related person. Proposed §1.45X-2(d)(4)(i) would provide that a Related Person Election may not be made if the taxpayer fails to provide the information required by proposed §1.45X-2(d)(2) with respect to the relevant eligible components, the taxpayer provides information that shows such components were put to an improper use or were defective, or such components were actually put to an improper use or were defective.

Proposed §1.45X-2(d)(4)(ii) would provide that an eligible component is put to an improper use if it is so used by the related person to which the eligible component is sold. The term "improper use" would mean a use that is wasteful, such as discarding, disposing of, or destroying the eligible component without putting it to a productive use.

As discussed previously, in cases in which the cost of producing certain eligible components may be less than the amount of the section 45X credit that is available, the Treasury Department and the IRS are concerned that taxpayers may have an incentive to produce such components solely for the purpose of exploiting the section 45X credit without putting such components to a productive use. In such cases, the Related Person Election would remove an important safeguard against the improper and wasteful production of eligible components that an unrelated-person-sale requirement would provide. The Treasury Department and the IRS request comments on this definition of the term "improper use" and whether any clarifications to its scope are necessary.

Proposed §1.45X-2(d)(4)(iii) would provide that an eligible component is "defective" if it does not meet the requirements of section 45X. The Treasury Department and the IRS are concerned that the Related Person Election may be used by taxpayers to claim a credit for eligible components that are defective, not capable of being used for its intended purpose, do not meet the requirements for the section 45X credit, and therefore are not eligible for the section 45X credit. For example, a taxpayer that mass produces a large quantity of an eligible component may find that some of those components are defective, cannot be used for its intended purposes, and are not eligible for the section 45X. Such components could also be difficult to sell to an unrelated person because they are defective. In such cases, the Related Person Election would remove an important safeguard against improper credit claims for defective components that an unrelated-person-sale requirement would provide. The Treasury Department and the IRS request comments on the definition of the term "defective components" and whether clarifications to its scope are necessary.

D. *Related person sale of integrated components*

Section 45X(d)(4) provides that for purposes of section 45X, a person is treated as having sold an eligible component to an unrelated person if such component is integrated, incorporated, or assembled into another eligible component that is sold to an unrelated person. See part II.F of this Explanation of Provisions for rules applicable to eligible components that are integrated, incorporated or assembled into other eligible components and sold to an unrelated person.

Proposed §1.45X-2(e)(1) would provide that a taxpayer that produces and then sells an eligible component to a related person who then integrates, incorporates, or assembles the taxpayer's eligible component into another complete and distinct eligible component that is subsequently sold to an unrelated person may claim a section 45X credit in the taxable year of the sale to the unrelated person. Proposed §1.45X-2(e)(2) would provide examples to illustrate the treatment of sales of multiple incorporated eligible components to related and unrelated persons.

Proposed §1.45X-2(e)(3)(i) would provide that if a taxpayer makes the Related Person Election and produces and sells an eligible component to a related person who then integrates, incorporates, or assembles the taxpayer's eligible component into another complete and distinct eligible component that is subsequently sold to an unrelated person, the taxpayer's sale of the eligible component to the related person would be treated as if made to an unrelated person in the taxable year in which the sale to the related person occurs. Proposed §1.45X-2(e)(3)(ii) would provide an example to illustrate the treatment of sales of multiple integrated eligible components to related and unrelated persons with a Related Person Election.

IV. *Eligible components*

For solar energy components, wind energy components, inverters, and qualifying battery components, proposed §1.45X-3 would provide definitions, rules

for determining the credit amount, and documentation requirements. Proposed §1.45X-3 would also provide rules for applying the phase out of the section 45X credit. Proposed §1.45X-4 would provide such information for applicable critical minerals (other than rules for applying the phase out which do not apply to applicable critical minerals).

A. *Eligible Components Generally*

Proposed §1.45X-3(a) defines the term "eligible component" as any solar energy component, any wind energy component, any inverter, any qualifying battery component, and any applicable critical mineral.

B. *Solar*

Proposed §1.45X-3(b) would define the term "solar energy component" as a solar module, photovoltaic cell, photovoltaic wafer, solar grade polysilicon, torque tube, structural fastener, or polymeric backsheet. Proposed §1.45X-3(b) would clarify the definition of each type of solar energy component.

Proposed §1.45X-3(b) would also clarify the calculation of the credit amount for each type of solar energy component. Proposed §1.45X-3(b)(1)(ii) and (b)(5)(ii) would require the capacity of a solar module or photovoltaic cell to be determined by the nameplate capacity in direct current watts using Standard Test Conditions, as defined by the International Electrotechnical Commission.

Proposed §1.45X-3(b) would also require taxpayers to maintain specific documentation with respect to certain solar energy components. For example, for structural fasteners to be eligible for the section 45X credit, section 45X(c)(3)(B)(vii)(II) provides that structural fasteners must be used (1) to connect the mechanical and drive system components of a solar tracker to the foundation of such solar tracker, (2) to connect torque tubes to drive assemblies, or (3) to connect segments of torque tubes to one another. Proposed §1.45X-3(b)(8)(iii) would require taxpayers to document that a structural fastener meets this use requirement with a bill of sale, or other similar documentation that explicitly describes such use. Proposed §1.45X-3(b)(7)(iii) would apply similar documentation rules to torque tubes because section 45X(c)(3)(B)(vii)(I)(aa) requires a torque tube to be "part of a solar tracker" to be eligible for the section 45X credit.

C. *Wind*

Proposed §1.45X-3(c) would define the term "wind energy component" as a blade, nacelle, tower, offshore wind foundation, or related offshore wind vessel. Proposed §1.45X-3(c) would clarify the definition of each type of wind energy component.

Proposed §1.45X-3(c)(4)(i) would clarify the definition of the term "related offshore wind vessel." Section 45X(c)(4)(B)(iv) defines the term "related offshore wind vessel" as any vessel that is purpose-built or retrofitted for purposes of the development, transport, installation, operation, or maintenance of offshore wind energy components. Proposed §1.45X-3(c)(4)(i) would clarify that a vessel is purpose-built for development, transport, installation, operation, or maintenance of offshore wind energy components if it is built to be capable of performing such functions and it is of a type that is commonly used in the offshore wind industry. Proposed §1.45X-3(c)(4)(i) would further clarify that a vessel is retrofitted for development, transport, installation, operation, or maintenance of offshore wind energy components if such vessel was incapable of performing such functions prior to being retrofitted, the retrofit causes the vessel to be capable of performing such functions, and the retrofitted vessel is of a type that is commonly used in the offshore wind industry.

Proposed §1.45X-3(c) would also clarify the calculation of the credit amount for each type of wind energy component. The credit amount for a blade, nacelle, tower, or offshore wind foundation is based on the total rated capacity of the completed wind turbine for which such component is designed. Proposed §1.45X-3(c)(6) would define "total rated capacity of the completed wind turbine" as, for the completed wind turbine for which a blade, nacelle, offshore wind foundation, or tower was manufactured and sold, the nameplate capacity at the time of sale as certified to the relevant national or international standards, such as International Electrotechnical Commission (IEC) 61400, or ANSI/ACP 101-1-2021, the Small Wind Turbine Standard. Certification of the turbine to such standards must be documented by a certificate issued by an accredited certification body. The total rated capacity of a wind turbine must be expressed in watts.

For a related offshore wind vessel, the credit amount is equal to 10 percent of the sales price of the vessel. The sales price of the vessel does not include the price of maintenance or other services that may be sold with the vessel. Proposed §1.45X-3(c)(4)(ii) would confirm that, for a related offshore wind vessel with respect to which a Related Person Election (as discussed in part III.C of this Explanation of Provisions) has been made, the effect of the election is limited to allowing the related person sale to qualify for a credit under section 45X (despite the fact that it is not actually between unrelated persons) and, therefore, the election does not also treat the sale price as an arm's length price that was determined between uncontrolled taxpayers for purposes of section 482 of the Code and the regulations thereunder.

For blades, nacelles, offshore wind foundations, or towers, proposed §1.45X-3(c)(7) would require a taxpayer to document the turbine model for which such component is designed and the total rated capacity of the completed wind turbine in technical documentation associated with the sale of such component.

D. *Inverters*

Proposed §1.45X-3(d) would define the term "inverter*"* as an end product that is suitable to convert DC electricity from one or more solar modules or certified distributed wind energy systems into AC electricity. An end product is suitable to convert DC electricity from one or more solar modules or certified distributed wind energy systems into AC electricity if, in the form sold by the manufacturer, it is able to connect with such modules or systems and convert DC electricity to AC electricity from such connected source. For purposes of section 45X, the

term inverter includes a central inverter, commercial inverter, distributed wind inverter, microinverter, or residential inverter. Proposed §1.45X-3(d) would clarify the definition of each of these types of inverters.

Section 45X(c)(2) requires certain types of inverters be "suitable to" or "suitable for" a statutorily required use or application to be considered an eligible component. For example, section 45X(c)(2)(B) requires a central inverter to be "suitable for large utility-scale systems." Proposed §1.45X-3(d)(2)(i) would clarify that an inverter is suitable for large utility-scale systems if, in the form sold by the manufacturer, it is capable of serving as a component in a large utility-scale system and meets the core engineering specifications for such application.

Proposed §1.45X-3(d)(5) would clarify that a direct current optimized inverter system (DC optimized inverter system) may qualify as a microinverter. Proposed §1.45X-3(d)(5)(i) would define a microinverter as an inverter that is suitable to connect with one solar module, has a rated output of 120 or 240 volt single-phase power, or 208 or 480 volt three-phase power, and has a capacity, expressed on an AC watt basis, that is not greater than 650 watts. Proposed §1.45X-3(d)(5)(iii)(A) would clarify that an inverter is suitable to connect to one solar module if, in the form sold by the manufacturer, it is capable of connecting to one or more solar modules and regulating the DC electricity from each module independently before that electricity is converted into alternating current electricity. Proposed §1.45X-3(d)(5)(iii)(B) would provide that a DC optimized inverter system is an inverter that is comprised of an inverter connected to multiple DC optimizers that are each designed to connect to one solar module.

Proposed §1.45X-3(d)(5)(iv)(B) would clarify how to determine the credit amount for a DC optimized inverter system that qualifies as a microinverter. For a DC optimized inverter system to qualify as a microinverter, the inverter must meet the requirements of section 45X(c)(2)(E) and a taxpayer must produce and sell the inverter and the DC optimizers in the DC optimized inverter system together as a single end product.

Proposed §1.45X-3(d)(5) would clarify that, similar to a DC optimized inverter system, a multi-module inverter may also qualify as a microinverter. The term "multi-module inverter" means an inverter that is comprised of an inverter with independent connections and DC optimizing components for two or more modules. Proposed §1.45X-3(d)(5)(iv)(C) would provide that the credit amount for a multi-module inverter that qualifies as a microinverter is equal to the product of 11 cents multiplied by the total alternating current capacity of the DC optimizers in the multi-module inverter when paired with the inverter in the multi-module inverter.

Proposed §1.45X-3(d) would also clarify the calculation of the credit amount for each type of inverter. In general, the credit amount for each type of inverter would be equal to the product of the inverter's total rated capacity and the amount prescribed in section 45X(b)(2)(B) for such inverter.

Proposed §1.45X-3(d) would generally require taxpayers to document whether an inverter is suitable to or suitable for a statutorily required use or application, the inverter's rated output, and the inverter's capacity, as applicable, in a specification sheet, bill of sale, or other similar documentation.

E. *Battery components*

Proposed §1.45X-3(e)(1) would define the term "qualifying battery component" as electrode active materials, battery cells, or battery modules. Proposed §1.45X-3(e)(2)(i)(A) would define the term "electrode active materials" to include cathode electrode materials, anode electrode materials, and electrochemically active materials that contribute to the electrochemical processes necessary for energy storage. In general, electrode active materials are materials that are capable of being used within a battery for energy storage. Proposed §1.45X-3(e)(2)(i)(A) would also provide that the following materials in a battery or vehicle would not qualify for the section 45X credit as an electrode active material: battery management systems, terminal assemblies, cell containments, gas release valves, module containments, module connectors, compression plates, straps, pack terminals, bus bars, thermal management systems, and pack jackets.

Proposed §1.45X-3(e)(2)(i)(B) would define "cathode electrode materials" to mean the materials that comprise the cathode of a commercial battery technology, such as binders, and current collectors (that is, cathode foils). Proposed §1.45X-3(e)(2)(i)(C) would define "anode electrode materials" to mean the materials that comprise the anode of a commercial battery technology, including anode foils. Proposed §1.45X-3(e)(2)(i)(D) would define "electrochemically active materials that contribute to the electrochemical processes necessary for energy storage" to mean the battery-grade materials that enable the electrochemical storage within a commercial battery technology. In addition to the list of electrochemically active materials provided in section 45X(c)(5)(B)(i) (solvents, additives, and electrolytic salts), these may include electrolytes, catholytes, anolytes, separators, and metal salts and oxides. Proposed §1.45X-3(e)(2)(i)(E) would also include an example illustrating this concept. Proposed §1.45X-3(e)(2)(i)(F) would define "battery-grade materials" to mean the processed materials found in a final battery cell or an analogous unit, or the direct battery-grade precursors to those processed materials.

Proposed §1.45X-3(e)(2)(v) would clarify that a taxpayer may claim only one section 45X credit with respect to a material that qualifies as both an electrode active material and an applicable critical mineral.

F. *Production costs incurred*

Proposed §1.45X-3(e)(2)(ii) would provide that for an electrode active material the credit amount is equal to 10 percent of the costs incurred by the taxpayer with respect to production of such materials. Proposed §1.45X-3(e)(2)(iii) would also provide the definition of purified and converted with respect to electrode active materials. Proposed §1.45X-3(e)(2)(iv) would clarify that the costs incurred for purposes of determining the credit amount includes costs as defined in §1.263A-1(e) that are paid or incurred within the meaning of section 461 of the Code by the tax-

payer for the production of an electrode active material only. Thus, production costs with respect to an electrode active material would not include any costs incurred after the production of the electrode active material. For example, the costs to incorporate the electrode active material into a battery component would not be taken into account as costs incurred in producing the electrode active material. These proposed regulations apply section 263A and the regulations under section 263A (section 263A regulations) solely to identify the types of costs that are includible in production costs incurred for purposes of computing the amount of the section 45X credit, but do not apply section 263A or the section 263A regulations for any other purposes, such as to determine whether a taxpayer is engaged in production activities.

