INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2024–21
May 20, 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.

ADMINISTRATIVE

Announcement 2024-18, page 1234.

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers. These individuals are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Part 10, and which are published in pamphlet form as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations.

EXCISE TAX, INCOME TAX

Notice 2024-37, page 1191.

Notice 2024-37 discusses the new 40BSAF-GREET 2024 model as a qualifying method under section 40B(e)(2) and provides a safe harbor for calculating emissions reduction using the 40BSAF-GREET 2024 model and a safe harbor for the related certification requirements. Notice 2024-37 also provides a safe harbor for using the United States Department of Agriculture Climate Smart Agriculture Pilot Program to further reduce the emissions reduction calculated using 40BSAF-GREET 2024 for domestic soybean and domestic corn feedstocks, as well as a safe harbor for the related certification requirements for that program.

EXEMPT ORGANIZATIONS

Announcement 2024-21, page 1236.

Revocation of IRC 501(c)(3) Organizations for failure to meet the code section requirements. Contributions made to the organizations by individual donors are no longer deductible under IRC 170(b)(1)(A).

INCOME TAX

Notice 2024-38, page 1211.

This notice accompanies Rev. Proc. 2024-24, which provides procedures for requesting private letter rulings from the IRS regarding certain matters pertaining to section 355 transactions. Specifically, this notice requests public feedback on the provisions set forth in Rev. Proc. 2024-24 and describes the Treasury Department's and IRS's views and concerns relating to certain matters addressed in the revenue procedure.

REG-117631-23, page 1237.

This document supplements the notice of proposed rulemaking issued by the Treasury Department and the IRS on December 26, 2023, relating to the Section 45V credit for the production of clean hydrogen and the Section 48(a)(15) election to treat clean hydrogen production facilities as energy property. This document contains supplemental information for taxpayers to request an emissions value from the Department of Energy to petition the Secretary of the Treasury for a provisional emissions rate as described in Section 45V(c)(2)(C) and proposed § 1.45V-4.

Rev. Proc. 2024-24, page 1214.

This revenue procedure provides updated procedures for taxpayers requesting private letter rulings from the IRS regarding certain matters pertaining to section 355 transactions, including representations, information, and analysis to be submitted with those requests. This revenue procedure modifies Rev. Proc. 2017-52, 2017-41 I.R.B. 283, and supersedes Rev. Proc. 2018-53, 2018-43 I.R.B. 667.

Finding Lists begin on page ii.

T.D. 9992, page 1175.

This document contains final regulations that address the determination of whether a qualified investment entity is domestically controlled, including the treatment of qualified foreign pension funds for this purpose. In particular, these final regulations provide guidance as to when foreign persons are considered to hold directly or indirectly stock in a qualified investment entity. The final regulations primarily affect foreign persons that own stock in a qualified investment entity that would be a United States real property interest if the qualified investment entity were not domestically controlled.

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

T.D. 9992

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Guidance on the Definition of Domestically Controlled Qualified Investment Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that address the determination of whether a qualified investment entity is domestically controlled, including the treatment of qualified foreign pension funds for this purpose. In particular, these final regulations provide guidance as to when foreign persons are considered to hold directly or indirectly stock in a qualified investment entity. The final regulations primarily affect foreign persons that own stock in a qualified investment entity that would be a United States real property interest if the qualified investment entity were not domestically controlled.

DATES: *Effective date:* These regulations are effective on April 25, 2024.

Applicability date: For the date of applicability, *see* §§1.897-1(a)(2) and 1.1445- 2(e).

FOR FURTHER INFORMATION CONTACT: Milton Cahn at (202) 317-4934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 29, 2022, the Treasury Department and the IRS published proposed regulations (REG-100442-22), relating to the treatment of certain entities, including qualified foreign pension funds ("QFPFs"), for purposes of the exemption from taxation afforded to foreign governments under section 892 of the Internal Revenue Code (the "Code"), and the determination of whether a qualified investment entity ("QIE") is domestically controlled under section 897(h)(4)(B) of the Code, in the **Federal Register** (87 FR 80097) (the "proposed regulations"). This Treasury decision finalizes the proposed regulations, other than those portions addressing the section 892 exemption (which will be addressed in a separate rulemaking), after taking into account and addressing comments with respect to the proposed regulations. Terms used but not defined in this preamble have the meaning provided in the final regulations.

Comments outside the scope of this rulemaking are generally not addressed but may be considered in connection with future regulations. All written comments received in response to the proposed regulations are available at www.regulations.gov or upon request. A public hearing on the proposed regulations was not held because there were no requests to speak.

Summary of Comments and Explanation of Revisions

The final regulations retain the general approach and structure of the proposed regulations, with certain revisions. This section of the preamble discusses the comments received in response to the proposed regulations and explains the revisions reflected in the final regulations.

I. *Domestic Corporation Look-Through Rule*

A. *Background*

The proposed regulations set forth proposed rules for determining whether stock of a QIE is considered "held directly or indirectly" by foreign persons for purposes of defining a domestically controlled QIE under section 897(h)(4)(B). The proposed regulations defined stock in a QIE that is held "indirectly" by taking into account stock of the QIE held through certain entities under a limited "look-through" approach. As described in the preamble to the proposed regulations, this approach gives effect to both the policy of the exception for domestically controlled QIEs in section 897(h)(2) ("DC-QIE exception"), which is limited to QIEs controlled by United States persons, and the requirement in section 897(h)(4)(B) to take into account "indirect" ownership of QIE stock by foreign persons in determining whether a QIE is domestically controlled. 87 FR 80100. The preamble to the proposed regulations also explained that this approach prevents the use of intermediary entities to achieve results contrary to the purposes of the DC-QIE exception. *Id.* at 80100-01.

The proposed regulations addressed the meaning of direct or indirect ownership by setting forth two categories of potential QIE owners, "look-through persons" and "non-look-through persons." Proposed §1.897-1(c)(3)(ii). The proposed regulations generally treated a "domestic C corporation," defined as any domestic corporation other than a regulated investment company ("RIC") under section 851, a real estate investment trust ("REIT") under section 856, or an S corporation under section 1361, as a non-look-through person. Proposed §1.897-1(c)(3)(v)(A) and (D). However, the proposed regulations treated non-publicly traded domestic C corporations as look-through persons if foreign persons hold a 25 percent or greater interest (by value) in the stock of the corporation (the "domestic corporation look-through rule"). Proposed §1.897-1(c)(3)(iii)(B) and (c)(3)(v)(B).

Comments generally did not raise concerns with the general look-through approach for determining domestic control of a QIE as it applied to most entities (for example, the treatment of partnerships) but asserted that the domestic corporation look-through rule raises significant issues and should be withdrawn or, if retained, modified to reduce its scope. These comments are addressed in turn in parts I.B. and I.C. of this Summary of Comments and Explanation of Revisions.

B. *Comments recommending withdrawal of the domestic corporation look-through rule*

Comments generally recommended that the domestic corporation look-through rule be withdrawn on three related grounds: first, that the rule is based on an incorrect reading of the Code, which for this purpose does not permit look-through treatment for domestic C corporations, including because there are no explicit rules providing for constructive ownership (such as those in section 318) under section 897(h)(4)(B); second, that the enactment of other related legislation (or consideration of legislation) demonstrates the rule is inconsistent with congressional intent; and third, that the rule is not necessary because domestic C corporations are subject to U.S. tax. Certain comments also based their recommendation to withdraw the domestic corporation look-through rule on the contention that the rule would negatively impact the U.S. real estate market or otherwise harm the broader U.S. economy.

The Treasury Department and the IRS have determined that it is necessary and appropriate to provide guidance regarding the meaning of "indirect" for determining whether foreign persons are considered to hold less than 50 percent of the value of the stock of a QIE. Every word in a statute must be given effect, and both the proposed and final regulations give effect to the term "indirectly" as used in section 897(h)(4)(B) by adopting a limited look-through approach that includes the domestic corporation look-through rule (as modified in the final regulations). The domestic corporation look-through rule does not apply specific constructive ownership rules like those in section 318. Rather, the guidance gives meaning to indirect ownership under section 897(h)(4)(B) in light of the purpose of the DC-QIE exception. Because the final regulations carry out the statute's mandate to determine indirect ownership rather than constructive ownership, the fact that other parts of section 897 refer to section 318 is irrelevant to the determination of whether a QIE is domestically controlled.