Direct material costs as defined in §1.263A-1(e)(2)(i)(A), or indirect material costs as defined in §1.263A-1(e)(3)(ii)(E), and any costs related to the extraction or acquisition of raw materials would not be taken into account as production costs. A wide range of costs that are attributable to the production of an electrode active material would be taken into account as a cost incurred in producing the electrode active material, including, but not limited to, labor, electricity used in the production of the electrode active material, storage costs, depreciation or amortization, recycling, and overhead. However, the cost of acquiring the raw material used to produce the electrode active material, the cost of materials used for conversion, purification, or recycling of the raw material, and other material costs related to the production of the electrode active material would not be taken into account.

The Treasury Department and the IRS seek to appropriately provide a credit for the costs associated with production activities that add value to the electrode active material and are conducted by the taxpayer that produces the electrode active material. Merely purchasing raw materials may enable a taxpayer to produce an electrode active material but it is not by itself an activity that adds value. Excluding material costs would also mitigate the risk of crediting the same costs multiple times. For example, if material costs are included in production costs for electrode active materials, the costs of producing an applicable critical mineral that is later incorporated into an electrode active material could be credited more than once, and such material costs could make up a significant share of the cost of producing the electrode active material.

The Treasury Department and the IRS recognize that a wide range of costs are incurred in the production of electrode active materials. The Treasury Department and the IRS request comments on this proposed rule for determining the costs incurred with respect to the production of electrode active materials, specifically whether and how extraction and other similar value-added activities in the production of raw materials used in electrode active materials should be taken into account. The Treasury Department and the IRS welcome an assessment of the magnitude of extraction costs and other direct and indirect material costs relative to the overall costs incurred in the production of an electrode active material, and the extent to which these costs are incurred by the taxpayer that also produces the electrode active material and add value to the electrode active material. The Treasury Department and the IRS also welcome comments on how extraction should be defined for this purpose, and whether it should be defined consistent with proposed §1.30D-3(c)(8).

The Treasury Department and the IRS are considering including in production costs the costs of extraction and other similar value-added activities in the production of raw materials used in electrode active materials. However, such costs would only be included if the IRS could effectively administer such an approach and there are sufficient assurances that adopting such an approach would pose a limited risk of (i) crediting the same production costs multiple times and (ii) increasing other forms of fraud, waste, and abuse. The Treasury Department and the IRS request comments on whether and to what extent including these costs might raise such risks.

The Treasury Department and the IRS intend for the production cost incurred rules in proposed §1.45X-3(e)(2) to apply to a credit claimant in a contract manufacturing arrangement. The Treasury Department and the IRS request comments on whether the proposed rules need further clarification or modification as applied to contract manufacturing arrangements.

G. *Battery cells and modules*

Proposed §1.45X-3(e)(3) and (4) would provide definitions, rules for measuring capacity, and documentation requirements for battery cells and battery modules. Proposed §1.45X-3(e)(4)(i) would define a "battery module" as a module, in the case of a module using battery cells, with two or more battery cells that are configured electrically, in series or parallel, to create voltage or current, as appropriate, to a specified end use, or a module with no battery cells, and, in each case, with an aggregate capacity of not less than 7 kilowatt-hours (or, in the case of a module for a hydrogen fuel cell vehicle, not less than 1 kilowatt-hour). Proposed §1.45X-3(e)(4)(i)(A) would define a "module using battery cells" as a module with two or more battery cells that are configured electrically, in series or parallel, to create voltage or current (as appropriate), to a specified end use, meaning an end-use configuration of battery technologies. An end-use configuration is the product that ultimately serves a specified end use. It is the collection of interconnected cells, configured to that specific end-use and interconnected with the necessary hardware and software required to deliver the required energy and power (voltage and current) for that use. As applied to batteries commonly used in electric vehicles, proposed §1.45X-3(e)(4)(i)(A) would permit a credit for the production and sale of the battery pack in the electric vehicle, but it would not permit a credit for the production of a module that is not the end-use configuration. The Treasury Department and the IRS request comments on this proposed interpretation of the phrase "to a specified end use" in section 45X(c)(5)(B)(iii)(I)(aa).

Proposed §1.45X-3(e)(4)(i)(B) would define the term "module with no battery

cells" as a product with a standardized manufacturing process and form that is capable of storing and dispatching useful energy, that contains an energy storage medium that remains in the module (for example, it is not consumed through combustion), and that is not a custom-built electricity generation or storage facility. This proposed definition would allow battery technologies such as flow batteries and thermal batteries to be eligible for the section 45X credit, but it would not permit technologies that do not meet this definition such as standalone fuel storage tanks or fuel tanks connected to engines or generation systems to qualify as a module with no battery cells.

Proposed §1.45X-3(e) would clarify how capacity must be determined for battery cells and battery modules. Proposed §1.45X-3(e)(3)(ii) would provide that taxpayers must measure the capacity of a battery cell in accordance with a national or international standard, such as IEC 60086-1 (Primary Batteries), or an equivalent standard. Taxpayers can reference the United States Advanced Battery Consortium (USABC) Battery Test Manual for additional guidance. Proposed §1.45X-3(e)(4)(ii)(A) would provide that, for modules using battery cells, taxpayers must measure the capacity of a module using battery cells with a testing procedure that complies with a national or international standard published by a recognized standard setting organization. The capacity of a battery module using battery cells may not exceed the total capacity of the battery cells in the module. Proposed §1.45X-3(e)(4)(ii)(B) would provide that, for modules with no battery cells, taxpayers must measure the capacity using a testing procedure that complies with a national or international standard published by a recognized standard setting organization. If no such standard applies to a type of module with no battery cells, taxpayers must measure the capacity of such module as the Secretary may prescribe in regulations or other guidance. The Treasury Department and the IRS request comments on what recognized national or international standards are currently available for measuring capacity of modules with no battery cells and whether further guidance may be required.

H. *Phase Out*

Proposed §1.45X-3(f) would provide the rules for the phase out of the section 45X credit. In the case of any eligible component that is not an applicable critical mineral and is sold after December 31, 2029, the amount of the section 45X credit determined with respect to such eligible component would be equal to the product of the amount determined under proposed §1.45X-3 with respect to such eligible component, multiplied by the phase out percentage. Proposed §1.45X-3(f)(2) would provide the phase out percentages. The phase out percentage would be equal to 75 percent for eligible components sold during calendar year 2030; 50 percent for eligible components sold during calendar year 2031; 25 percent for eligible components sold during calendar year 2032, and zero percent for eligible components sold after calendar year 2032. The phase out percentages would be determined based on the year the eligible component is sold rather than the year in which the eligible component is produced by the taxpayer. Proposed §1.45X-3(f)(3) would clarify that the phase out rules described in proposed §1.45X-3(f) do not apply to applicable critical minerals as defined in proposed §1.45X-4(b).

V. *Applicable critical minerals*

A. *In general*

Section 45X(c)(6) defines applicable critical minerals that are eligible components for purposes of the section 45X credit. Congress enacted section 45X to incentivize the domestic production of eligible components, including certain applicable critical minerals, that are vital to strengthening the country's renewable energy and energy storage supply chains. In addition, Congress amended section 30D in the IRA to provide that section 30D credit eligibility and credit amount is based in part on the sourcing of applicable critical minerals contained in the battery of new clean vehicles from secure and resilient supply chains, with applicable critical minerals defined by cross-reference to section 45X(c)(6). See section 30D(d)(7)(A) and (e)(1). The Treasury Department and the IRS interpret the applicable critical minerals described in section 45X(c)(6) through this lens.

Proposed §1.45X-4(b) adopts, with some clarifications, the definitions of applicable critical minerals provided in section 45X(c)(6). In particular, section 45X(c)(6)(N) provides that the term "graphite" means graphite (both natural and synthetic) that is purified to a minimum purity of 99.9 percent graphitic carbon by mass. Some stakeholders have questioned whether this definition could be interpreted to refer to a particular crystalline structure of carbon, that is, 99.9 percent carbon in a graphitic form. After consulting with experts at the Department of Energy, U.S. Geological Survey, and Department of the Interior, the Treasury Department and the IRS are unaware of a current application in the energy sector for graphite that is at least 99.9 percent carbon in the graphitic form. However, graphite that is at least 99.9 percent carbon by mass is used in electric vehicle batteries to facilitate the electrochemical processes necessary for energy storage, as well as in other energy sector applications. Consistent with the general intent of section 45X, proposed §1.45X-4(b)(14) would clarify that the term "99.9 percent graphitic carbon by mass" means graphite that is 99.9 percent carbon by mass. This interpretation reflects that various forms of matter are 99.9 percent carbon, such as carbon black, so the word "graphitic" is providing additional clarification regarding the particular application of the carbon. This interpretation provides an incentive for the domestic production of the type of graphite that is used in the renewable energy and energy storage industry, including both synthetic and natural graphite for use in electric vehicle batteries. This interpretation also supports the secure supply chain objectives expressed by Congress in amendments to section 30D that cross-reference the section 45X definition of applicable critical minerals.

Section 45X(c)(6)(A) provides that aluminum that is converted from bauxite to a minimum purity of 99 percent alumina by mass or purified to a minimum purity of 99.9 percent aluminum by mass, qualifies as an applicable critical mineral. Some stakeholders have requested clarification whether commercial grade alu-

minum that is 99.7 percent aluminum by mass may qualify as an applicable critical mineral under section 45X(c)(6)(A).

Section 45X(c)(6)(A) should be interpreted in light of the dynamics of the aluminum industry and the role that critical materials like aluminum play in the renewable energy and energy storage industry. Aluminum oxide, commonly known as alumina, is a form of aluminum that is referred to in section 45X(c)(6)(A)(i). Proposed §1.45X-4(b)(1) would interpret section 45X(c)(6)(A) to mean aluminum, including commodity-grade aluminum, described in section 45X(c)(6)(A)(i) and (ii). Proposed §1.45X-4(b)(1) would define "commodity-grade aluminum" as aluminum that has been produced directly from aluminum that is described in proposed §1.45X-4(b)(1)(i) or (ii) and is in a form that is sold on international commodity exchanges, which would include commercial grade aluminum that is 99.7 percent aluminum by mass.

Proposed §1.45X-4(b)(1) clarifies that the term "commodity-grade aluminum" is limited to primary production of unwrought forms by specifying that commodity-grade aluminum must be "produced directly" from certain forms of aluminum. The Treasury Department and the IRS currently understand that the ability to ascertain and substantiate the process or processes used in an earlier point in the lifecycle of feedstock aluminum for secondary production is limited. Such limitations would pose significant substantiation and administrability issues if secondary production were permitted for commodity-grade aluminum under proposed §1.45X-4(b)(1). Excluding secondary production would also avoid significant administrability challenges that would arise if the process or processes used at previous points in the lifecycle of feedstock aluminum used in secondary production had to be verified to determine eligibility for the section 45X credit.

The Treasury Department and the IRS request comments on this interpretation of section 45X(c)(6)(A).

B. *Credit amount*

Section 45X(b)(1) generally provides the credit amount determined with respect to any eligible component, including any eligible component it incorporates, subject to the credit phase out provided at section 45X(b)(3). Section 45X(b)(3)(C) provides that the credit phase out does not apply with respect to any applicable critical mineral.

Section 45X(b)(1)(M) provides that in the case of any applicable critical mineral, the credit amount is an amount equal to 10 percent of the costs incurred by the taxpayer with respect to production of such mineral.

Proposed §1.45X-4(c)(1) would provide that for an applicable critical mineral the credit amount is equal to 10 percent of the costs incurred by the taxpayer with respect to production of such materials. Proposed §1.45X-4(c)(2) would provide definitions of production processes for applicable critical minerals. Proposed §1.45X-1(c)(2)(i) would provide that for purposes of section 45X, the term "conversion" means a chemical transformation from one species to another. Proposed §1.45X-1(c)(2)(ii) would provide that for purposes of section 45X, the term "purification" means increasing the mass fraction of a certain element.

C. *Production costs incurred*

Proposed §1.45X-4(c)(3) would clarify that the costs incurred for purposes of determining the credit amount includes costs as defined in §1.263A-1(e) that are paid or incurred within the meaning of section 461 of the Code by the taxpayer for the production of an applicable critical mineral only. Thus, production costs with respect to an applicable critical mineral would not include any costs incurred after the production of the applicable critical mineral. For example, the costs to incorporate the applicable critical mineral into another product would not be taken into account as costs incurred in producing the applicable critical mineral. These proposed regulations apply section 263A and the section 263A regulations solely to identify the types of costs that are includible in production costs incurred for purposes of computing the credit amount, but do not apply section 263A or the section 263A regulations for any other purposes, such as to determine whether a taxpayer is engaged in production activities.

Direct or indirect materials costs as defined in §1.263A-1(e)(2)(i)(A) and (e)(3)(ii)(E), respectively, and any costs related to the extraction or acquisition of raw materials would not be taken into account as production costs. A wide range of costs that are attributable to the production of an applicable critical mineral would be taken into account as a cost incurred in producing the applicable critical mineral, including, but not limited to, labor, electricity used in the production of the applicable critical mineral, storage costs, depreciation or amortization, recycling, and overhead. However, the cost of acquiring the raw material used to produce the applicable critical mineral, the cost of materials used for conversion, purification, or recycling of the raw material, and other material costs related to the production of the applicable critical mineral would not be taken into account.