The Treasury Department and the IRS do not agree that the enactment of section 897(h)(4)(E) in section 322(b)(1)(A) of the Protecting Americans from Tax Hikes Act of 2015, Public Law 114-113, div. Q (the "PATH Act"), informs whether the domestic corporation look-through rule should be applied under section 897(h)(4)(B). The rules added in section 897(h)(4)(E) do not prescribe how to interpret the meaning of "indirectly" in section 897(h)(4)(B), nor do they suggest that Congress intended for that provision to set out the only rules for QIE stock held by domestic corporations. Although section 897(h)(4)(E) provides certain rules for looking through QIE stock held by another QIE for purposes of the DC-QIE exception, the absence of other specific rules in the statute on whether domestic C corporations (or any other type of entity) should be looked through does not mean that all other entities should be non-look-through persons.

The Treasury Department and the IRS also disagree with the observation in comments that Congress sanctioned the approach taken by a 2009 private letter ruling (the "2009 PLR") that treated QIE stock held by a domestic C corporation as owned by a domestic person.[1] The brief citation to that ruling in a report by the Joint Committee on Taxation is neutral and merely restates the holding in the ruling in its description of the then current law. *See* STAFF OF THE JOINT COMM. ON TAX'N, General Explanation of Tax Legislation Enacted in 2015 (JCS–1–16) 279 (2016) (the "JCT Report").[2] The JCT Report did not express any view regarding the effect of the 2009 PLR or indicate that Congress endorsed a rule that precludes looking through domestic C corporations in all cases, and it caveated that a private letter ruling may only be relied on by the specific taxpayer to which it was issued and only provided "some indication of administrative practice." *See* section 6110(k)(3). This is in contrast to other instances where Congress has explicitly endorsed an approach taken by the IRS. *See, for example*, H.R. Rep. No. 103-111, at 727-29 (1993) (in enacting section 7701(l), citing Rev. Rul. 84-152, 1984-2 C.B. 381, Rev. Rul. 84-153 1984-2 C.B. 1, and Rev. Rul. 87-89, 1987-2 C.B. 195, in stating the "committee believes that the above-cited IRS rulings appropriately ignore conduit entities and properly recharacterize the transactions described therein."); S. Rep. No. 95-762, at 8 (1978) (stating that the IRS's "ruling position is correct" in enacting rules consistent with private letter rulings indicating that certain income earned by exempt organizations was not taxable as debt-financed income). Accordingly, the Treasury Department and the IRS have concluded that the JCT Report's reference to the 2009 PLR does not affect the application of the domestic corporation look-through rule.

Likewise, the Treasury Department and the IRS disagree with comments that emphasized the discussion draft released by the Senate Committee on Finance in 2013 (the "2013 Discussion Draft") and the absence of any related changes to section 897 in the PATH Act. The relevant provision in the 2013 Discussion Draft would have replaced the "held directly or indirectly" language in section 897(h)(4)(B) with specific constructive ownership rules in section 318 (not just those applicable to corporations) to address uncertainty in the determination of indirect ownership. *See* STAFF OF THE JOINT COMM. ON TAX'N, Technical Explanation of the Senate Committee on Finance Chairman's Staff Discussion Draft of Provisions to Reform International Business Taxation (JCX-15-13) 84 (2013). The 2013 Discussion Draft, however, is not authoritative and has no relevance because it was neither introduced as a bill nor enacted into law. Moreover, Congress did not provide any explanation as to why constructive ownership rules under section 318, as proposed in the 2013 Discussion Draft, were not adopted in the PATH Act nor did it provide any indication as to its interpretation of "indirectly" under the statute, and nothing in the legislative

[1] PLR 200923001 (February 26, 2009).

[2] *See also* STAFF OF THE JOINT COMM. ON TAX'N, Technical Explanation of the Revenue Provisions of the Protecting Americans from Tax Hikes Act of 2015, House Amendment #2 to the Senate Amendment to H.R. 2029 (JCX-144-15) 186-87 (2015). As noted in the JCT Report, a Senate Committee on Finance report on an earlier, separate bill referenced the 2009 PLR in the same manner in describing provisions similar to those in section 322 of the PATH Act. *See* JCT Report at 277, note 943; S. Rep. No. 114-25, 6 (2015).

history of the PATH Act or otherwise suggests draft legislation from more than two years earlier during a different Congress informed what was ultimately enacted in the PATH Act. *See United States v. Wise*, 370 U.S. 405, 411 (1962) ("[S]tatutes are construed by the courts with reference to the circumstances existing at the time of the passage. The interpretation placed upon an existing statute by a subsequent group of Congressmen who are promoting legislation and who are unsuccessful has no persuasive significance here.").

The Treasury Department and the IRS also disagree with one comment's assertion that the legislative re-enactment doctrine bears on whether to issue the domestic corporation look-through rule. *See Helvering v. Reynolds*, 313 U.S. 428, 432 (1941) ("[The doctrine of legislative reenactment] does not mean that the prior construction has become so imbedded in the law that only Congress can effect a change.").[3] Accordingly, the Treasury Department and the IRS have determined that no changes to section 897 made in, or contemplated in connection with, the PATH Act, or any explanation of those changes, preclude, or otherwise affect, adoption of the domestic corporation look-through rule.

Finally, the Treasury Department and the IRS have determined that the domestic corporation look-through rule is the appropriate interpretation of the term "indirectly" in section 897(h)(4)(B) irrespective of whether the domestic C corporation is subject to U.S. tax on income derived from its QIE stock. As expressed through the statutory text, the policy underlying the DC-QIE exception looks to whether control of the QIE is held directly or indirectly by United States or foreign persons, which does not depend on whether United States persons are subject to U.S. tax with respect to income derived from their QIE stock. The determination of domestic control is likewise not affected by whether a foreign shareholder of the domestic C corporation is subject to tax on a disposition of its stock in the corporation under section 897. The purpose of the inquiry is to determine control, and the status of an entity as taxable is not determinative for this purpose.

Accordingly, the Treasury Department and the IRS do not adopt the recommendation to withdraw the domestic corporation look-through rule. However, the final regulations modify the domestic corporation look-through rule as discussed in part I.C of this Summary of Comments and Explanation of Revisions.

C. *Comments recommending modifications to the domestic corporation look-through rule; explanation of revision*

Comments recommended that, if the final regulations retain a rule similar to the domestic corporation look-through rule, then the approach should be narrowed from what was proposed so that the final rule more directly addresses potentially inappropriate planning and is easier to comply with and administer.

One comment suggested a variety of potential approaches to narrow the domestic corporation look-through rule. Under one such approach, a non-public domestic C corporation that owns 10 percent or less of a QIE (determined after applying constructive ownership rules under section 318, so as to prevent circumvention of the threshold) would be treated as a non-look-through person. The comment asserted that this approach would be less burdensome on taxpayers and the IRS than the proposed regulations and is premised on the view that a foreign person would not structure an investment through a taxable domestic C corporation so that an unrelated foreign person may apply the DC-QIE exception. The comment described an alternative approach, also intended to reduce compliance and administrative burdens, that would treat a non-public domestic C corporation as a look-through person only if there is at least one foreign person that is a non-look-through person that holds, directly or indirectly (using constructive ownership rules under section 318), 25 percent or more of the value of the corporation's stock. Under this alternative, look-through treatment would also apply only as to those foreign non-look-through persons. As another alternative, the comment suggested a look-through rule that would apply only if a foreign person or a foreign related party holds both a direct interest in the QIE and a substantial indirect interest in the QIE through a non-public domestic C corporation.

A different comment also recommended an approach that focused on commonality of substantial ownership by a foreign person of the QIE and the domestic C corporation. Specifically, a domestic C corporation would be treated as a foreign person for purposes of section 897(h)(4)(B) (but not for section 897(h)(4)(C)), if more than 50 percent of its stock is owned, by voting power or value, by foreign persons that also hold stock of the QIE directly, or indirectly through one or more partnerships, grantor trusts, or QIEs. Under this comment's recommended approach, a foreign person would be included in the more than 50 percent control test if the domestic C corporation had actual knowledge that the foreign person has cross-ownership of the QIE after inquiry with any person that is at least a 5-percent shareholder of the domestic C corporation (after applying the rules of section 318(a)). The comment reasoned that foreign investors should be considered incidental and thus should not be counted when measuring direct or indirect foreign control of the QIE when they invest through a domestic C corporation and do not have cross-ownership of the QIE directly or through related parties, or do hold interests in both entities but do not individually or collectively control the domestic C corporation.

Finally, one comment advocated that a look-through approach to a domestic C corporation should not apply when that corporation has material business activities unrelated to its investment in a QIE's stock with potential safe harbors such as where the corporation is registered as an investment adviser under the Investment Company Act of 1940 or the foreign owner of the domestic C corporation is actively

[3] *See also Helvering v. Wilshire Oil Co.*, 308 U.S. 90, 100 (1939) (holding that the legislative reenactment doctrine applies where "it does not appear that the rule or practice has been changed by the administrative agency through exercise of its continuing rule-making power"); *McCoy v. United States*, 802 F.2d 762 (4th Cir. 1986); *Interstate Drop Forge Co. v. Comm'r*, 326 F2d 743 (7th Cir. 1964).

traded on an established securities market outside of the United States. The comment reasoned that such cases are unlikely to be structured transactions of the type identified by the proposed regulations. Similarly, another comment also proposed that the look-through approach should not apply if a domestic C corporation would be treated as engaged in a U.S. trade or business if it had been a foreign corporation (such that the corporation is not a mere shell), and this exception could be further limited by ensuring that the value of the QIE stock held by the domestic C corporation is less than a certain threshold of the affiliated group's total assets.

The final regulations do not adopt any of the recommended modifications to the domestic corporation look-through rule. Several suggested modifications would limit the application of the rule to situations that indicate that foreign persons are using a domestic C corporation to establish domestic control of a QIE so that their direct investments in the QIE benefit from the DC-QIE exception. However, as discussed in part I.A of this Summary of Comments and Explanation of Revisions, the proposed and final regulations serve a broader purpose by interpreting the meaning of "indirect" ownership under section 897(h)(4)(B) to effectuate the policy of the DC-QIE exception by ensuring that the exception is available only when a QIE is controlled by United States persons. The comments also proposed various modifications intended to limit or alter the application of the rule; the Treasury Department and the IRS are of the view that these would introduce additional complexity, such as requiring an examination of the business activities of a domestic C corporation. Furthermore, a modification that would treat domestic C corporations that own less than 10 percent of a QIE as a non-look-through person would not alleviate concerns regarding the ability to identify shareholders through multiple tiers of ownership, and could result in disparate and inconsistent results as to which foreign owners are taken into account in measuring domestic control of a QIE (for example, a foreign non-look-through person that wholly owns a domestic C corporation that owns 9 percent of a QIE would not be taken into account, while a foreign non-look-through person that owns 50 percent of a domestic C corporation that owns 10 percent of the QIE would be taken into account). The Treasury Department and the IRS also do not agree that the domestic corporation look-through rule should only apply if 25 percent or more of the corporation's stock is owned by a single foreign non-look-through person (taking into account section 318 constructive ownership rules), as the DC-QIE exception looks to any measure of foreign ownership of a QIE and such a high threshold would inappropriately exempt foreign persons owning significant indirect interests in QIEs from look-through treatment.

Although the final regulations do not adopt any of the specific recommendations to the domestic corporation look-through rule, the Treasury Department and the IRS agree that the scope of the rule should be narrowed to address compliance concerns and to ensure the rule is more appropriately limited to situations where significant indirect ownership by foreign persons indicative of foreign control is present. After considering the various suggestions raised in comments, the Treasury Department and the IRS have determined that this is best achieved by increasing the amount of foreign ownership required to look through a non-public domestic C corporation from 25 percent or more to more than 50 percent. Increasing the threshold to more than 50 percent significantly narrows the scope of look-through treatment to non-public domestic C corporations that are controlled by foreign persons, and is consistent with the measurement of control for purposes of the domestically controlled QIE test. This change is also consistent with the policy of the DC-QIE exception and other provisions in section 897 that are based on a 50-percent threshold. *See, for example,* section 897(c)(2) (providing that a corporation is a United States real property holding corporation if the fair market value of its United States real property interests ("USRPIs") meets a 50 percent or greater threshold). Thus, rather than a "foreign-owned domestic corporation," the final regulations apply look-through treatment with respect to a "foreign-controlled domestic corporation," which is defined as any non-public domestic C corporation if foreign persons hold directly or indirectly more than 50 percent of the fair market value of that corporation's outstanding stock (the "final domestic corporation look-through rule"). §1.897-1(c)(3)(v)(B). In addition, the final regulations adopt a transition rule for existing QIE structures, as discussed in part IV of this Summary of Comments and Explanation of Revisions.

II. *Effect of Section 897(l) on the DC-QIE Exception*

A. *Background on section 897(l) and interaction with the DC-QIE exception*

Section 897(l) provides an exception to the application of section 897(a) for certain foreign pension funds and their wholly owned subsidiaries. As originally enacted in the PATH Act, section 897(l)(1) provided that section 897 does not apply to any USRPI held directly (or indirectly through one or more partnerships) by, or to any distribution received from a REIT by, a QFPF or any entity all of the interests of which are held by a QFPF. Congress later made several technical amendments to section 897(l) in section 101(q) of the Tax Technical Corrections Act of 2018, Public Law 115-141, div. U (the "2018 technical correction"). As amended by the 2018 technical correction, section 897(l) provides that neither a QFPF nor an entity all the interests of which are held by a QFPF is treated as a nonresident alien individual or foreign corporation for purposes of section 897.

The proposed regulations addressed uncertainty as to whether QFPFs and entities wholly owned by one or more QFPFs ("QCEs"), which are treated as not "nonresident alien individuals or foreign corporations" for purposes of section 897, are treated as foreign persons for purposes of the DC-QIE exception. Specifically, proposed §1.897-1(c)(3)(iv)(A) provided that a QFPF, including any part of a QFPF, or a QCE is a foreign person for purposes of the DC-QIE exception (the "QFPF DC-QIE rule").

B. *Comments regarding authority to issue the QFPF DC-QIE rule*

Although one comment stated that it was generally in agreement with the QFPF DC-QIE rule, other comments rec-

ommended that the rule be withdrawn because it is an incorrect reading of the statute and contrary to congressional intent. One comment contended that the preamble to the proposed regulations failed to consider the existing definition of "foreign person" in §1.897-9T(c) (which includes a foreign corporation, a foreign partnership, a foreign trust, or a nonresident alien individual) and noted that Congress is presumed to have knowledge of that regulatory definition. The comment also contended that the text of section 897(l) is clear and that, without any textual ambiguity, the Treasury Department and the IRS lack the authority to issue the QPFF DC-QIE rule.

Another comment submitted that the legislative history and policy of section 897, including the DC-QIE exception and the section 897(l) exception for QFPFs, indicate that 50 percent or more ownership of a QIE by a QFPF results in the DC-QIE exception being available to other foreign investors. The comment's overall recommendation was to clarify the definition of foreign person in section 897(h)(4)(B) and (C) to have the same meaning as "a nonresident alien individual or a foreign corporation" in section 897(a). The comment included several reasons for its recommendation. First, section 897(l) refers generally to section 897, rather than solely to section 897(a), which the comment argued indicates that section 897(l) is intended to be given effect for all purposes under section 897. According to the comment, the effect of section 897(l) on the DC-QIE exception can be analogized to a special election in section 897(i) for a foreign corporation to be treated as a domestic corporation for purposes of section 897 because, when that election applies, it has effect for all of section 897 and can benefit other investors in QIEs even though they are not party to the election. The comment also noted that the 2018 technical correction should be presumed to be a more accurate reflection of the original intent of Congress, which was to align QFPFs with exempt U.S. pension funds. Finally, the comment noted that because a QFPF is not taxed under section 897(h)(1), there is no policy reason to treat it as a foreign person for other rules such as the DC-QIE exception, the foreign ownership percentage rule in section 897(h)(3) or the wash sale rule in section 897(h)(5).