The Treasury Department and the IRS seek to appropriately provide a credit for the costs associated with production activities that add value to the applicable critical mineral and are conducted by the taxpayer that produces the applicable critical mineral. Merely purchasing raw materials may enable a taxpayer to produce an applicable critical mineral but it is not by itself an activity that adds value. Excluding material costs would also mitigate the risk of crediting the same costs multiple times. For example, if material costs are included in production costs for an applicable critical mineral, the costs of producing an applicable critical mineral that is later incorporated into another applicable critical mineral could be credited more than once, and such material costs could make up a significant share of the cost of producing the applicable critical mineral. This might be the case if, for instance, Taxpayer 1 produces Applicable Critical Mineral 1 and then sells it to Taxpayer 2 who uses it to create Applicable Critical Mineral 2. The cost of producing Applicable Critical Mineral 1 would be credited twice if material costs are included in production costs, once by Taxpayer 1 for the initial production of Applicable Critical Mineral 1 and then again by Taxpayer 2 because Taxpayer 2 would include its cost of purchasing Applicable Critical Mineral 1 in its production costs for Applicable Critical Mineral 2.

The Treasury Department and the IRS recognize that a wide range of costs are

incurred in the production of applicable critical minerals. The Treasury Department and the IRS request comments on this proposed rule for determining the costs incurred with respect to the production of applicable critical minerals, specifically whether and how extraction and other similar value-added activities in the production of raw materials used in applicable critical minerals should be taken into account. The Treasury Department and the IRS welcome an assessment of the magnitude of extraction costs and other direct and indirect material costs relative to the overall costs incurred in the production of an applicable critical mineral, and the extent to which these costs are incurred by the taxpayer that also produces the applicable critical mineral and add value to the applicable critical mineral. The Treasury Department and the IRS also welcome comments on how extraction should be defined, and whether it should be defined consistent with proposed §1.30D-3(c)(8).

The Treasury Department and the IRS are considering including in production costs the costs of extraction and other similar value-added activities in the production of raw materials used in applicable critical minerals. However, such costs would only be included if the IRS could effectively administer such an approach and there are sufficient assurances that adopting such an approach would pose a limited risk of (i) crediting the same production costs multiple times and (ii) increasing other forms of fraud, waste, and abuse. The Treasury Department and the IRS request comments on whether and to what extent including these costs might raise such risks.

Proposed §1.45X-4(c)(3) would also provide that the rules regarding ownership and property produced under a contract with a taxpayer under §1.263A-2(a)(1)(ii) that are used to determine whether a taxpayer is engaged in production or resale activities for purposes of section 263A do not apply for purposes of determining the taxpayer that is engaged in production activities for purposes of section 45X and the section 45X regulations.

D. *Substantiation*

Proposed §1.45X-4(c)(4) would require the taxpayer to document that their product meets the criteria for an applicable critical mineral as described in section 45X(c)(6) with a certificate of analysis (COA) provided by the taxpayer to the person to which the taxpayer sold the applicable critical mineral. The Treasury Department and the IRS request comments on this substantiation requirement, including whether a similar requirement should be applied to electrode active materials.

VI. *Substantiation required under section 6001*

Section 6001 of the Code 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 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. 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. Various provisions under proposed §§1.45X-1 through 1.45X-4 would require taxpayers to maintain specific documentation regarding certain eligible components that are produced by a taxpayer. These requirements would be part of the general recordkeeping requirements under section 6001 and the regulations under section 6001.

Severability

If any provision in this proposed rulemaking is held to be invalid or unenforceable facially, or as applied to any person or circumstance, it shall be severable from the remainder of this rulemaking, and shall not affect the remainder thereof, or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

Effect on Other Documents

Section 5.05 of Notice 2023-18 and section 3 of Notice 2023-44, which relate to the interaction between sections 45X and 48C, will be superseded upon the publication in the **Federal Register** of a Treasury Decision addressing the interaction between sections 45X and 48C.

Proposed Applicability Dates

Each of proposed §§1.45X-1 through 1.45X-4 is proposed to apply to eligible components for which production is completed and sales occur after December 31, 2022, and during taxable years ending on or after the date of publication of the final regulations in the **Federal Register**.

Special Analyses

I. *Regulatory Planning and Review—Economic Analysis*

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

II. *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. The collections of information in these proposed regulations contain reporting and recordkeeping requirements that are required to validate eligibility to claim a section 45X credit. These collections of information would generally be used by the IRS for tax compliance purposes and by taxpayers to facilitate proper reporting and compliance. The general recordkeeping requirements mentioned within these proposed regulations are considered general tax records under §1.6001-1(e). Specific certification statements under §1.45X-1(c)(3) are considered general tax records and are required for the IRS to validate the taxpayer that may claim a section 45X credit. For PRA purposes,

general tax records are already approved by OMB under 1545-0074 for individuals, 1545-0123 for business entities, and under 1545-0092 for trust and estate filers.

These proposed regulations also provide reporting requirements related to making the Related Person Election as described in §1.45X-2(d) and calculating the section 45X credit amount as described in §1.45X-1. The Related Person Election will be made by taxpayers with Forms 1040, 1041, 1120-S, 1065, and 1120, on Form 7207 (or any successor forms); and credit calculations will be made on Form 3800 and supporting forms including Form 7207 (and any successor forms). These forms are approved under 1545-0074 for individuals, 1545-0123 for business entities, 1545-2306 for trust and estate filers of Form 7207, and 1545-0895 for trust and estate filers of Form 3800. These proposed regulations are not changing or creating new collection requirements not already approved by OMB or will be approved under 5 CFR 1320.10 by OMB.

III. *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rule. The Treasury Department and the IRS have not determined whether the proposed rule, when finalized, will likely have a significant economic impact on a substantial number of small entities. This determination requires further study. However, because there is a possibility of significant economic impact on a substantial number of small entities, an IRFA is provided in these proposed regulations. The Treasury Department and the IRS invite comments on both the number of entities affected and the economic impact on small entities.

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

A. *Need for and objectives of the rule*

The proposed regulations would provide greater clarity to taxpayers that intend to claim a section 45X credit. The proposed regulations would provide necessary definitions, the time and manner to make the Related Person Election and rules regarding the determination of credit amounts. The Treasury Department and the IRS intend and expect that giving taxpayers guidance that allows them to claim the section 45X credit will beneficially impact various industries. In particular, the section 45X credit encourages the domestic production of eligible components and incentivizes taxpayers to invest in clean energy projects that generate eligible credits.

B. *Affected small entities*

The RFA directs agencies to provide a description of, and if feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted. The Small Business Administration's Office of Advocacy estimates in its 2023 Frequently Asked Questions that 99.9 percent of American businesses meet its definition of a small business. The applicability of these proposed regulations does not depend on the size of the business, as defined by the Small Business Administration.

As described more fully in the preamble to this proposed regulation and in this IRFA, section 45X and these proposed regulations may affect a variety of different entities across several different clean energy industries as multiple types of eligible components are provided for under the statute and manufacturers may produce more than one type. Although there is uncertainty as to the exact number of small businesses within this group, the current estimated number of respondents to these proposed rules is 13,450 taxpayers. The estimated total annual reporting burden and estimated average annual burden per respondent will be computed when Form 7207 and the instructions to Form 7207 are updated to reflect these proposed regulations.

The Treasury Department and the IRS expect to receive more information on the impact on small businesses through comments on this proposed rule and after taxpayers start to claim the section 45X credit using the guidance and procedures provided in these proposed regulations.

C. *Impact of the rules*

The proposed regulations provide rules for how taxpayers can claim the section 45X credit. Taxpayers that claim the section 45X credit will have administrative costs related to reading and understanding the rules as well as recordkeeping and reporting requirements because of the Related Person Election, computation of the section 45X credit and tax return requirements. The costs will vary across different-sized entities and across the type of production activities in which such entities are engaged.

The Related Person Election allows a taxpayer to make an irrevocable election annually with their Federal income tax return by providing the information required on Form 7207 (or any successor form), including, for example, the name, EIN of the taxpayer; a description of the taxpayer's trade or business; the name, address and EINs of all related persons; a list of the eligible components that are sold, and the intended purpose of the eligible components sold by the related person. To make the Related Person Election and claim the section 45X credit, the taxpayer must file an annual Federal income tax return. The reporting and recordkeeping requirements for that Federal income tax return would be required for any taxpayer that is claiming a general business credit, regardless of whether the taxpayer was making a Related Person Election under section 45X.

D. *Alternatives considered*

The Treasury Department and the IRS considered alternatives to the proposed regulations. For example, the Treasury

Department and the IRS considered whether to impose certain pre-return filing requirements as a condition of making the Related Person Election as authorized in section 45X(a)(3)(B)(ii) to prevent duplication, fraud, or improper or excessive credits. The proposed regulations were designed to minimize burdens for taxpayers while ensuring that the IRS has sufficient information to determine eligibility for the section 45X credit. The Treasury Department and the IRS determined that requiring registration before a taxpayer makes the Related Person Election is unnecessary at this time. The proposed regulations would allow taxpayers to make an irrevocable Related Person Election annually with their Federal income tax return by providing the information required on Form 7207 (or any successor form), which would provide the IRS with sufficient information to assist in preventing duplication, fraud, or the claiming of improper or excessive credits if eligible components are produced and then sold to related persons.

Comments are requested on the requirements in the proposed regulations, including specifically, whether there are less burdensome alternatives that ensure the IRS has sufficient information to administer the advanced manufacturing production credit.

E. *Duplicative, overlapping, or conflicting Federal rules*

The proposed rule would not duplicate, overlap, or conflict with any relevant Federal rules. As discussed above, the proposed rule would merely provide procedures and definitions to allow taxpayers to claim the section 45X credit. The Treasury Department and the IRS invite input from interested members of the public about identifying and avoiding overlapping, duplicative, or conflicting requirements.

IV. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 Indian Tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Indian Tribal governments, or by the private sector in excess of that threshold.

V. *Executive Order 13132: Federalism*

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

VI. *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments, and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. This proposed rule does not have substantial direct effects on one or more federally recognized Indian tribes and does not impose substantial direct compliance costs on Indian Tribal governments within the meaning of the Executive order.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be made available at *https://www.regulations.gov*. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing with respect to this notice of proposed rulemaking has been scheduled for February 22, 2024, beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the public hearing. Persons who wish to present oral comments at the public hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by February 13, 2024. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the public hearing. If no outline of the topics to be discussed at the public hearing is received by February 13, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG-107423-23 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG-107423-23.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and

access code for the public hearing. The subject line of the email must contain the regulation number REG-107423-23 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-107423-23.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG-107423-23 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG-107423-23. Requests to attend the public hearing must be received by 5 p.m. ET on February 20, 2024.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the public hearing. The subject line of the email must contain the regulation number REG-107423-23 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-107423-23. Requests to attend the public hearing must be received by 5 p.m. ET on February 20, 2024.

Public hearings will be made accessible to people with disabilities. To request special assistance during a public hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov (preferred)* or by telephone at (202) 317-6901 (not a toll-free number) and must be received by 5 p.m. ET on February 16, 2024.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov*.

Drafting Information

The principal authors of these proposed regulations are Mindy Chou, John Deininger and Alexander Scott, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order for §§1.45X-1 through 1.45X-4 to read in part as follows:

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

Section 1.45X-1 also issued under 26 U.S.C. 45X.

Section 1.45X-2 also issued under 26 U.S.C. 45X(b) and (d) and 1502.

Section 1.45X-3 also issued under 26 U.S.C. 45X(b) and (c).

Section 1.45X-4 also issued under 26 U.S.C. 45X(b) and (c).

* * * * *

Par. 2. Sections 1.45X-0 through 1.45X-4 are added to read as follows:

Sec.

* * * * *

1.45X-0 Table of contents.

1.45X-1 General rules applicable to the advanced manufacturing production credit.

1.45X-2 Sale to unrelated person.

1.45X-3 Eligible components.

1.45X-4 Applicable critical minerals.

* * * * *

§1.45X-0 Table of contents.

This section lists the captions contained in §§1.45X-1 through 1.45X-4.

§1.45X-1 General rules applicable to the advanced manufacturing production credit.

(a) Overview.

(b) Credit amount.

(c) Definition of produced by the taxpayer.

(d) Produced in the United States.

(e) Production and sale in a trade or business.

(f) Sale of integrated components.

(g) Interaction between sections 45X and 48C.

(h) [Reserved]

(i) Anti-abuse rule.

(j) Severability.

(k) Applicability date.

§1.45X-2 Sale to unrelated person.

(a) In general.

(b) Definitions.

(c) Special rule for sale to related person.

(d) Related person election.

(e) Sales of integrated components to related person.

(f) Severability.

(g) Applicability date.

§1.45X-3 Eligible components.

(a) In general.

(b) Solar energy components.

(c) Wind energy components.

(d) Inverters.

(e) Qualifying battery component.

(f) Phase out rule.

(g) Severability.

(h) Applicability date.

§1.45X-4 Applicable critical minerals.

(a) In general.

(b) Definitions.

(c) Credit amount.

(d) Severability.

(e) Applicability date.

§1.45X-1 General rules applicable to the advanced manufacturing production credit.

(a) *Overview*—(1) *In general*. This section provides general rules regarding

the advanced manufacturing production credit determined under section 45X of the Code (section 45X credit). Paragraph (a)(2) of this section provides definitions of certain terms that apply for purposes of section 45X and the section 45X regulations (defined in paragraph (a)(2)(xiv) of this section). Paragraphs (b) through (j) of this section provide the basic rules regarding the section 45X credit, including the definition of the term *produced by the taxpayer*, and rules to determine the taxpayer that produces an eligible component and whether such taxpayer is entitled to claim a section 45X credit in contract manufacturing arrangements; where the production of eligible components must occur; the treatment of integrated, incorporated or assembled eligible components; and the interaction between sections 45X and 48C of the Code. *See* §1.45X-2 for rules regarding sales to unrelated persons, sales to related persons, and the Related Person Election, including rules regarding the time, place, and manner of making the Related Person Election. *See* §1.45X-3 for the definitions of all eligible components (except applicable critical minerals) and the credit amounts available for each of these eligible components, including certain phase-out percentages. *See* §1.45X-4 for the definitions of applicable critical minerals and the rules regarding the determination of the credit amount for applicable critical minerals.