The Treasury Department and the IRS have determined that the QFPF DC-QIE rule reflects the proper interpretation of the statute and congressional intent. The term "nonresident alien individuals or foreign corporations" in section 897(l) (introduced only in the 2018 technical correction) differs from "foreign persons" in section 897(h)(4)(B), and the purposes of the two provisions also differ. Congress provided no indication that it intended for the definition of foreign person in §1.897-9T(c) to apply to confer non-foreign person status on QFPFs for purposes of the DC-QIE exception. Instead, the term "nonresident alien individuals or foreign corporations" appears in section 897(a) and similar provisions to refer to the persons that are directly subject to tax under FIRPTA. The Treasury Department and the IRS also do not agree that a QFPF is analogous to a foreign corporation that has elected to be treated as a domestic corporation under section 897(i) because that election explicitly treats a foreign corporation as a domestic corporation and therefore not a foreign person. In contrast, section 897(l) treats a QFPF as not a nonresident alien individual or a foreign corporation but does not address whether a QFPF is also not a foreign person.

The Treasury Department and the IRS agree that it is reasonable to presume that the changes made in the 2018 technical correction are a more accurate reflection of original congressional intent, which the preamble to the proposed regulations described (allowing a QFPF and QCE to jointly own a USRPI and qualify for section 897(l) with respect to their partial USRPI interests, as well as clarifying that the section 897(l) exception applies to distributions from all QIEs and not just REITs). 87 FR 80100. However, the Treasury Department and the IRS disagree with the assertion that the 2018 technical correction should be interpreted to bestow the benefit of the DC-QIE exception on foreign investors that cannot claim the section 897(l) exception. Such an interpretation would be inconsistent with the intent of section 897(l) as originally enacted in the PATH Act, which was to provide an exception from section 897 to QFPFs (and QCEs). Where possible, as in this case, the technical correction should be viewed in a manner consistent with a core principle of the original legislation. *See Fed. Nat'l Mortgage Assoc. v. United States*, 56 Fed. Cl. 228, 234, 237 (2003), *rev'd and remanded on other grounds,* 379 F.3d 1303 (Fed. Cir. 2004) (''Congress turns to technical corrections when it wishes to clarify existing law or repair a scrivener's error, rather than to change the substantive meaning of the statute. . . . [A] technical correction that merely restores the rule Congress intended to enact cannot be construed as a fundamental change in the operation of the statute.''); STAFF OF THE JOINT COMM. ON TAX'N, Overview of Revenue Estimating Procedures and Methodologies Used by the Staff of the Joint Committee on Taxation (JCX–1–05) 33 (2005) (describing a technical correction as ''legislation that is designed to correct errors in existing law in order to fully implement the intended policies of previously enacted legislation'' and a change that ''conforms to and does not alter the intent'' of the underlying legislation).

The comment discussed above asserts that there is no policy reason to treat a QFPF as a foreign person for other provisions in section 897(h) such as the DC-QIE exception, given that the QFPF is not taxed under section 897(h)(1). The Treasury Department and the IRS disagree based on the statute and its policy. As described earlier in this preamble, the policy of the DC-QIE exception looks to foreign control, not control by taxable persons. The presence or absence of taxation of the controlling persons is not determinative. Additionally, Congress expressed in section 897(l) an intent to provide a tax benefit specifically for QFPFs, and not for other owners of a DC-QIE that would benefit from the QFPF's treatment. Therefore, the Treasury Department and the IRS have determined that the appropriate interpretation of the statute is one that only gives effect to the purpose of section 897(l) to provide an exception from section 897 for QFPFs, rather than a construction that would give non-QFPF investors the ability to rely on section 897(l) to benefit under the DC-QIE exception. The DC-QIE exception is a separate provision with underlying policies that focus on foreign control rather than taxability

of controlling persons, and these policies are inconsistent with treating a QFPF as a United States person for purposes of the DC-QIE exception. Accordingly, the final regulations do not adopt the comments' recommendations.

III. *Other Comments and Revisions*

A. *Certain registered investment vehicles*

One comment noted that there are a large number of investment vehicles that are publicly registered with the Securities and Exchange Commission ("SEC") that own QIEs but are not regularly traded and asserted that the final regulations should treat these investment vehicles offered to retail investors (for example, non-traded publicly registered REITs, non-traded publicly registered RICs, or publicly registered open-ended funds) as non-look-through persons. The comment noted that the same reasoning for applying non-look-through treatment to public domestic C corporations and publicly traded partnerships – that is, difficulty in looking through to the entity's owners and the unlikelihood for use as an intermediary entity to establish domestic control – applied equally to those investment vehicles.

The final regulations do not adopt this comment with respect to registered investment vehicles that are QIEs because section 897(h)(4)(E) already provides specific rules with respect to QIE ownership by other QIEs that are incorporated in the final regulations. In particular, under section 897(h)(4)(E)(ii), stock in a QIE held by certain public QIEs is treated as held by a foreign or United States person based on whether the public QIE is itself domestically controlled. §1.897-1(c)(3)(iii)(C). Section 897(h)(4)(E)(iii) provides that stock of a QIE held by a QIE that is not a public QIE is only treated as held by a United States person in proportion to the stock of the non-public QIE that is held by a United States person. Section 897(h)(4)(E)(iii) thus contemplates look-through treatment for non-public QIEs, even if such QIEs are publicly registered with the SEC, and this treatment is reflected in the final regulations. §1.897-1(c)(3)(v)(C).

However, the Treasury Department and the IRS are of the view that the treatment of certain RICs that are not QIEs should be aligned with the treatment of other publicly held entities that are not QIEs. The proposed regulations provided that any RIC that is not a QIE, and thus not subject to the rules that apply to public QIEs, is treated as a look-through person. With respect to RICs whose shares are publicly traded or otherwise widely held, this treatment may be viewed as inconsistent with the treatment of publicly traded partnerships and public domestic C corporations, neither of which is subject to look-through treatment under the proposed regulations primarily due to compliance and administrability concerns. The final regulations therefore provide that a public RIC, generally defined as a RIC that is not a QIE and whose shares are (i) regularly traded on an established securities market or (ii) common stock that is continuously offered pursuant to a public offering and held by at least 500 shareholders, is generally treated as a non-look-through person. §1.897-1(c)(3)(v)(D) and (I). However, for reasons similar to those discussed in part I.C of this Summary of Comments and Explanation of Revisions (regarding foreign-controlled domestic corporations, which are treated as look-through persons), a RIC will not be a public RIC, and thus will be a look-through person, if the QIE being tested for domestically controlled status under §1.897-1(c)(3) has actual knowledge that the RIC is foreign controlled, which is determined by treating the RIC as a non-public domestic C corporation and applying §1.897-1(c)(3)(v)(B). §1.897-1(c)(3)(v)(I).

B. *Public entities*

The proposed regulations provided that a person holding less than five percent of U.S. publicly traded stock of a QIE at all times during the testing period, determined without regard to proposed §1.897-1(c)(3)(ii)(A), is treated as a United States person that is a non-look-through person with respect to that stock, unless the QIE has actual knowledge that such person is not a United States person. Section 897(h)(4)(E)(i); proposed §1.897-1(c)(3)(iii)(A). To prevent the avoidance of the actual knowledge exception to this rule, the final regulations modify the rule to provide that it will also not apply if the QIE has actual knowledge that such person is foreign controlled (treating any person that is not a non-public domestic C corporation as a non-public domestic C corporation for this purpose). §1.897-1(c)(3)(iii)(A).

The proposed regulations also provided non-look-through treatment for public domestic C corporations and publicly traded partnerships, which were generally defined to include entities with a class of stock or interests regularly traded on an established securities market. Proposed §1.897-1(c)(3)(v)(D), (G) and (I). In the final regulations, these definitions exclude domestic entities that are known to be foreign controlled. Thus, consistent with the treatment of public RICs and for reasons similar to those discussed in part I.C of this Summary of Comments and Explanation of Revisions (regarding foreign-controlled domestic corporations, which are treated as look-through persons), a domestic C corporation or a domestic partnership will not be a public domestic C corporation or a publicly traded partnership, respectively, if the QIE being tested for domestically controlled status under §1.897-1(c)(3) has actual knowledge that the corporation or partnership is foreign controlled (treating the entity as a non-public domestic C corporation for this purpose). §1.897-1(c)(3)(v)(G) and (J). In such case, the domestic C corporation or domestic partnership will therefore be a look-through person. §1.897-1(c)(3)(v)(B) through (E).

C. *Certification by domestic C corporation*

One comment recommended that the final regulations provide guidance on how a domestic C corporation may certify to a QIE that it is not a foreign-owned domestic corporation. The comment suggested that the regulations provide a model certification to confirm that a domestic C corporation is not foreign owned, such as a revised Form W-9.

The final regulations do not provide guidance regarding the procedures for determining whether a domestic C corporation is a foreign-controlled domestic corporation, nor do they provide any procedures generally for a QIE to identify its non-look-through person owners for purposes of determining whether the QIE is domestically controlled. A QIE must take appropriate measures to deter-

mine the identity of its direct and indirect shareholders in determining whether it is domestically controlled, and the final regulations do not prescribe a specific form or method as to how it solicits or receives information from its shareholders. Guidance with respect to the manner in which a QIE determines the identity of its relevant shareholders for purposes of establishing domestic control is beyond the scope of this rulemaking but may be considered in a separate guidance project.

D. *Section 1445 withholding on dispositions of USRPI*

Current regulations under section 1445 (imposing withholding of tax on dispositions of USRPI) provide the circumstances under which a transferee of property can ascertain that there is no duty to withhold under section 1445(a) because the transferor is not a foreign person, the property acquired is not a USRPI, or an exception to withholding applies. §1.1445-2. Section 1.1445-2(c)(3) provides that no withholding is required with respect to an acquisition of an interest in a domestic corporation if the transferor provides the transferee with a copy of a statement, issued by the corporation pursuant to §1.897-2(h), certifying that the interest in the corporation is not a USRPI. The transferor must request the statement before the transfer, which may be relied on if the statement is dated not more than 30 days before the date of the transfer. A transferee may also rely on a corporation's statement that is voluntarily provided by the domestic corporation in response to a request from the transferee, if that statement otherwise complies with the requirements of §§1.1445-2(c)(3) and 1.897-2(h).

Under §1.897-2(h)(1), a foreign person holding an interest in a domestic corporation may request that the corporation inform the person whether the interest constitutes a USRPI, which the corporation is required to provide within a reasonable period after receipt of such a request. A statement must be provided by the domestic corporation to the foreign person indicating the corporation's determination, and notice must be provided to the IRS in accordance with §1.897-2(h)(2). Section 1.897-2(h)(3), however, provides that the requirements of §1.897-2(h) do not apply to "domestically-controlled REITs, as defined in section 897(h)(4)(B)," although a corporation not otherwise required to comply with the requirements of §1.897-2(h) may voluntarily choose to comply with the requirements of §1.897-2(h)(4) and attach a statement to its income tax return informing the IRS that it is not a United States real property holding corporation.

The availability of the procedures in §1.1445-2(c)(3) to holders of stock in a domestically controlled QIE is unclear given its reference to a statement provided under §1.897-2(h), which is explicitly inapplicable to domestically controlled QIEs under §1.897-2(h)(3). Although §1.897-2(h) generally does not apply to domestically controlled QIEs pursuant to §1.897-2(h)(3) (and, therefore, the corporation is not *required*, upon request, to provide a statement to a person holding an interest in the corporation), this should not preclude the availability of the rules in §1.1445-2(c)(3) to transferors of interests seeking to avoid withholding under section 1445 when the corporation *voluntarily* provides a statement to an interest holder that otherwise complies with §1.897-2(h). Absent the availability of these procedures, the transferor would not be able to establish that it is transferring an interest in a domestically controlled QIE and is thus not subject to withholding under section 1445(a). The final regulations thus revise the rules in §§1.897-2(h)(3) and 1.1445-2(c)(3) to clarify the procedures available to a transferor to certify to a transferee that no withholding is required because the DC-QIE exception applies. As revised, the final regulations confirm that a domestic corporation may voluntarily provide a statement in response to a request from a transferor certifying that an interest in the corporation is not a USRPI because the corporation is a domestically controlled QIE, which the transferor may furnish to the transferee, provided the statement issued by the corporation otherwise complies with the requirements of §1.897-2(h).

E. *Revisions to examples*

A comment observed that proposed §1.897-1(c)(3)(vi)(D) (*Example 4*) contained a mathematical error. The final version of this example corrects that error, which does not otherwise affect the overall conclusion that the entity at issue does not qualify as a domestically controlled QIE. §1.897-1(c)(3)(vii)(D) (*Example 4*). The final regulations make other revisions to the examples in proposed §1.897-1(c)(3)(vi) to clarify the operation of certain rules, but which are not intended to alter the conclusions or substance of those examples.

IV. *Applicability Date and Transition Rules*

The proposed regulations generally were proposed to apply to transactions occurring on or after the date that those regulations are published as final regulations in the **Federal Register** ("the finalization date"). The preamble to the proposed regulations noted, however, that the rules applicable for determining whether a QIE is domestically controlled may be relevant for determining QIE ownership during periods before the finalization date to the extent the testing period related to a transaction that occurs on or after the finalization date includes periods before that date.

Comments raised concerns with the proposed applicability date; in particular, they noted that it would have a retroactive effect because of the testing period element of the DC-QIE exception and argued that, if adopted, the domestic corporation look-through rule should apply on a fully prospective basis with no application to any portion of a testing period before the finalization date. Further, these comments characterized the proposed regulations as a change from existing law and asserted that applying the rules to existing structures would be inappropriate because restructuring to comply with the rules would be difficult and costly, and buyers may be less inclined to invest in a structure that may be "tainted" as failing to qualify for the DC-QIE exception.

Comments generally advocated for the following types of transition relief: (i) for QIEs in existence on the date the proposed regulations were issued, provide an exception (subject to termination rules like those in §301.7701-2(d)) such that a foreign-owned domestic corporation is not treated as a look-through person;

(ii) exempt foreign investors in existing QIEs from the domestic corporation look-through rule to the extent of existing ownership and capital commitments as of the date the proposed regulations were issued; (iii) only apply the domestic corporation look-through rule to QIE stock acquired by a foreign-owned domestic corporation after the finalization date; or (iv) delay application of the domestic corporation look-through rule to existing QIEs for some period ranging from at least 120 days after the finalization date to tax years beginning on or after January 1, 2028 (drawing from the general five-year testing period standard).

The final regulations do not adopt the suggestion to delay application of the final domestic corporation look-through rule, which would exempt both existing and new QIE structures from the rule. However, the Treasury Department and the IRS have determined that, although the final domestic corporation look-through rule represents the appropriate application of section 897(h)(4)(B), its effect should be limited with respect to investors that may have entered into structures with the expectation that domestic control of a QIE would be determined without regard to that rule. Thus, consistent with the first three types of comments noted above, the final regulations include a transition rule that, for a ten-year period, exempts existing structures from the final domestic corporation look-through rule, provided they meet certain requirements. §1.897-1(c)(3)(vi). These requirements are intended to ensure that the final domestic corporation look-through rule does not apply to pre-existing business arrangements, but only to the extent the QIE does not acquire a significant amount of new USRPIs and does not undergo a significant change in its ownership (subject to an exception for acquisitions of a USRPI or QIE interest pursuant to a previous binding commitment). §1.897-1(c)(3)(vi)(A) and (E). If either of these two thresholds is exceeded, the QIE at that time becomes subject to the final domestic corporation look-through rule like any other QIE. §1.897-1(c)(3)(vi)(B).