(2) *Generally applicable definitions*. This paragraph (a)(2) provides definitions of terms that apply for purposes of section 45X and the section 45X regulations.

(i) *Applicable critical mineral.* The term *applicable critical mineral* means any of the minerals that are listed in section 45X(c)(6) and defined in §1.45X-4(b).

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

(iii) *Contract manufacturing arrangement*. The term *contract manufacturing arrangement* is defined in paragraph (c)(3)(ii)(B) of this section.

(iv) *Electrode active materials*. The term *electrode active materials* is defined in §1.45X-3(e)(2).

(v) *Eligible component*. The term *eligible component* is defined in section 45X(c)(1)(A) and described in §§1.45X-3 and 1.45X-4.

(vi) *Eligible taxpayer*. The term e*ligible taxpayer* is defined in paragraph (c)(3) of this section.

(vii) *Guidance*. The term *guidance* means guidance published in the **Federal Register** or Internal Revenue Bulletin, as well as administrative guidance such as forms, instructions, publications, or other guidance on the IRS.gov website. *See* §§ 601.601 and 601.602 of this chapter.

(viii) *IRA*. The term *IRA* means Public Law 117-169, commonly known as the Inflation Reduction Act of 2022.

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

(x) *Produced by the taxpayer*. The term *produced by the taxpayer* is defined in paragraph (c) of this section, and the related terms *production activities* and *production process* have the meaning given those terms in paragraph (c) of this section.

(xi) *Related person*. The term *related person* is defined in §1.45X-2(b)(2).

(xii) *Related Person Election*. The term *Related Person Election* is defined in §1.45X-2(d)(1).

(xiii) *Secretary*. The term *Secretary* means the Secretary of the Treasury or her delegate.

(xiv) *Section 45X regulations.* The term *section 45X regulations* means the provisions of this section, §§1.45X-2 through 1.45X-4, and the regulations in this chapter under sections 6417 and 6418 of the Code that relate to the section 45X credit.

(xv) *Unrelated person*. The term *unrelated person* is defined in section 45X(a)(3) and described in §1.45X-2(b)(3).

(b) *Credit amount*. Except as otherwise provided in section 45X(b)(3) and §1.45X-3(f), for purposes of section 38 of the Code, the amount of the section 45X credit for any taxable year is equal to the sum of the credit amounts provided under section 45X(b) and described in §§1.45X-3 and 1.45X-4 with respect to each eligible component that is produced by the taxpayer and, within the taxable year, sold by the taxpayer to an unrelated person. *See* §1.45X-2 for rules regarding sales of eligible components to related persons that may be treated as if sold to unrelated persons for purposes of section 45X(a).

(c) *Definition of produced by the taxpayer*—(1) *In general.* The term *produced by the taxpayer* means a process conducted by the taxpayer that substantially transforms constituent elements, materials, or subcomponents into a complete and distinct eligible component that is functionally different from that which would result from mere assembly or superficial modification of the elements, materials, or subcomponents.

(i) *Partial transformation*. The term *produced by the taxpayer* does not include partial transformation that does not result in substantial transformation of constituent elements, materials, or subcomponents into a complete and distinct eligible component as described in this paragraph (c)(1).

(ii) *Mere assembly or superficial modification*. The term *produced by the taxpayer* does not include minor assembly of two or more constituent elements, materials, or subcomponents, or superficial modification of the final eligible component, if the taxpayer does not also engage in the process resulting in a substantial transformation described in this paragraph (c)(1).

(iii) *Examples.* The following examples illustrate the application of this paragraph (c)(1).

(A) *Example 1.* Taxpayers X, Y, and Z each produce one of three sections of a wind tower that together make up the wind tower. No taxpayer has produced an eligible component within the meaning of section 45X(a)(1)(A) because no taxpayer has produced all sections of the wind tower.

(B) *Example 2.* Same facts as paragraph (c)(1)(iii)(A) of this section (*Example 1*), but taxpayers X, Y, and Z instead form Partnership XYZ. Partnership XYZ produces all three sections of the wind tower. Partnership XYZ has produced an eligible component within the meaning of section 45X(a)(1)(A).

(C) *Example 3*. Taxpayer V puts the external casing on a battery module (within the meaning of §1.45X-3(e)(4)(i)(A)) that already had cells, battery management systems, and other components integrated into it. Taxpayer V has engaged in minor assembly and has not produced an eligible component within the meaning of section 45X(a)(1)(A).

(D) *Example 4.* Taxpayer U purchases two finished halves of a wind turbine nacelle and combines them into a single nacelle. Taxpayer U has engaged in minor assembly and has not produced an eligible component within the meaning of section 45X(a)(1)(A).

(E) *Example 5*. Taxpayer T purchases a dry cell battery and fills the electrolyte of the battery. Taxpayer T has engaged in minor assembly and has not produced an eligible component within the meaning of section 45X(a)(1)(A).

(F) *Example 6.* Taxpayer W purchases a prefabricated wind turbine blade and applies paint and finishes. Taxpayer W has engaged in superficial modification of the blade and has not produced an eligible

component within the meaning of section 45X(a)(1)(A).

(2) *Special rule for certain eligible components*. For solar grade polysilicon, electrode active materials, and applicable critical minerals, the term *produced by the taxpayer* means processing, conversion, refinement, or purification of source materials, such as brines, ores, or waste streams, to derive a distinct eligible component.

(3) *Eligible taxpayer*—(i) *In general*. Except as otherwise provided in paragraph (c)(3)(iii) of this section, a taxpayer claiming a section 45X credit with respect to an eligible component must be the taxpayer that directly performs the production activities that bring about a substantial transformation resulting in the eligible component, and must sell such eligible component to an unrelated person.

(ii) *Contract manufacturing arrangement*—(A) *In general*. If the production of an eligible component is performed in whole or in part pursuant to a contract that is a contract manufacturing arrangement, then, provided the other requirements of section 45X are met, the party to such contract that may claim the section 45X credit with respect to such eligible component is the party that performs the actual production activities that bring about a substantial transformation resulting in the eligible component.

(B) *Contract manufacturing arrangement defined*. The term *contract manufacturing arrangement* means any agreement (or agreements) providing for the production of an eligible component if the agreement is entered into before the production of the eligible component to be delivered under the contract is completed. A routine purchase order for off-the-shelf property is not treated as a contract manufacturing arrangement for purposes of this paragraph (c)(3). An agreement will be treated as a routine purchase order for off-the-shelf property if the contractor is required to make no more than de minimis modifications to the property to tailor it to the customer's specific needs, or if at the time the agreement is entered into, the contractor knows or has reason to know that the contractor can satisfy the agreement out of existing stocks or normal production of finished goods.

(iii) *Special rule for contract manufacturing arrangements*. If an eligible component is produced by a taxpayer pursuant to a contract manufacturing arrangement, the parties to such agreement may determine by agreement the party that may claim the section 45X credit. If a taxpayer enters into contract manufacturing arrangements with multiple fabricators to produce an eligible component, the parties to such agreements may determine by agreement the party that may claim the section 45X credit. The IRS will not challenge the agreement of the parties provided all the parties submit signed certification statements (as described in paragraph (c)(3)(iv) of this section) indicating that all parties agree as to the party that may claim the section 45X credit.

(iv) *Certification statement requirements.* A certification statement indicating that all parties to a contract manufacturing arrangement agree as to the party that will claim the section 45X credit must include—

(A) All required information set forth in guidance; and

(B) A properly signed penalty of perjury statement.

(v) *Examples*. The following examples illustrate the application of this paragraph (c)(3).

(A) *Example 1*: *Contract manufacturing with sale*. Taxpayers X, Y and Z are unrelated C corporations that have calendar year taxable years. In 2024, pursuant to a contract manufacturing arrangement as described in paragraph (c)(3)(ii)(B) of this section, X hires Y to produce a solar module. The contract is a tolling arrangement and provides that Y will produce the solar module according to X's designs and specifications and using the materials and subcomponents that X provides. X and Y enter an agreement providing that X is the sole party that may claim a section 45X credit for the production and sale of the solar module, and X and Y each sign a certification statement as described in paragraph (c)(3)(iv) of this section reflecting this agreement. In 2025, Y produces and delivers the solar module to X, and in 2026, X sells the solar module to Z. X may claim a section 45X credit in taxable year 2026 for the solar module it sold to Z provided all other requirements of section 45X are met and the certification statements signed by X and Y meet the requirements described in paragraph (c)(3)(iv) of this section and are properly submitted by X. Similarly, Y could claim a section 45X credit if the agreement between X and Y had designated Y as the sole party that could claim a section 45X credit for the production and sale of the solar module provided all other requirements of section 45X are met and the certification statements signed by X and Y meet the requirements described in paragraph (c)(3)(iv) of this section and are properly submitted by Y.

(B) *Example 2*: *Contract manufacturing with no sale.* Assume the facts are the same as in paragraph (c)(3)(v)(A) of this section (*Example 1*), except that X does not sell the solar module and instead X uses it to generate electricity for use in X's trade or business. Because there has been no sale, neither X nor Y may claim a section 45X credit for the solar module regardless of whether X and Y submit signed certification statements described in paragraph (c)(3)(iv) of this section.

(C) *Example 3*: *Multiple contract manufacturing arrangements.* Taxpayers V, W, X, Y and Z are unrelated C corporations that have calendar year taxable years. In 2024, pursuant to three separate contract manufacturing arrangements as described in paragraph (c)(3)(ii)(B) of this section, V hires W, X, and Y to produce the bottom, middle and top segments, respectively, of a single wind tower that V designed. W, X, Y and V enter into an agreement providing that V is the sole party that may claim a section 45X credit for the production and sale of the wind tower, and W, X, Y and V each sign a certification statement as described in paragraph (c)(3)(iv) of this section reflecting this agreement. In 2024, W and X both produce and deliver their respective wind tower segments to the installation site, and in 2025, Y produces and delivers its wind tower segment to the installation site. In 2026, V sells the completed wind tower to Z. V may claim a section 45X credit in taxable year 2026 for the wind tower it sold to Z provided all other requirements of section 45X are met and the certification statements signed by V, W, X and Y meet the requirements described in paragraph (c)(3)(iv) of this section and are properly submitted by V. Similarly, W or X or Y could be the party that could claim a section 45X credit if the agreement between V, W, X and Y had designated W or X or Y as the sole party that could claim a section 45X credit for the production and sale of the wind tower provided all other requirements of section 45X are met and the certification statements signed by V, W, X and Y meet the requirements described in paragraph (c)(3)(iv) of this section and are properly submitted by the party designated as the sole party that could claim a section 45X credit.

(4) *Timing of production and sale*—(i) *In general*. Production of eligible components for which a taxpayer is claiming a section 45X credit may begin before December 31, 2022. Production of eligible components must be completed, and sales of eligible components must occur, after December 31, 2022.

(ii) *Example.* Taxpayer X has a calendar year taxable year. Taxpayer X begins production of a related offshore wind vessel (as defined in section 45X(4)(B)(iv) and described in §1.45X-3(c)(4)) in January 2022. Production is completed in December 2024 and the sale to an unrelated person occurs in 2025. Taxpayer X is eligible to claim the section 45X credit in 2025, assuming that all other requirements of section 45X are met.

(d) *Produced in the United States*—(1) *In general*. Sales are taken into account for purposes of the section 45X credit only for eligible components that are produced within the United States, as defined in section 638(1) of the Code, or a United States territory, which for purposes of section 45X and the section 45X regulations has the meaning of the term *possession* provided in section 638(2).

(2) *Subcomponents*. Constituent elements, materials, and subcomponents used in the production of eligible components are not subject to the domestic production requirement provided in paragraph (d)(1) of this section.

(e) *Production and sale in a trade or business*. An eligible component produced and sold by the taxpayer is taken into account for purposes of the section 45X credit only if the production and sale are in a trade or business (within the meaning of section 162 of the Code) of the taxpayer.

(f) *Sale of integrated components*—(1) *In general.* For purposes of the section 45X credit, section 45X(d)(4) provides that a taxpayer is treated as having produced and sold an eligible component to an unrelated person if such component is integrated, incorporated, or assembled into another eligible component that is then sold to an unrelated person.

(i) *Integrated, incorporated, or assembled.* The term *integrated*, *incorporated*, *or assembled* means the production activities by which an eligible component that is a constituent element, material, or subcomponent is substantially transformed into another complete and distinct eligible component that is not solar grade polysilicon, an electrode active material, or an applicable critical mineral. The term *integrated*, *incorporated*, *or assembled* does not mean the mere assembly or superficial modification of an eligible component used as an element, material, or subcomponent and other elements, materials, or subcomponents that results in a distinct product.

(ii) *Special rule for eligible components resulting in solar grade polysilicon, electrode active materials, or applicable critical minerals.* For solar grade polysilicon, electrode active material, and applicable critical minerals, the term *integrated*, *incorporated*, *or assembled* means the production activities in which an eligible component is processed, converted, refined, or purified to derive a distinct eligible component that is solar grade polysilicon, an electrode active material, or an applicable critical mineral. The term *integrated*, *incorporated*, or *assembled* does not mean mere assembly or superficial modification of an eligible component used as an element, material, or subcomponent and other elements, materials, or subcomponents that results in a distinct product.

(2) *Application*—(i) *In general*. A taxpayer may claim a section 45X credit for each eligible component the taxpayer produces and sells to an unrelated person, including any eligible component the taxpayer produces that was used as a constituent element, material, or subcomponent and integrated, incorporated, or assembled into another complete and distinct eligible component or another complete and distinct product (that is not itself an eligible component) that the taxpayer also produces and sells to an unrelated person.