A QIE is considered to have acquired a significant amount of new USRPIs if the total fair market value of the USRPIs it acquires directly and indirectly exceeds 20 percent of the fair market value of the USRPIs held directly and indirectly by the QIE as of April 24, 2024. §1.897-1(c)(3)(vi)(A)(*2*). The final regulations provide that the value of the USRPIs held directly and indirectly by a QIE on April 24, 2024 is determined as of that date and that, for this purpose, taxpayers may use the most recently calculated amounts under the quarterly tests described in section 851(b)(3) or 856(c)(4), as applicable. §1.897-1(c)(3)(vi)(D). By using these existing rules the final regulations minimize the need to make additional or complex valuations.

In determining whether there has been a significant change in the ownership of a QIE, the final regulations consider whether the direct or indirect ownership of the QIE by non-look-through persons (determined by applying the final domestic corporation look-through rule) has increased by more than 50 percentage points in the aggregate relative to the QIE stock owned by such non-look-through persons on April 24, 2024. §1.897-1(c)(3)(vi)(A)(*3*). Because this rule applies on a percentage basis, a non-pro-rata issuance or redemption of stock is counted towards the 50 percentage point amount. To simplify the determination of changes in ownership of stock of a QIE that is publicly traded, the final regulations disregard transfers by any person (regardless of whether they are a non-look-through person) that owns a less than five-percent interest in the stock of the QIE, unless the QIE has actual knowledge of that person's ownership. §1.897-1(c)(3)(vi)(G).

The transition rule applies until April 24, 2034, or, if earlier, until the requirements precluding significant acquisitions of USRPIs and changes in ownership are not met, at which time the final domestic corporation look-through rule applies in determining whether a QIE is domestically controlled. §1.897-1(c)(3)(vi)(B). The ten-year period is intended to provide sufficient time to mitigate the impact of the final domestic corporation look-through rule on existing QIEs and their investors, but ensures that all QIEs are eventually subject to the same rules. However, even after the transition rule no longer applies, the final domestic corporation look-through rule is prospective only and thus does not apply to any portion of a testing period during which the transition rule applied to a QIE. §1.897-1(c)(3)(vi)(C). Thus, for example, if the transition rule ceases to apply to a QIE due to a change in its ownership but, at such time, the QIE is a domestically controlled QIE notwithstanding the final domestic corporation look-through rule, the determination of domestic control for the testing period of a subsequent disposition of QIE stock may disregard the final domestic corporation look-through rule to the extent the transition rule applied.

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 OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. The collection of information in §1.1445-2(c)(3) is a statement provided by a domestic corporation that certifies that an interest in such corporation is not a U.S. real property interest. Section 1.1445-2(c)(3) clarifies that the existing procedure may also be used by a domestic corporation to certify that it is a domestically controlled QIE (as determined under §1.897-1(c)(3)), as long as the certification is voluntarily issued and otherwise complies with the existing requirements in §1.897-2(h).

This modification to §1.1445-2(c)(3) clarifies the existing scope of the collection of information. For purposes of the PRA, the reporting burden associated with the collections of information in §1.1445-2(c)(3) will be reflected in the Paperwork Reduction Act Submissions associated

with the section 1445 regulations (OMB control number 1545–0902).

III. *Regulatory Flexibility Act*

A. Succinct Statement of the Need for, and Objectives of, the Final Regulations

As discussed in the preamble to the proposed regulations, there may be some uncertainty as to whether QFPFs and QCEs, which are treated as not "nonresident alien individuals or foreign corporations" for purposes of section 897, are treated as foreign persons for purposes of the DC-QIE exception. Treating QFPFs and QCEs as non-foreign investors for purposes of the DC-QIE exception has the potential to expand the effect of section 897(l) to foreign investors who are neither QFPFs nor QCEs (by exempting such investors from tax under section 897(a)). These regulations eliminate any uncertainty that taxpayers may have as to the proper classification of QFPFs and QCEs for purposes of the DC-QIE exception by providing that QFPFs and QCEs are treated as foreign persons for purposes of the DC-QIE exception.

Also as discussed in the preamble to the proposed regulations, there is uncertainty regarding the determination of whether stock of a QIE is held "directly or indirectly" by foreign persons for purposes of the DC-QIE exception. These regulations provide rules to clarify this determination.

Because there was a possibility of significant economic impact on a substantial number of small entities as a result of the rules relating to the treatment of QFPFs and QCEs for purposes of the DC-QIE exception and the definition of a domestically controlled QIE, the proposed regulations provided an initial regulatory flexibility analysis and requested comments from the public on the number of small entities that may be impacted and whether that impact will be economically significant. No comments were received.

B. Small Entities to Which These Regulations Will Apply

The regulation relating to the treatment of QFPFs and QCEs for purposes of the DC-QIE exception affects other foreign investors in QIEs. The regulation defining a domestically controlled QIE also affects foreign investors in QIEs. Because an estimate of the number of small businesses affected is not currently feasible, this final regulatory flexibility analysis assumes that a substantial number of small businesses will be affected. The Treasury Department and the IRS do not expect that these regulations will affect a substantial number of small nonprofit organizations or small governmental jurisdictions.

C. Projected Reporting, Recordkeeping, and Other Compliance Requirements

These regulations do not impose additional reporting or recordkeeping obligations. However, see Part II of this Special Analysis describing certain voluntary reporting that these regulations clarify is available in §1.1445-2(c)(3) by a domestic corporation to certify that it is a domestically controlled QIE.

D. Steps Taken to Minimize Significant Economic Impact, Legal Reasons, and Alternatives Considered

The final regulations address potential uncertainty under current law and do not impose an additional economic burden. Consequently, the rules represent the approach with the least economic impact.

These regulations clarify the treatment of QFPFs and QCEs for purposes of the DC-QIE exception. The rules are intended to ensure that the exemption under section 897(l) does not inappropriately inure to non-QFPFs or non-QCEs by treating QFPFs and QCEs as domestic investors for purposes of the DC-QIE exception. These regulations also clarify whether stock of a QIE is held "directly or indirectly" by foreign persons in determining whether the DC-QIE exception applies. The legal basis for these regulations is contained in sections 897(l) and 7805.

Section 897(a) applies to nonresident alien individuals and foreign corporations, and neither the statute nor prior regulations establish different rules for small entities. Moreover, the DC-QIE exception is measured based on the ownership interests in a QIE, regardless of the size of the investor. Because the DC-QIE exception takes into account all investors, regardless of size, the Treasury Department and the IRS have concluded that the DC-QIE exception should apply uniformly to large and small business entities. The Treasury Department and the IRS did not consider any significant alternative to the rule that provides for the treatment of QFPFs and QCEs under the DC-QIE exception.

The Treasury Department and the IRS did consider alternatives for the rule that defines a domestically controlled QIE, including one alternative that generally would treat all domestic C corporations as non-look-through persons (that is, without the special rule for foreign-controlled domestic corporations discussed in part I of the Summary of Comments and Explanation of Revisions section of this preamble). However, the Treasury Department and the IRS concluded that the look-through approach in the final regulations best serves the purposes of the DC-QIE exception while also taking into account "indirect" ownership of QIE stock by foreign persons in determining whether a QIE is domestically controlled under section 897(h)(4)(B).

IV. *Section 7805(f)*

Pursuant to section 7805(f) of the Code, the proposed regulations (REG-100442-22) preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small businesses and no comments were received.

V. *Unfunded Mandates Reform Act*

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

VI. *Executive Order 13132: Federalism*

Executive Order 13132 (entitled "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. The final regulations do not have federalism implications, do not impose substantial direct compliance costs on State and local governments, and do not preempt State law within the meaning of the Executive order.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this document 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 *www.irs.gov*.

Drafting Information

The principal author of these final regulations is Arielle Borsos, Office of Associate Chief Counsel (International). 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.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order for §§1.897-1, 1.897-2, and 1.1445-2 to read in part as follows:

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

Section 1.897-1 also issued under 26 U.S.C. 897 and 897(l)(3).

Section 1.897-2 also issued under 26 U.S.C. 897.
* * * * *

Section 1.1445-2 also issued under 26 U.S.C. 1445.
* * * * *

Par. 2. Section 1.897-1 is amended by:
1. Revising paragraph (a)(2);
2. Removing and reserving paragraph (c)(2)(i);
3. Adding paragraphs (c)(3) and (4) and (k);
4. Revising and republishing paragraph (l); and
5. Adding paragraph (n).

The revisions and additions read as follows:

§1.897-1 Taxation of foreign investment in United States real property interests, definition of terms.

(a) * * *

(2) *Applicability date*. Except as otherwise provided in this paragraph (a)(2), the regulations set forth in this section and §§1.897-2 through 1.897-4 apply to transactions occurring after June 18, 1980. Except as otherwise provided in paragraph (c)(3)(vi) of this section, paragraphs (c)(3) and (4), (k), and (l) of this section apply to transactions occurring on or after April 25, 2024, and transactions occurring before April 25, 2024, resulting from an entity classification election under §301.7701-3 of this chapter that was effective on or before April 25, 2024, but was filed on or after April 25, 2024. For transactions occurring before April 25, 2024, *see* paragraphs (c)(2)(i) and (l) of this section and §1.897-9T(c) contained in 26 CFR part 1, as revised April 1, 2024.
* * * * *

(c) * * *

(3) *Domestically controlled QIE*—(i) *In general*. An interest in a domestically controlled qualified investment entity (QIE) is not a United States real property interest. A QIE is domestically controlled if foreign persons hold directly or indirectly less than 50 percent of the fair market value of the QIE's outstanding stock at all times during the testing period. For rules that apply to distributions by a QIE (including a domestically controlled QIE) attributable to gain from the sale or exchange of a United States real property interest, *see* section 897(h)(1).

(ii) *Look-through approach for determining QIE stock held directly or indirectly*. The following rules apply for purposes of determining whether a QIE is domestically controlled:

(A) *Non-look-through persons considered holders*. Only a non-look-through person is considered to hold directly or indirectly stock of the QIE.

(B) *Attribution from look-through persons*. Stock of a QIE that, but for the application of paragraph (c)(3)(ii)(A) of this section, would be considered directly or indirectly held by a look-through person, is instead considered held directly or indirectly by the look-through person's shareholders, partners, or beneficiaries, as applicable, that are non-look-through persons based on the non-look-through person's proportionate interest in the look-through person. To the extent the shareholders, partners, or beneficiaries, as applicable, of the look-through person are also look-through persons, this paragraph (c)(3)(ii)(B) applies to such shareholders, partners, or beneficiaries as if they directly or indirectly held, but for the application of paragraph (c)(3)(ii)(A) of this section, their proportionate share of the stock of the QIE.

(C) *No attribution from non-look-through persons*. Stock of a QIE considered held directly or indirectly by a non-look-through person is not considered held directly or indirectly by any other person.

(iii) *Special rules for applying look-through approach.* The following additional special rules apply for purposes of determining whether a QIE is domestically controlled:

(A) *Certain holders of U.S. publicly traded QIE stock*. Notwithstanding any other provision of this paragraph (c)(3), a person holding less than five percent of U.S. publicly traded stock of a QIE at all times during the testing period, determined without regard to paragraph (c)(3)(ii)(A) of this section, is treated as a United States person that is a non-look-through person with respect to that stock, unless the QIE has actual knowledge that

such person is not a United States person or has actual knowledge that such person is foreign controlled as determined under paragraph (c)(3)(v)(B) of this section (treating any person that is not a non-public domestic C corporation as if it were a non-public domestic C corporation for this purpose). For an example illustrating the application of this paragraph (c)(3)(iii)(A), *see* paragraph (c)(3)(vii)(C) of this section (*Example 3*).

(B) *Certain foreign-controlled domestic C corporations*. A non-public domestic C corporation is treated as a look-through-person if it is a foreign-controlled domestic corporation. For an example illustrating the application of this paragraph (c)(3)(iii)(B), *see* paragraph (c)(3)(vii)(B) of this section (*Example 2*).

(C) *Public QIEs*. A public QIE is treated as a foreign person that is a non-look-through person. The preceding sentence does not apply, however, if the public QIE is a domestically controlled QIE as defined in this paragraph (c)(3), determined after the application of this paragraph (c)(3)(iii), in which case the public QIE is treated as a United States person that is a non-look-through person. For an example illustrating the application of this paragraph (c)(3)(iii)(C), *see* paragraph (c)(3)(vii)(C) of this section (*Example 3*).

(iv) *Treatment of certain persons as foreign persons*—(A) *Qualified foreign pension fund or qualified controlled entity*. For purposes of this paragraph (c)(3), a qualified foreign pension fund (including any part of a qualified foreign pension fund) or a qualified controlled entity is treated as a foreign person, irrespective of whether the fund or entity qualifies for the exception from section 897 provided in §1.897(l)-1(b)(1). For an example illustrating the application of this paragraph (c)(3)(iv)(A), *see* paragraph (c)(3)(vii)(A) of this section (*Example 1*). *See also* paragraph (k) of this section for a definition of foreign person that applies for purposes of sections 897, 1445, and 6039C.

(B) *International organization*. For purposes of this paragraph (c)(3), an international organization (as defined in section 7701(a)(18)) is treated as a foreign person. *See* §1.897-9T(e) (regarding the treatment of international organizations under sections 897, 1445, and 6039C), which provides that an international organization is not a foreign person with respect to United States real property interests, and is not subject to sections 897, 1445, and 6039C on the disposition of a United States real property interest.

(v) *Definitions*. The following definitions apply for purposes of this paragraph (c)(3):

(A) A *domestic C corporation* is any domestic corporation other than a regulated investment company (RIC) as defined in section 851, a real estate investment trust (REIT) as defined in section 856, or an S corporation as defined in section 1361.

(B) A *foreign-controlled domestic corporation* is any non-public domestic C corporation if foreign persons hold directly or indirectly more than 50 percent of the fair market value of the non-public domestic C corporation's outstanding stock. For purposes of determining whether a non-public domestic C corporation is a foreign-controlled domestic corporation, the rules of paragraphs (c)(3)(ii)(A) through (C) and (c)(3)(iii)(C) of this section apply with the following modifications—

(*1*) In paragraphs (c)(3)(ii)(A) through (C) of this section, treating references to *QIE* as references to *non-public domestic C corporation*; and

(*2*) A non-public domestic C corporation that is a foreign-controlled domestic corporation under this paragraph (c)(3)(v)(B) is treated as a look-through person for purposes of determining whether any other non-public domestic C corporation is a foreign-controlled domestic corporation.

(C) A *look-through person* is any person other than a non-look-through person. Thus, for example, a look-through person includes a REIT that is not a public QIE, an S corporation, a partnership (domestic or foreign) that is not a publicly traded partnership, a RIC that is not a public RIC, and a trust (domestic or foreign, whether or not the trust is described in sections 671 through 679). For a special rule that treats certain non-public domestic C corporations as look-through persons, *see* paragraph (c)(3)(iii)(B) of this section.

(D) A *non-look-through person* is an individual, a domestic C corporation (other than a foreign-controlled domestic corporation), a nontaxable holder, a foreign corporation (including a foreign government pursuant to section 892(a)(3)), a publicly traded partnership (domestic or foreign), a public RIC, an estate (domestic or foreign), an international organization (as defined in section 7701(a)(18)), a qualified foreign pension fund (including any part of a qualified foreign pension fund), or a qualified controlled entity. For special rules that treat certain holders of QIE stock as non-look-through persons, *see* paragraphs (c)(3)(iii)(A) and (C) of this section.

(E) A *non-public domestic C corporation* is any domestic C corporation that is not a public domestic C corporation.

(F) A *nontaxable holder* is—

(*1*) Any organization that is exempt from taxation by reason of section 501(a);

(*2*) The United States, any State (as defined in section 7701(a)(10)), any territory of the United States, or a political subdivision of any State or any territory of the United States; or

(*3*) Any Indian Tribal government (as defined in section 7701(a)(40)) or its subdivision (determined in accordance with section 7871(d)).