(ii) *Example: Sale of product with incorporated eligible components to unrelated person*. In 2022, X, a domestic corporation that has a calendar year taxable year, begins production of electrode active materials (EAMs) that are completed in 2023 and incorporated into battery cells that X also produces. In 2024, X incorporates those battery cells into battery modules (within the meaning of §1.45X-3(e)(4)(i)(A)) and integrates the battery modules into electric vehicles. X sells the electric vehicles to Z, an unrelated person, in 2024. X may claim a section 45X credit for the EAMs, the battery cells, and the battery modules in 2024.

(g) *Interaction between sections 45X and 48C*—(1) *In general.* For purposes of the section 45X credit, consistent with section 45X(c)(1)(B), an eligible component—

(i) Must be produced by a section 45X facility; and

(ii) Does not include any property (produced property) that is produced at a facility if the basis of any property that is part of the production unit (within the meaning of paragraph (g)(2)(ii) of this section) that produces the produced property—

(A) Is eligible property that is included in a section 48C facility; and

(B) Is taken into account for purposes of the credit allowed under section 48C (section 48C credit) after August 16, 2022.

(2) *Section 45X facility*—(i) *In general*. A *section 45X facility* includes all tangible property that comprises an independently functioning production unit that produces one or more eligible components.

(ii) *Production unit*. The production unit is the tangible property that substantially transforms the material inputs to complete the production process of an eligible component.

(3) *Section 48C facility*—(i) *In general*. A *section 48C facility* includes all eligible property included in a qualifying advanced energy project for which a taxpayer receives an allocation of section 48C credits under the allocation program established under section 48C(e) and claims such credits after August 16, 2022.

(ii) *Eligible property. Eligible property* is property that—

(A) Is necessary for the production or recycling of property described in section 48C(c)(1)(A)(i), re-equipping an industrial or manufacturing facility described in section 48C(c)(1)(A)(ii), or re-equipping, expanding, or establishing an industrial facility described in section 48C(c)(1)(A)(iii);

(B) Is tangible personal property, or other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified investment credit facility; and

(C) With respect to which depreciation (or amortization in lieu of depreciation) is allowable.

(4) *Examples.* The following examples illustrate the application of this paragraph (g):

(i) *Example 1*: *Two independent production units*—(A) *Facts*. Taxpayer owns and operates a manufacturing site that contains Production Unit A and Production Unit B, each of which function independently and are arranged in serial fashion. Photovoltaic wafers produced by Production Unit A are utilized in Production Unit B to manufacture photovoltaic cells. Taxpayer was allocated a section 48C credit under the section 48C(e) program for a section 48C facility that includes Production Unit A and subsequently placed the section 48C facility and Production Unit A in service in taxable year 2026. Taxpayer claimed a section 48C credit for Production Unit A for taxable year 2026.

(B) *Analysis.* Production Unit A is eligible property that is include in Taxpayer's section 48C facility. Therefore, Production Unit A cannot qualify as

a section 45X facility under section 45X(c)(1)(B) and paragraph (g)(2) of this section. Production Unit B, however, is tangible property that comprises an independently functioning production unit that produces eligible components. Production Unit B can be treated as a section 45X facility because the tangible property comprising Production Unit B is not eligible property that is included in a section 48C facility.

(ii) *Example 2*: *Single production unit*—(A) *Facts*. Taxpayer owns and operates two manufacturing sites. Manufacturing Site 1 includes tangible property that forms ingots from polysilicon to partially produce photovoltaic wafers. Manufacturing Site 2 completes the production process of the photovoltaic wafers. Taxpayer was allocated a section 48C credit under the section 48C(e) program for tangible property that is used to produce the ingots at Manufacturing Site 1.

(B) *Analysis.* Manufacturing Site 1 and Manufacturing Site 2 comprise a single production unit. As a result, Taxpayer may not claim the section 45X credit for the photovoltaic wafers it produced at Manufacturing Site 1 and Manufacturing Site 2 because Taxpayer claimed the section 48C credit for the tangible property that was used to produce the ingots at Manufacturing Site 1, which is part of a single production unit.

(iii) *Example 3: Independent production units and production of subcomponent*—(A) *Facts*. Taxpayer owns and operates two manufacturing sites. Manufacturing Site 1 contains Production Unit A and Production Unit B, which are arranged in parallel fashion and each produce photovoltaic cells. Manufacturing Site 2 contains Production Unit C and Production Unit D, which are arranged in serial fashion. Production Unit C produces photovoltaic cells. Production Unit D produces solar modules, in part, by combining the photovoltaic cells produced by Production Units A, B and C. Taxpayer was allocated a section 48C credit under the section 48C(e) program for a section 48C facility that includes Production Unit C. Subsequently, Taxpayer places the section 48C facility and Production Unit C in service in taxable year 2026. Taxpayer claimed a section 48C credit for Production Unit C in taxable year 2026.

(B) *Analysis*. Production Units A and B each comprise a single production unit that produces eligible components. Production Units A and B can be treated as a section 45X facility because the tangible property comprising Production Units A and B are not eligible property that is included in a section 48C facility. Production Unit C cannot qualify as a section 45X facility under section 45X(c) because Production Unit C is eligible property that is included in a section 48C facility. Production Unit D is tangible property that comprises an independently functioning production unit that produces eligible components utilizing subcomponents produced by Taxpayer in a separate, independently functioning production unit. Therefore, Production Unit D can be treated as a section 45X facility because the tangible property comprising Production Unit D is not eligible property that is included in a section 48C facility.

(iv) *Example 4: Two independent production units manufacturing under a contract manufacturing arrangement*—(A) *Facts*. X is hired by Y to manufacture photovoltaic cells. X owns and operates a manufacturing site that contains Production Unit A and Production Unit B. Production Unit A and Production Unit B function independently and are arranged in serial fashion. Photovoltaic wafers produced by Production Unit A are utilized in Production Unit B to manufacture photovoltaic cells. X was allocated a section 48C credit under the section 48C(e) program for a section 48C facility that includes Production Unit A and subsequently placed the section 48C Facility and Production Unit A in service in taxable year 2026. X claimed a section 48C credit for Production Unit A in taxable year 2026.

(B) *Analysis*. Production Unit A is eligible property that is included in X's section 48C facility. Therefore, Production Unit A cannot qualify as a section 45X facility under section 45X(c)(1)(B) and paragraph (g)(2) of this section and X does not qualify for a section 45X credit with respect to Production Unit A. Production Unit B is, however, tangible property that comprises an independently functioning production unit that produces eligible components. Production Unit B can be treated as a section 45X facility by X, the party who produces the eligible components, because the tangible property comprising Production Unit B is not eligible property that is included in a section 48C facility.

(v) *Example 5*: *Two independent production units manufacturing under a contract manufacturing arrangement*—(A) *Facts*. Assume the facts are the same as in paragraph (g)(4)(iv) of this section (*Example 4*), except that Y owns Production Units A and B and hires X to operate Production Units A and B to produce the eligible components.

(B) *Analysis.* Production Unit A is eligible property that is included in Y's section 48C facility. Y claimed a section 48C credit for Production Unit A in taxable year 2026. Therefore, Production Unit A cannot qualify as a section 45X facility under section 45X(c)(1)(B) and paragraph (g)(2) of this section and X does not qualify for a section 45X credit with respect to Production Unit A. Production Unit B, however, is tangible property that comprises an independently functioning production unit that produces eligible components. Production Unit B can be treated as a section 45X facility by X (and not Y) because the tangible property comprising Production Unit B is not eligible property that is included in a section 48C facility.

(h) [Reserved]

(i) *Anti-abuse rule*—(1) *In general.* The rules of section 45X and the section 45X regulations must be applied in a manner consistent with the purposes of section 45X and the section 45X regulations (and the regulations in this chapter under sections 6417 and 6418 related to the section 45X credit). A purpose of section 45X and the section 45X regulations (and the regulations in this chapter under sections 6417 and 6418 related to the section 45X credit) is to provide taxpayers an incentive to produce eligible components in a manner that contributes to the development of secure and resilient supply chains. Accordingly, the section 45X credit is not allowable if the primary purpose of the production and sale of an eligible component is to obtain the benefit of the section 45X credit in a manner that is wasteful, such as discarding, disposing of, or destroying the eligible component without putting it to a productive use. A determination of whether the production and sale of an eligible component is inconsistent with the purposes of section 45X and the section 45X regulations (and the regulations in this chapter under sections 6417 and 6418 related to the section 45X credit) is based on all facts and circumstances.

(2) *Example*—(i) *Facts.* Taxpayer is engaged in the activity of producing and selling multiple units of Eligible Component 1 (EC1). Taxpayer engages in no other activities. The cost of producing each unit of EC1 is less than the amount of the section 45X credit that would be available if each EC1 qualified for the section 45X credit. Taxpayer sells some of its units of EC1 to related persons and makes a Related Person Election pursuant to section 45X(a)(3)(B)(i). Taxpayer also sells some of its units of EC1 to unrelated persons. Taxpayer sells all units of EC1 at an amount equal to cost plus a markup to reflect an anticipated accommodation fee and establishes corresponding accounts receivable at the time of the respective sales. In addition, Taxpayer knows or reasonably expects that after acquiring the units of EC1, the related and unrelated transferees will not resell the units of EC1 or use them in their trades or businesses. Taxpayer intends to obtain the benefit from the section 45X credit by claiming such credits itself or monetizing such credits through an election under sections 6417 or 6418. Taxpayer eliminates the aforementioned accounts receivable at the time it claims the section 45X credit or receives related payments attributable to the section 45X credit, and further makes payments to the related and unrelated transferees as accommodation fees computed as a percentage of such benefits.

(ii) *Analysis.* Based on all of the facts and circumstances in paragraph (i)(2)(i) of this section, the primary purpose of Taxpayer's production and sale of EC1 is to obtain the benefit of the section 45X credit in a manner that is wasteful and will not be treated as the production and sale of eligible components in a trade or business of Taxpayer for purposes of section 45X(a)(1) and (2). Taxpayer is not eligible for the section 45X credit with respect to units of EC1 that it produced and sold. See sections 6417(d)(6) (excessive payments) and 6418(g)(2) (excessive credit transfer).

(j) *Severability.* The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agencies' intention that the remaining provisions shall continue in effect.

(k) *Applicability date*. This section applies to eligible components for which production is completed and sales occur after December 31, 2022, and during a

taxable year ending on or after [date of publication of final regulations in the **Federal Register**].

§1.45X-2 Sale to unrelated person.

(a) *In general*. The amount of the section 45X credit for any taxable year is equal to the sum of the credit amounts determined under section 45X(b) (and described in §§1.45X-3 and 1.45X-4) with respect to each eligible component that is produced by the taxpayer and, during the taxable year, sold by the taxpayer to an unrelated person. Applicable Federal income tax principles apply to determine whether a transaction is in substance a sale (or the provision of a service, or some other disposition). *See* §1.45X-1(d) and (e) for additional requirements relating to sales.

(b) *Definitions*. This paragraph (b) provides definitions of terms that apply for purposes of this section.

(1) *Person*. The term *person* means an individual, a trust, estate, partnership, association, company or corporation, as provided in section 7701(a)(1) of the Code. For purposes of this section, an entity disregarded as separate from a person (for example, under §301.7701-3 of this chapter) is not a person.

(2) *Related person*. The term *related person* means a person who is related to another person if such persons would be treated as a single employer under the regulations in this chapter under section 52(b) of the Code.

(3) *Unrelated person*. The term *unrelated person* means a person who is not a related person as defined in paragraph (b)(2) of this section.

(c) *Special rule for sale to related person*—(1) *In general.* For purposes of section 45X(a), a taxpayer is treated as selling an eligible component to an unrelated person if such component is sold to such person by a person who is a related person with respect to the taxpayer.

(2) *Example*. X and Y are members of a group of trades or businesses under common control under section 52(b), and thus are related persons under section 45X(d)(1). Each of X and Y has a calendar year taxable year. Z is an unrelated person. X is in the trade or business of producing and selling solar modules. X produces and sells solar modules to Y in 2023. Y sells the solar modules to Z in 2024. X may claim a section 45X credit for the sale of the solar modules in 2024, the taxable year of X in which Y sells the solar modules to Z.

(d) *Related person election*—(1) *Availability of election*—(i) *In general.* In such form and manner as the Secretary may prescribe, a taxpayer may make an election under section 45X(a)(3)(B) (Related Person Election), to treat a sale of eligible components by such taxpayer to a related person as if made to an unrelated person. As a condition of, and prior to, a taxpayer making a Related Person Election (as described in paragraph (d)(2) of this section), the Secretary may require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, or any improper or excessive credit amount determined under section 45X(a)(1).

(ii) *Members of a consolidated group*. A Related Person Election is made by a member of a consolidated group (as defined in §1.1502-1(h)) in the manner described in paragraph (d)(3)(ii) of this section. A member of a consolidated group that sells eligible components in an intercompany transaction (as defined in §1.1502-13(b)(1)) may make the Related Person Election to claim the section 45X credit in the year of the intercompany sale. For the treatment of the selling member's gain or loss from that sale, *see* §1.1502-13.

(2) *Time and manner of making election*—(i) *In general*. A taxpayer must make an affirmative Related Person Election annually on the taxpayer's timely filed original Federal income tax return, including extensions in such form and in such manner as may be prescribed in Internal Revenue Service forms or instructions or in publications or guidance published in the Internal Revenue Bulletin. *See* §601.601 of this chapter. The Related Person Election will be applicable to all sales of eligible components to related persons by the taxpayer for each trade or business that the taxpayer engages in during the taxable year that resulted in a credit claim and for which the taxpayer has made the Related Person Election.

(ii) *Required information*. For all sales of eligible components to related persons, the taxpayer must provide all required information set forth in guidance. Such information may include, for example, the taxpayer's name, employer identification number (EIN), a description of the taxpayer's trade or business (including principal business activity code); the name(s) and EINs of all related persons; a listing of the eligible components that are sold; and the intended purpose of any sales of eligible components to or from related persons.

(3) *Scope and effect of election*—(i) *In general*. A separate Related Person Election must be made with respect to related person sales made by a taxpayer for each eligible trade or business of the taxpayer. The election applies only to such trade or business for which the Related Person Election is made. An election under this section applies to all sales to related persons (including between members of the same consolidated group) of eligible components produced by the taxpayer during the taxable year with respect to each trade or business for which the Related Person Election is made and is irrevocable for the taxable year for which the election is made. An election under paragraph (d)(2)(i) of this section applies solely for purposes of the section 45X credit and the section 45X regulations (and the regulations in this chapter under sections 6417 and 6418 related to the section 45X credit).

(ii) *Application to consolidated groups*. For a trade or business of a consolidated group, a Related Person Election must be made by the agent for the group on behalf of the members claiming the section 45X credit and filed with the group's timely filed original Federal income tax return, including extensions, with respect to each trade or business that the consolidated group conducts. *See* §1.1502-77 (providing rules regarding the status of the common parent as agent for its members). A separate election must be filed on behalf of each member claiming the section 45X credit, and each election must include the name and EIN of the agent for the group and the member on whose behalf the election is being made.

(iii) *Application to partnerships*. The Related Person Election for a partnership must be made on the partnership's timely filed original Federal income tax return, including extensions, with respect to each trade or business that the partnership conducts. The election applies only to such

trade or business for which the Related Person Election is made. An election by a partnership does not apply to any trade or business conducted by a partner outside the partnership.

(4) *Anti-abuse rule*—(i) *In general.* A Related Person Election may not be made if, with respect to the eligible components relevant to such election, the taxpayer fails to provide the information described in paragraph (d)(2) of this section, provides information described in paragraph (d)(2) of this section that shows that such components are described in paragraph (d)(4)(ii) or (iii) of this section, or such components are described in paragraph (d)(4)(ii) or (iii) of this section.

(ii) *Improper use*. For purposes of this paragraph (d)(4) the term *improper use* means a use that is wasteful, such as discarding, disposing of, or destroying the eligible component without putting it to a productive use by the related person to which the eligible component is sold.

(iii) *Defective components.* The term *defective component* means a component that does not meet the requirements of section 45X and the section 45X regulations.

(e) *Sales of integrated components to related person*—(1) *In general.* For purposes of section 45X and the section 45X regulations (and the regulations in this chapter under sections 6417 and 6418 related to the section 45X credit), a taxpayer that produces and then sells an eligible component to a related person, who then integrates, incorporates, or assembles the taxpayer's eligible component into another complete and distinct eligible component that is subsequently sold to an unrelated person, may claim a section 45X credit (or make an election under section 6417 or 6418) with respect to the taxable year in which the related person's sale to the unrelated person occurs.

(2) *Examples.* The following examples illustrate the rules provided in paragraph (e)(1) of this section.

(i) *Example 1*: *Sales of multiple incorporated eligible components to related persons.* X and Y are C corporations that are members of a group of trades or businesses under common control under section 52(b), and thus are related persons under section 45X(d)(1) and paragraph (b)(2) of this section. Each of X and Y has a calendar year taxable year. Z is an unrelated person. X and Y are in the trade or business of producing and selling photovoltaic wafers and cells. X produces and sells photovoltaic wafers to Y in 2023. Y incorporates the photovoltaic wafers into photovoltaic cells and sells the photovoltaic cells to Z in 2024. X may claim a section 45X credit for the sale of the photovoltaic wafers in 2024, the taxable year of X in which Y sells the photovoltaic cells to Z.

(ii) *Example 2: Sales of multiple incorporated eligible components to related and unrelated persons.* W, X, and Y are domestic C corporations that are members of a group of trades or businesses under common control under section 52(b), and thus are related persons under section 45X(d)(1) and paragraph (b)(2) of this section. Each of W, X, and Y has a calendar year taxable year. W produces electrode active materials (EAMs) and sells the EAMs to X in 2023. In 2024, X incorporates the EAMs into battery cells that it produces and sells the battery cells to Y. In 2025, Y incorporates the battery cells into battery modules (within the meaning of §1.45X-3(e)(4)(i)(A)) that it produces and sells the battery modules to Z, an unrelated person. W may claim a section 45X credit for EAMs sold to X, X may claim a section 45X credit for the battery cells sold to Y, and Y may claim a section 45X credit for the battery modules sold to Z in 2025, the taxable year of each of W, X, and Y in which the battery modules are sold to Z.

(3) *Special rules applicable to related person election*—(i) *In general.* If a taxpayer makes a valid Related Person Election under section 45X(a)(3)(B)(i) and paragraph (d)(2) of this section, and the taxpayer produces and then sells an eligible component to a related person, who then integrates, incorporates, or assembles the taxpayer's eligible component into another complete and distinct eligible component that is subsequently sold to an unrelated person, the taxpayer's sale of the eligible component to the related person is treated (solely for purposes of the section 45X credit and the section 45X regulations, and the regulations in this chapter under sections 6417 and 6418 related to the section 45X credit) as if made to an unrelated person in the taxable year in which the sale to the related person occurs.

(ii) *Example: Sales of multiple integrated eligible components to related and unrelated persons with a related person election*. W, X, and Y are domestic C corporations that are members of a group of trades or businesses under common control and thus are related persons under section 45X(d)(1) and paragraph (b)(2) of this section. Each of W, X, and Y has a calendar year taxable year. W produces electrode active materials (EAMs) and sells the EAMs to X in 2023. W makes a valid Related Person Election under paragraph (d)(2) of this section in 2023 with regard to the sale. In 2024, X incorporates the EAMs into battery cells that it produces and sells the battery cells to Y. X makes a valid Related Person Election under paragraph (d)(2) of this section in 2024 with regard to the sale. In 2025, Y incorporates the battery cells into battery modules that it produces and sells the battery modules to Z, an unrelated person. W may claim a section 45X credit for the sale of the EAMs in 2023 because the sale to X is treated as if made to an unrelated person solely for purposes of section 45X(a). X may claim a section 45X credit for the sale of the battery cells in 2024 because the sale to Y is treated as if made to an unrelated person solely for purposes of section 45X(a). Y may claim a section 45X credit for the sale of battery modules in 2025 because Z is an unrelated person.

(f) *Severability.* The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agencies' intention that the remaining provisions shall continue in effect.

(g) *Applicability date.* This section applies to eligible components for which production is completed and sales occur after December 31, 2022, and during a taxable year ending on or after [date of publication of the final regulations in the **Federal Register**].

§1.45X-3 Eligible components.

(a) *In general*. For purposes of the section 45X credit, *eligible component* means any solar energy component (as defined in paragraph (b) of this section), any wind energy component (as defined in paragraph (c) of this section), any inverter (as defined in paragraph (d) of this section), any qualifying battery component (as defined in paragraph (e) of this section), and any applicable critical mineral (as defined in §1.45X-4(b)). See paragraph (f) of this section for certain phase-out rules applicable to eligible components other than applicable critical minerals.

(b) *Solar energy components*. *Solar energy component* means a solar module, photovoltaic cell, photovoltaic wafer, solar grade polysilicon, torque tube, structural fastener, or polymeric backsheet, each as defined in this paragraph (b).

(1) *Photovoltaic cell*—(i) *Definition*. *Photovoltaic cell* means the smallest semiconductor element of a solar module that performs the immediate conversion of light into electricity that is either a thin film photovoltaic cell or a crystalline photovoltaic cell.

(ii) *Credit amount*. For a photovoltaic cell, the credit amount is equal to the product of 4 cents multiplied by the capacity of such photovoltaic cell. The capacity of each photovoltaic cell is expressed on a direct current watt basis. Capacity is the nameplate capacity in direct current watts using Standard Test Conditions, as defined by the International Electrotechnical Commission. In the case of a tandem technology produced in serial fashion, such as a monolithic multijunction cell composed of two or more sub-cells, capacity must be measured at the point of sale at the end of the single cell production unit. In the case of a four-terminal tandem technology produced by mechanically stacking two distinct cells or interconnected layers, capacity must be measured for each cell at each point of sale.

(iii) *Substantiation*. The taxpayer must document the capacity of a photovoltaic cell in a bill of sale or design documentation, such as an International Electrotechnical Commission certification (for example, IEC 61215 or IEC 60904).

(2) *Photovoltaic wafer*—(i) *Definition*. *Photovoltaic wafer* means a thin slice, sheet, or layer of semiconductor material of at least 240 square centimeters that comprises the substrate or absorber layer of one or more photovoltaic cells. A photovoltaic wafer must be produced by a single manufacturer by forming an ingot from molten polysilicon (for example, Czochralski method) and then subsequently slicing it into wafers, forming molten or evaporated polysilicon into a sheet or layer, or depositing a thin-film semiconductor photon absorber into a sheet or layer (that is, thin-film deposition).

(ii) *Credit amount*. For a photovoltaic wafer, the credit amount is $12 per square meter.

(3) *Polymeric backsheet*—(i) *Definition*. *Polymeric backsheet* means a sheet on the back of a solar module that acts as an electric insulator and protects the inner components of such module from the surrounding environment.

(ii) *Credit amount*. For a polymeric backsheet, the credit amount is 40 cents per square meter.

(4) *Solar grade polysilicon*—(i) *Definition*. *Solar grade polysilicon* means silicon that is suitable for use in photovoltaic manufacturing and purified to a minimum purity of 99.999999 percent silicon by mass.

(ii) *Credit amount*. For solar grade polysilicon, the credit amount is $3 per kilogram.

(5) *Solar module*—(i) *Definition*. *Solar module* means the connection and lamination of photovoltaic cells into an environmentally protected final assembly that is—

(A) Suitable to generate electricity when exposed to sunlight; and

(B) Ready for installation without an additional manufacturing process.

(ii) *Credit amount*. For a solar module, the credit amount is equal to the product of 7 cents multiplied by the capacity of such module. The capacity of each solar module is expressed on a direct current watt basis. Capacity is the nameplate capacity in direct current watts using Standard Test Conditions, as defined by the International Electrotechnical Commission.

(iii) *Substantiation.* The taxpayer must document the capacity of a solar module in a bill of sale or design documentation, such as an International Electrotechnical Commission certification (for example, IEC 61215 or IEC 61646).

(6) *Solar tracker*. *Solar tracker* means a mechanical system that moves solar modules according to the position of the sun and to increase energy output. A torque tube (as defined in paragraph (b)(7) of this section) or structural fastener (as defined in paragraph (b)(8) of this section) are solar tracker components that are eligible components for purposes of the section 45X credit.

(7) *Torque tube*—(i) *Definition*. *Torque tube* means a structural steel support element (including longitudinal purlins) that—

(A) Is part of a solar tracker;

(B) Is of any cross-sectional shape;

(C) May be assembled from individually manufactured segments;

(D) Spans longitudinally between foundation posts;

(E) Supports solar panels and is connected to a mounting attachment for solar panels (with or without separate module interface rails); and

(F) Is rotated by means of a drive system.

(ii) *Credit amount*. For a torque tube, the credit amount is 87 cents per kilogram.

(iii) *Substantiation*. The taxpayer must document that a torque tube is part of a solar tracker with a specification sheet, bill of sale, or other similar documentation that explicitly describes its application as part of a solar tracker.

(8) *Structural fastener*—(i) *Definition*. *Structural fastener* means a component that is used—

(A) To connect the mechanical and drive system components of a solar tracker to the foundation of such solar tracker;

(B) To connect torque tubes to drive assemblies; or

(C) To connect segments of torque tubes to one another.

(ii) *Credit amount*. For a structural fastener, the credit amount is $2.28 per kilogram.

(iii) *Substantiation*. The taxpayer must document that a structural fastener is used in a manner described in paragraph (b)(8)(i)(A), (B), or (C) of this section with a bill of sale or other similar documentation that explicitly describes such use.

(c) *Wind energy components*. *Wind energy component* means a blade, nacelle, tower, offshore wind foundation, or related offshore wind vessel, each as defined in this paragraph (c).

(1) *Blade*—(i) *Definition*. *Blade* means an airfoil-shaped blade that is responsible for converting wind energy to low-speed rotational energy.

(ii) *Credit amount.* For a blade, the credit amount is equal to the product of 2 cents multiplied by the total rated capacity of the completed wind turbine for which the blade is designed.

(2) *Offshore wind foundation*—(i) *Definition*. *Offshore wind foundation* means the component (including transition piece) that secures an offshore wind tower and any above-water turbine components to the seafloor using—

(A) Fixed platforms, such as offshore wind monopiles, jackets, or gravity-based foundations; or

(B) Floating platforms and associated mooring systems.

(ii) *Credit amount*. For a fixed offshore wind foundation platform, the credit amount is equal to the product of 2 cents multiplied by the total rated capacity of the completed wind turbine for which the fixed offshore wind foundation platform is designed. For a floating offshore wind foundation platform, the credit amount is equal to the product of 4 cents multiplied by the total rated capacity of the completed wind turbine for which the floating offshore wind foundation platform is designed.

(3) *Nacelle*—(i) *Definition*. *Nacelle* means the assembly of the drivetrain and other tower-top components of a wind turbine (with the exception of the blades and the hub) within their cover housing.

(ii) *Credit amount*. For a nacelle, the credit amount is equal to the product of 5 cents multiplied by the total rated capacity of the completed wind turbine for which the nacelle is designed.

(4) *Related offshore wind vessel*—(i) *Definition*. *Related offshore wind vessel* means any vessel that is purpose-built or retrofitted for purposes of the development, transport, installation, operation, or maintenance of offshore wind energy components. A vessel is purpose-built for development, transport, installation, operation, or maintenance of offshore wind energy components if it is built to be capable of performing such functions and it is of a type that is commonly used in the offshore wind industry. A vessel is retrofitted for development, transport, installation, operation, or maintenance of offshore wind energy components if such vessel was incapable of performing such functions prior to being retrofitted, the retrofit causes the vessel to be capable of performing such functions, and the retrofitted vessel is of a type that is commonly used in the offshore wind industry.

(ii) *Credit amount*. For a related offshore wind vessel, the credit amount is equal to 10 percent of the sales price of the vessel. The sales price of the vessel does not include the price of maintenance, services, or other similar items that may be sold with the vessel. For a related offshore wind vessel with respect to which an election under section 45X(a)(3)(B)(i) has been made, such election shall not cause the sale price of such vessel to be treated as having been determined with respect to a transaction between uncontrolled taxpayers for purposes of section 482 of the Code and the regulations in this chapter.

(5) *Tower*—(i) *Definition*. *Tower* means a tubular or lattice structure that supports the nacelle and rotor of a wind turbine.

(ii) *Credit amount*. For a tower, the credit amount is equal to the product of 3 cents multiplied by the total rated capacity of the completed wind turbine for which the tower is designed.

(6) *Total rated capacity of the completed wind turbine.* For purposes of this section, *total rated capacity of the completed wind turbine* means, for the completed wind turbine for which a blade, nacelle, offshore wind foundation, or tower was manufactured and sold, the nameplate capacity at the time of sale as certified to the relevant national or international standards, such as International Electrotechnical Commission (IEC) 61400, or ANSI/ACP 101-1-2021, the Small Wind Turbine Standard. Certification of the turbine to such standards must be documented by a certificate issued by an accredited certification body. The total rated capacity of a wind turbine must be expressed in watts.

(7) *Substantiation.* Taxpayers must maintain specific documentation regarding wind energy components for which a section 45X credit is claimed. For blades, nacelles, offshore wind foundations, or towers, a taxpayer must document the turbine model for which such component is designed and the total rated capacity of the completed wind turbine in technical documentation associated with the sale of such component.

(d) *Inverters*—(1) *In general*. *Inverter* means an end product that is suitable to convert direct current (DC) electricity from 1 or more solar modules or certified distributed wind energy systems into alternating current electricity. An end product is suitable to convert DC electricity from 1 or more solar modules or certified distributed wind energy systems into alternating current electricity if, in the form sold by the manufacturer, it is able to connect with such modules or systems and convert DC electricity to alternating current electricity from such connected source. The term inverter includes a central inverter, commercial inverter, distributed wind inverter, microinverter, or residential inverter. Only an inverter that meets at least one of the requirements in paragraphs (d)(2) through (7) of this section is an eligible component for purposes of the section 45X credit.

(2) *Central inverter*—(i) *Definition. Central inverter* means an inverter that is suitable for large utility-scale systems and has a capacity that is greater than 1,000 kilowatts. The capacity of a central inverter is expressed on an alternating current watt basis. An inverter is suitable for large utility-scale systems if, in the form sold by the manufacturer, it is capable of serving as a component in a large utility-scale system and meets the core engineering specifications for such application.

(ii) *Credit amount*. For a central inverter the total rated capacity of which is expressed on an alternating current watt basis, the credit amount is equal to the product of 0.25 cents multiplied by the total rated capacity of the central inverter.

(iii) *Substantiation.* The taxpayer must document that a central inverter meets the core engineering specifications for use in a large utility-scale system and has a capacity that is greater than 1,000 kilowatts with a specification sheet, bill of sale, or other similar documentation that explicitly describes such specifications and capacity.

(3) *Commercial inverter*—(i) *Definition*. *Commercial inverter* means an inverter that—

(A) Is suitable for commercial or utility-scale applications;

(B) Has a rated output of 208, 480, 600, or 800 volt three-phase power; and

(C) Has a capacity expressed on an alternating current watt basis that is not less than 20 kilowatts and not greater than 125 kilowatts.

(ii) *Suitable for commercial or utility-scale applications*. An inverter is suitable for commercial or utility-scale applications if, in the form sold by the manufacturer, it is capable of serving as a component in commercial or utility-scale systems and meets the core engineering specifications for such application.

(iii) *Credit amount*. For a commercial inverter the total rated capacity of which is expressed on an alternating current watt basis, the credit amount is equal to the product of 2 cents multiplied by the total rated capacity of the commercial inverter.

(iv) *Substantiation.* The taxpayer must document that a commercial inverter meets the core engineering specifications for use in commercial or utility-scale applications, the inverter's rated output, and the inverter's capacity in a specification sheet, bill of sale, or other similar documentation.

(4) *Distributed wind inverter*—(i) *In general*. *Distributed wind inverter* means an inverter that is used in a residential or non-residential system that utilizes 1 or more certified distributed wind energy systems and has a total rated output, expressed on an alternating current watt basis, of not greater than 150 kilowatts.

(ii) *Certified distributed wind energy system*. *Certified distributed wind energy system* means a wind energy system that is certified by an accredited certification agency to meet Standard 9.1-2009 of the American Wind Energy Association; International Electrotechnical Commission 61400-1, 61400-2, 61400-11, 61400-12; or ANSI/ACP 101-1-2021, the Small Wind Turbine Standard, including any subsequent revisions to or modifications of such Standard that have been approved by the American National Standards Institute.

(iii) *Credit amount*. For a distributed wind inverter the total rated capacity of which is expressed on an alternating current watt basis, the credit amount is equal to the product of 11 cents multiplied by the total rated capacity of the distributed wind inverter.

(iv) *Substantiation.* The taxpayer must document that a distributed wind inverter is used in a residential or non-residential system that utilizes one or more certified distributed wind energy systems with a specification sheet, bill of sale, or other similar documentation that explicitly describes such use and the total rated output of the inverter on an alternating current watt basis.

(5) *Microinverter*—(i) *Definition*. *Microinverter* means an inverter that—

(A) Is suitable to connect with one solar module;

(B) Has a rated output described in paragraph (d)(5)(ii) of this section; and

(C) Has a capacity, expressed on an alternating current watt basis, that is not greater than 650 watts.

(ii) *Rated output*. For purposes of paragraph (d)(5)(i)(B) of this section, for an inverter to be a microinverter, the inverter must have a rated output of—

(A) 120 or 240 volt single-phase power; or

(B) 208 or 480 volt three-phase power.

(iii) *Suitable to connect to one solar module*—(A) *In general*. An inverter is suitable to connect to one solar module if, in the form sold by the manufacturer, it is capable of connecting to one or more solar modules and regulating the DC electricity from each module independently before that electricity is converted into alternating current electricity.

(B) *Application to direct current (DC) optimized inverter systems*. A *DC optimized inverter system* means an inverter that is comprised of an inverter connected to multiple DC optimizers that are each designed to connect to one solar module. A DC optimized inverter system is suitable to connect with one solar module if, in the form sold by the manufacturer, it is capable of connecting to one or more solar modules and regulating the DC electricity from each module independently before that electricity is converted into alternating current electricity.

(C) *Application to multi-module inverters*. A *multi-module inverter* means an inverter that is comprised of an inverter with independent connections and DC optimizing components for two or more modules. A multi-module microinverter is suitable to connect with one solar module if it is capable of connecting to one or more solar modules and regulating the DC electricity from each module independently before that electricity is converted into alternating current electricity.

(iv) *Credit amount*—(A) *In general.* For a microinverter the total rated capacity of which is expressed on an alternating current watt basis, the credit amount is equal to the product of 11 cents multiplied by the total rated capacity of the microinverter.

(B) *DC optimized inverter systems*. A DC optimized inverter system qualifies as a microinverter if it meets the requirements of paragraph (d)(5)(i) of this section. For purposes of paragraph (d)(5)(i)(C) of this section, a DC optimized inverter system's capacity is determined separately for each DC optimizer paired with the inverter in a DC optimized inverter system. If each DC optimizer paired with the inverter in a DC optimized inverter system meets the requirements of paragraph (d)(5)(i) of this section, then the DC optimized inverter system qualifies as a microinverter. The credit amount for a DC optimized inverter system that qualifies as a microinverter is equal to the product of 11 cents multiplied by the lesser of the sum of the alternating current capacity of each DC optimizer when paired with the inverter in the DC optimized inverter system or the alternating current capacity of the inverter in the DC optimized inverter system. For purposes of this paragraph (d)(5)(iv)(B), capacity must be measured in watts of alternating current converted from DC electricity by the inverter in a DC optimized inverter system. For a DC optimized inverter system to qualify as a microinverter, a taxpayer must produce and sell the inverter and the DC optimizers in the DC optimized inverter system together as a combined end product.

(C) *Multi-module inverters*. A multi-module inverter qualifies as a microinverter if it meets the requirements of paragraph (d)(5)(i) of this section. For purposes of paragraph (d)(5)(i)(C) of this section, a multi-module inverter's capacity is determined separately for each internal DC optimizer paired with the inverter. The credit amount for a multi-module inverter is equal to the product of 11 cents multiplied by the total alternating current capacity of the DC optimizers in the multi-module inverter when paired with the inverter in the system. For purposes of this paragraph (d)(5)(iv)(C), capacity must be measured in watts of alternating current converted from DC electricity by the inverter in a multi-module microinverter.

(v) *Substantiation.* The taxpayer must document that a microinverter meets the core engineering specifications to be suitable to connect with one solar module, the inverter's rated output, and the inverter's

capacity in a specification sheet, bill of sale, or other similar documentation. In the case of a DC optimized inverter system, the taxpayer must also document that the DC optimizers and the inverter in such system were sold as a combined end product.

(6) *Residential inverter*—(i) *Definition*. *Residential inverter* means an inverter that—

(A) Is suitable for a residence;

(B) Has a rated output of 120 or 240 volt single-phase power; and

(C) Has a capacity expressed on an alternating current watt basis that is not greater than 20 kilowatts.

(ii) *Suitable for a residence*. An inverter is suitable for a residence if, in the form sold by the manufacturer, it is capable of serving as a component in a residential system and meets the core engineering specifications for such application.

(iii) *Credit amount*. For a residential inverter the total rated capacity of which is expressed on an alternating current watt basis, the credit amount is equal to the product of 6.5 cents multiplied by the total rated capacity of the residential inverter.

(iv) *Substantiation*. The taxpayer must document that a residential inverter meets the core engineering specifications for use in a residence, the inverter's rated output, and the inverter's capacity in a specification sheet, bill of sale, or other similar documentation.

(7) *Utility inverter*—(i) *Definition*. *Utility inverter* means an inverter that—

(A) Is suitable for commercial or utility-scale systems;

(B) Has a rated output of not less than 600 volt three-phase power; and

(C) Has a capacity expressed on an alternating current watt basis that is greater than 125 kilowatts and not greater than 1000 kilowatts.

(ii) *Suitable for commercial or utility-scale systems*. An inverter is suitable for commercial or utility-scale systems if, in the form sold by the manufacturer, it is capable of serving as a component in such systems and meets the core engineering specifications for such application.

(iii) *Credit amount*. For a utility inverter the total rated capacity of which is expressed on an alternating current watt basis, the credit amount is equal to the product of 1.5 cents multiplied by the total rated capacity of the utility inverter.

(iv) *Substantiation*. The taxpayer must document that a utility inverter meets the core engineering specifications for use in commercial or utility-scale systems, the inverter's rated output, and the inverter's capacity in a specification sheet, bill of sale, or other similar documentation.

(e) *Qualifying battery component*—(1) *In general*. *Qualifying battery component* means electrode active materials, battery cells, or battery modules, each as defined in this paragraph (e).

(2) *Electrode active materials*—(i) *Definitions*—(A) *Electrode active materials.* Electrode active materials means cathode electrode materials, anode electrode materials, and electrochemically active materials that contribute to the electrochemical processes necessary for energy storage. Electrode active materials do not include battery management systems, terminal assemblies, cell containments, gas release valves, module containments, module connectors, compression plates, straps, pack terminals, bus bars, thermal management systems, and pack jackets.

(B) *Cathode electrode materials.* Cathode electrode materials means the materials that comprise the cathode of a commercial battery technology, such as binders, and current collectors (for example, cathode foils).

(C) *Anode electrode materials.* Anode electrode materials means the materials that comprise the anode of a commercial battery technology, including anode foils.

(D) *Electrochemically active materials.* Electrochemically active materials that contribute to the electrochemical processes necessary for energy storage means battery-grade materials that enable the electrochemical storage within a commercial battery technology. In addition to solvents, additives, and electrolyte salts, electrochemically active materials that contribute to the electrochemical processes necessary for energy storage may include electrolytes, catholytes, anolytes, separators, and metal salts and oxides.

(E) *Example*. A commercial battery technology contains Cathode Active Material (CAM), which is a powder used in the battery that is made by processing and combining Battery-Grade Materials A and B. Battery-Grade Material A is a derivative of Material C, which has been refined to the necessary level to enable electrochemical storage. The production costs for CAM and its direct inputs (Battery-Grade Material A and Battery-Grade Material B) are eligible for the section 45X credit for electrode active materials, but the unrefined Material C is not.

(F) *Battery-grade materials.* Battery-grade materials means the processed materials found in a final battery cell or an analogous unit, or the direct battery-grade precursors to those processed materials.

(ii) *Credit amount*. For an electrode active material, the credit amount is equal to 10 percent of the costs incurred by the taxpayer with respect to production of such materials.

(iii) *Production processes for electrode active materials*—(A) *Conversion*. For purposes of section 45X, the term *conversion* means a chemical transformation from one species to another.

(B) *Purification*. For purposes of section 45X, the term *purification* means increasing the mass fraction of a certain element.

(iv) *Production costs incurred.* Costs incurred by the taxpayer with respect to production of electrode active materials includes all costs as defined in §1.263A-1(e) that are paid or incurred within the meaning of section 461 of the Code by the taxpayer for the production of an electrode active material only, except direct materials costs as defined in §1.263A-1(e)(2)(i)(A), or indirect materials costs as defined in §1.263A-1(e)(3)(ii)(E), and any costs related to the extraction of raw materials. Section 263A of the Code and the regulations in this chapter under section 263A apply solely to identify the types of costs that are includible in production costs incurred for purposes of computing the amount of the section 45X credit, but do not apply for any other purpose, such as to determine whether a taxpayer is engaged in production activities.

(v) *Materials that are both electrode active materials and applicable critical minerals*—(A) *In general*. A material that qualifies as an electrode active material

and an applicable critical material is eligible for the section 45X credit. A taxpayer may claim the section 45X credit with respect to such material either as an electrode active material or an applicable critical material, but not both.

(B) *Example.* Lithium carbonate is an electrode active material because it is a direct battery-grade precursor to electrolyte salts, which are processed materials found in a final battery cell. Lithium carbonate is also eligible for the 45X critical minerals credit. A taxpayer who produces and sells lithium carbonate may claim either the electrode active material credit or the critical mineral credit for its production and sale of lithium carbonate but may not take both credits.

(3) *Battery cells*—(i) *Definition*. *Battery cell* means an electrochemical cell—

(A) Comprised of one or more positive electrodes and one or more negative electrodes;

(B) With an energy density of not less than 100 watt-hours per liter; and

(C) Capable of storing at least 12 watt-hours of energy.

(ii) *Capacity measurement*. Taxpayers must measure the capacity of a battery cell in accordance with a national or international standard, such as IEC 60086-1 (Primary Batteries), or an equivalent standard. Taxpayers can reference the United States Advanced Battery Consortium (USABC) Battery Test Manual for additional guidance.

(iii) *Credit amount*. For a battery cell, the credit amount is equal to the product of $35 multiplied by the capacity of such battery cell, subject to the limitation provided in paragraph (e)(5) of this section. The capacity of a battery cell is expressed on a kilowatt-hour basis.

(4) *Battery module definitions and applicable rules*—(i) *Battery module defined*. The term *battery module* means a module described in paragraph (e)(4)(i)(A) or (B) of this section with an aggregate capacity of not less than 7 kilowatt-hours (or, in the case of a module for a hydrogen fuel cell vehicle, not less than 1 kilowatt-hour).

(A) *Modules using battery cells.* A module using battery cells, is a module with two or more battery cells that are configured electrically, in series or parallel, to create voltage or current, as appropriate, to a specified end use, meaning an end-use configuration of battery technologies. An end-use configuration is the product that ultimately serves a specified end use. It is the collection of interconnected cells, configured to that specific end-use and interconnected with the necessary hardware and software required to deliver the required energy and power (voltage and current) for that use.

(B) *Modules with no battery cells.* A *module with no battery cells* means a product with a standardized manufacturing process and form that is capable of storing and dispatching useful energy, that contains an energy storage medium that remains in the module (for example, it is not consumed through combustion), and that is not a custom-built electricity generation or storage facility. For example, neither standalone fuel storage tanks nor fuel tanks connected to engines or generation systems qualify as modules with no battery cells.

(ii) *Capacity measurement*—(A) *Modules using battery cells*. Taxpayers must measure the capacity of a module using battery cells with a testing procedure that complies with a national or international standard published by a recognized standard setting organization. The capacity of a battery module may not exceed the total capacity of the battery cells in the module. Taxpayers must measure the capacity of a battery cell in accordance with a national or international standard, such as IEC 60086-1 (Primary Batteries), or an equivalent standard. Taxpayers can reference the USABC Battery Test Manual for additional guidance.

(B) *Modules with no battery cells.* Taxpayers must measure the capacity of a module with no battery cells with a testing procedure that complies with a national or international standard published by a recognized standard setting organization. If no such standard applies to a type of module with no battery cells, taxpayers must measure the capacity of such module as the Secretary may prescribe in regulations or other guidance.

(iii) *Credit amount*—(A) *Modules using battery cells.* For a battery module with cells, the credit amount is equal to the product of $10 multiplied by the capacity of such battery module, subject to the limitation provided in paragraph (e)(5) of this section. The capacity of each battery module is expressed on a kilowatt-hour basis.

(B) *Modules with no battery cells*. For a battery module without cells, the credit amount is equal to the product of $45 multiplied by the capacity of such battery module, subject to the limitation provided in paragraph (e)(5) of this section. The capacity of each battery module is expressed on a kilowatt-hour basis.

(5) *Limitation on capacity of battery cells and battery modules*—(i) *In general*. For purposes of paragraphs (e)(3)(iii) and (e)(4)(iii) of this section, the capacity determined with respect to a battery cell or battery module must not exceed a capacity-to-power ratio of 100:1.

(ii) *Capacity to power ratio*. For purposes of paragraph (e)(5)(i) of this section, *capacity-to-power ratio* means, with respect to a battery cell or battery module, the ratio of the capacity of such cell or module to the maximum discharge amount of such cell or module.

(f) *Phase out rule*—(1) *In general.* Except as provided in paragraph (f)(3) of this section, in the case of any eligible component sold after December 31, 2029, the amount of the section 45X credit determined with respect to such eligible component must be equal to the product of—

(i) The amount determined under this section with respect to such eligible component, multiplied by;

(ii) The phase out percentage under paragraph (f)(2) of this section.

(2) *Phase out percentages*. The phase out percentage is equal to 75 percent for eligible components sold during calendar year 2030; 50 percent for eligible components sold during calendar year 2031; 25 percent for eligible components sold during calendar year 2032, and zero percent for eligible components sold after calendar year 2032.

(3) *Exception for applicable critical minerals*. The phase out rules described in paragraphs (f)(1) and (2) of this section apply to all eligible components except applicable critical minerals.

(g) *Severability.* The provisions of this section are separate and severable

from one another. If any provision of this section is stayed or determined to be invalid, it is the agencies' intention that the remaining provisions shall continue in effect.

(h) *Applicability date.* This section applies to eligible components for which production is completed and sales occur after December 31, 2022, and during a taxable year ending on or after [date of publication of the final regulations in the **Federal Register**].

§1.45X-4 Applicable critical minerals.

(a) *In general.* The term *applicable critical mineral* means any of the minerals that are listed in section 45X(c)(6) and defined in paragraph (b) of this section.

(b) *Definitions*—(1) *Aluminum*. The term *commodity-grade aluminum* means aluminum that has been produced directly from aluminum described in paragraph (b)(1)(i) or (ii) of this section and is in a form that is sold on international commodity exchanges. The term *aluminum* means aluminum, including commodity-grade aluminum, that is—

(i) Converted from bauxite to a minimum purity of 99 percent alumina by mass; or

(ii) Purified to a minimum purity of 99.9 percent aluminum by mass.

(2) *Antimony*. The term *antimony* means antimony that is—

(i) Converted to antimony trisulfide concentrate with a minimum purity of 90 percent antimony trisulfide by mass; or

(ii) Purified to a minimum purity of 99.65 percent antimony by mass.

(3) *Barite*. The term *barite* means barite that is barium sulfate purified to a minimum purity of 80 percent barite by mass.

(4) *Beryllium*. The term *beryllium* means beryllium that is—

(i) Converted to copper-beryllium master alloy; or

(ii) Purified to a minimum purity of 99 percent beryllium by mass.

(5) *Cerium*. The term *cerium* means cerium that is—

(i) Converted to cerium oxide that is purified to a minimum purity of 99.9 percent cerium oxide by mass; or

(ii) Purified to a minimum purity of 99 percent cerium by mass.

(6) *Cesium*. The term *cesium* means cesium that is—

(i) Converted to cesium formate or cesium carbonate; or

(ii) Purified to a minimum purity of 99 percent cesium by mass.

(7) *Chromium*. The term *chromium* means chromium that is—

(i) Converted to ferrochromium consisting of not less than 60 percent chromium by mass; or

(ii) Purified to a minimum purity of 99 percent chromium by mass.

(8) *Cobalt*. The term *cobalt* means cobalt that is—

(i) Converted to cobalt sulfate; or

(ii) Purified to a minimum purity of 99.6 percent cobalt by mass.

(9) *Dysprosium*. The term *dysprosium* means dysprosium that is—

(i) Converted to not less than 99 percent pure dysprosium iron alloy by mass; or

(ii) Purified to a minimum purity of 99 percent dysprosium by mass.

(10) *Europium*. The term *europium* means europium that is—

(i) Converted to europium oxide that is purified to a minimum purity of 99.9 percent europium oxide by mass; or

(ii) Purified to a minimum purity of 99 percent of europium by mass.

(11) *Fluorspar*. The term *fluorspar* means fluorspar that is—

(i) Converted to fluorspar that is purified to a minimum purity of 97 percent calcium fluoride by mass; or

(ii) Purified to a minimum purity of 99 percent fluorspar by mass.

(12) *Gadolinium*. The term *gadolinium* means gadolinium that is—

(i) Converted to gadolinium oxide that is purified to a minimum purity of 99.9 percent gadolinium oxide by mass; or

(ii) Purified to a minimum purity of 99 percent gadolinium by mass.

(13) *Germanium*. The term *germanium* means germanium that is—

(i) Converted to germanium tetrachloride; or

(ii) Purified to a minimum purity of 99.99 percent germanium by mass.

(14) *Graphite*. The term *graphite* means natural or synthetic graphite that is purified to a minimum purity of 99.9 percent graphitic carbon by mass. The term *99.9 percent graphitic carbon by mass* means graphite that is 99.9 percent carbon by mass.

(15) *Indium*. The term *indium* means indium that is—

(i) Converted to—

(A) Indium tin oxide; or

(B) Indium oxide that is purified to a minimum purity of 99.9 percent indium oxide by mass; or

(ii) Purified to a minimum purity of 99 percent indium by mass.

(16) *Lithium.* The term *lithium* means lithium that is—

(i) Converted to lithium carbonate or lithium hydroxide; or

(ii) Purified to a minimum purity of 99.9 percent lithium by mass.

(17) *Manganese*. The term *manganese* means manganese that is—

(i) Converted to manganese sulphate; or

(ii) Purified to a minimum purity of 99.7 percent manganese by mass.

(18) *Neodymium*. The term *neodymium* means neodymium that is—

(i) Converted to neodymium-praseodymium oxide that is purified to a minimum purity of 99 percent neodymium-praseodymium oxide by mass;

(ii) Converted to neodymium oxide that is purified to a minimum purity of 99.5 percent neodymium oxide by mass; or

(iii) Purified to a minimum purity of 99.9 percent neodymium by mass.

(19) *Nickel*. The term *nickel* means nickel that is—

(i) Converted to nickel sulphate; or

(ii) Purified to a minimum purity of 99 percent nickel by mass.

(20) *Niobium*. The term *niobium* means niobium that is—

(i) Converted to ferronibium; or

(ii) Purified to a minimum purity of 99 percent niobium by mass.

(21) *Tellurium*. The term *tellurium* means tellurium that is—

(i) Converted to cadmium telluride; or

(ii) Purified to a minimum purity of 99 percent tellurium by mass.

(22) *Tin*. The term *tin* means tin that purified to low alpha emitting tin that—

(i) Has a purity of greater than 99.99 percent by mass; and

(ii) Possesses an alpha emission rate of not greater than 0.01 counts per hour per centimeter square.

(23) *Tungsten*. The term *tungsten* means tungsten that is converted to ammonium paratungstate or ferrotungsten.

(24) *Vanadium*. The term *vanadium* means vanadium that is converted to ferrovanadium or vanadium pentoxide.

(25) *Yttrium*. The term *yttrium* means yttrium that is—

(i) Converted to yttrium oxide that is purified to a minimum purity of 99.999 percent yttrium oxide by mass; or

(ii) Purified to a minimum purity of 99.9 percent yttrium by mass.

(26) *Other minerals*. The following minerals are also applicable critical minerals provided that such mineral is purified to a minimum purity of 99 percent by mass:

(i) Arsenic.
(ii) Bismuth.
(iii) Erbium.
(iv) Gallium.
(v) Hafnium.
(vi) Holmium.
(vii) Iridium.
(viii) Lanthanum.
(ix) Lutetium.
(x) Magnesium.
(xi) Palladium.
(xii) Platium.
(xiii) Praseodymium.
(xiv) Rhodium.
(xv) Rubidium.
(xvi) Ruthemium.
(xvii) Samarium.
(xviii) Scandium.
(xix) Tantalum.
(xx) Terbium.
(xxi) Thulium.
(xxii) Titanium.
(xxiii) Ytterbium.
(xxiv) Zinc.
(xxv) Zirconium.

(c) *Credit amount*—(1) *In general.* For any applicable critical mineral, the credit amount is equal to 10 percent of the costs incurred by the taxpayer with respect to production of such mineral.

(2) *Production processes for applicable critical minerals*—(i) *Conversion*. For purposes of section 45X, the term *conversion* means a chemical transformation from one species to another.

(ii) *Purification*. For purposes of section 45X, the term *purification* means increasing the mass fraction of a certain element.

(3) *Production costs incurred*. Costs incurred by the taxpayer with respect to the production of applicable critical minerals includes all costs as defined in §1.263A-1(e) that are paid or incurred within the meaning of section 461 of the Code by the taxpayer for the production of an applicable critical mineral only, except direct or indirect materials costs as defined in §1.263A-1(e)(2)(i)(A) and (e)(3)(ii)(E), respectively, and any costs related to the extraction of raw materials. Section 263A of the Code and the regulations in this chapter under section 263A apply solely to identify the types of costs that are includible in production costs incurred for purposes of computing the amount of the section 45X credit, but do not apply for any other purpose, such as to determine whether a taxpayer is engaged in production activities.

(4) *Substantiation*. The taxpayer must document that an applicable critical mineral meets the requirements of section 45X(c)(6) with a certificate of analysis provided by the taxpayer to the person to which the taxpayer sold the applicable critical mineral.

(d) *Severability.* The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agencies' intention that the remaining provisions shall continue in effect.

(e) *Applicability date*. This section applies to eligible components for which production is completed and sales occur after December 31, 2022, and during a taxable year ending on or after [date of publication of the final regulations in the **Federal Register**].

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

(Filed by the Office of the Federal Register December 14, 2023, 8:45 a.m., and published in the issue of the Federal Register for December 15, 2023, 88 FR 86844)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List[1]

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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 26, 2023.

Finding List of Current Actions on Previously Published Items[1]

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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 26, 2023.

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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

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