(G) A *public domestic C corporation* is a domestic C corporation any class of stock of which is regularly traded on an established securities market within the meaning of §§1.897-1(m) and 1.897-9T(d). A domestic C corporation is not a public domestic C corporation, however, if the QIE whose status as domestically controlled is being determined under this paragraph (c)(3) has actual knowledge that the domestic C corporation is foreign controlled as determined under paragraph (c)(3)(v)(B) of this section (treating the domestic C corporation for this purpose as if it were a non-public domestic C corporation).

(H) A *public QIE* is a QIE any class of stock of which is regularly traded on an established securities market within the meaning of §§1.897-1(m) and 1.897-9T(d), or that is a RIC that issues redeemable securities within the meaning of section 2 of the Investment Company Act of 1940.

(I) A *public RIC* is a RIC that is not a QIE and any class of stock of which is either regularly traded on an established securities market within the meaning of §§1.897-1(m) and 1.897-9T(d), or com-

mon stock that is continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. 77a to 77aa)) and held by or for no fewer than 500 persons. A RIC is not a public RIC, however, if the QIE whose status as domestically controlled is being determined under this paragraph (c)(3) has actual knowledge that the RIC is foreign controlled as determined under paragraph (c)(3)(v)(B) of this section (treating the RIC for this purpose as if it were a non-public domestic C corporation).

(J) A *publicly traded partnership* is a partnership any class of interest of which is regularly traded on an established securities market within the meaning of §§1.897-1(m) and 1.897-9T(d). A domestic partnership is not a publicly traded partnership, however, if the QIE whose status as domestically controlled is being determined under this paragraph (c)(3) has actual knowledge that the domestic partnership is foreign controlled as determined under paragraph (c)(3)(v)(B) of this section (treating the partnership for this purpose as if it were a non-public domestic C corporation).

(K) A *qualified controlled entity* has the meaning set forth in §1.897(l)-1(e)(9).

(L) A *qualified foreign pension fund* has the meaning set forth in §1.897(l)-1(c).

(M) A *QIE* is a qualified investment entity, as defined in section 897(h)(4)(A).

(N) *Testing period* has the meaning set forth in section 897(h)(4)(D).

(O) *U.S. publicly traded QIE stock* is any class of stock of a QIE that is regularly traded on an established securities market within the meaning of §§1.897-1(m) and 1.897-9T(d), but only if the established securities market is in the United States.

(vi) *Transition rule for certain QIEs owned by foreign-controlled domestic corporations*—(A) *General rule*. Except as provided in paragraph (c)(3)(vi)(B) of this section, paragraph (c)(3)(iii)(B) of this section does not apply with respect to a QIE that is in existence as of April 24, 2024, and satisfies the following requirements at all times on and after April 24, 2024—

(*1*) The QIE is domestically controlled (as determined under this paragraph (c)(3), but without regard to paragraph (c)(3)(iii)(B) of this section);

(*2*) The aggregate fair market value of any United States real property interests acquired by the QIE directly and indirectly after April 24, 2024, is no more than 20 percent of the aggregate fair market value of the United States real property interests held directly and indirectly by the QIE as of April 24, 2024 (determined in accordance with paragraph (c)(3)(vi)(D) of this section); and

(*3*) The percentage of the stock of the QIE held directly or indirectly by one or more non-look-through persons (determined based on fair market value and under the rules of paragraphs (c)(3)(ii) through (v) of this section and this paragraph (c)(3)(vi), including paragraph (c)(3)(iii)(B) of this section) does not increase by more than 50 percentage points in the aggregate over the percentage of stock of the QIE owned directly or indirectly by such non-look-through persons on April 24, 2024.

(B) *Termination of transition rule*. The transition rule described in paragraph (c)(3)(vi)(A) of this section will cease to apply, and the rule in paragraph (c)(3)(iii)(B) of this section will apply for purposes of determining whether a QIE is domestically controlled, with respect to transactions occurring on or after the earlier of:

(*1*) The date immediately following the date on which the QIE fails to meet any of the requirements described in paragraph (c)(3)(vi)(A) of this section; and

(*2*) April 24, 2034. For an example illustrating the application of paragraph (c)(3)(vi)(A) of this section and this paragraph (c)(3)(vi)(B), *see* paragraph (c)(3)(vii)(E) of this section (*Example 5*).

(C) *Effect of transition rule on testing period*. If the transition rule described in paragraph (c)(3)(vi)(A) of this section ceases to apply to a QIE under paragraph (c)(3)(vi)(B) of this section, the rule in paragraph (c)(3)(iii)(B) of this section will not apply to the QIE with respect to the portion of any testing period during which the transition rule in this paragraph (c)(3)(vi) applied.

(D) *Determination of fair market value of United States real property interests*. For purposes of paragraph (c)(3)(vi)(A)(*2*) of this section, the fair market value of the United States real property interests held directly and indirectly by a QIE on April 24, 2024, is the value of such property interests as calculated under section 851(b)(3) or 856(c)(4) as of the close of the most recent quarter of the QIE's taxable year before April 24, 2024. For purposes of paragraph (c)(3)(vi)(A)(*2*) of this section, the fair market value of any property acquired after the close of the most recent quarter of the QIE's taxable year before April 24, 2024, whether acquired before or after April 24, 2024, is determined on the date of such acquisition using a reasonable method, provided the QIE consistently uses the same method with respect to all of its United States real property interests when applying this paragraph (c)(3)(vi).

(E) *Binding commitments*. For purposes of paragraphs (c)(3)(vi)(A)(*2*) and (*3*) of this section, a direct or indirect acquisition of a United States real property interest or of stock of a QIE pursuant to a written agreement that was (subject to customary conditions) binding before April 24, 2024, and all times thereafter, or pursuant to a tender offer announced before April 24, 2024, that is subject to section 14(e) of the Securities and Exchange Act of 1934 (15 U.S.C. 78n(e)) and 17 CFR 240.14e–1 through 240.14e–8 (Regulation 14E), is treated as occurring on April 24, 2024.

(F) *Ownership by certain successors under section 368(a)(1)(F)*. For purposes of paragraph (c)(3)(vi)(A)(*3*) of this section, the transferor corporation and the resulting corporation (as defined in §1.368-2(m)(1)) in a reorganization described under section 368(a)(1)(F) (whether engaged in by the QIE or by another corporation) are treated as the same corporation.

(G) *Ownership by less than five-percent public shareholders*. For purposes of paragraph (c)(3)(vi)(A)(*3*) of this section, in the case of any class of stock of a QIE that is regularly traded on an established securities market within the meaning of §§1.897-1(m) and 1.897-9T(d), all such stock owned by persons holding less than 5 percent of that class of stock, determined without regard to paragraph (c)(3)(ii)(A) of this section, is treated as stock owned by a single non-look-through person except to the extent that the QIE has actual knowledge regarding the ownership of any person.

(vii) *Examples*. The rules of this paragraph (c)(3) are illustrated by the fol-

lowing examples. It is assumed that each entity has a single class of stock or other ownership interests, that the ownership described existed throughout the relevant testing period and that, unless otherwise stated, a QIE is not a public QIE as defined under paragraph (c)(3)(v)(H) of this section.

(A) *Example 1*: *QIE stock held by public domestic C corporation*—(*1*) *Facts*. USR is a REIT, 51 percent of the stock of which is held by X, a public domestic C corporation as defined in paragraph (c)(3)(v)(G) of this section, and 49 percent of the stock of which is held by nonresident alien individuals, which are foreign persons as defined in paragraph (k) of this section.

(*2*) *Analysis*. Under paragraph (c)(3)(v)(M) of this section, USR is a QIE. Because X is a public domestic C corporation, it cannot be a foreign-controlled domestic corporation and, therefore, is a non-look-through person as defined under paragraph (c)(3)(v)(D) of this section. Thus, under paragraph (c)(3)(ii)(A) of this section X is considered as holding directly or indirectly stock of USR for purposes of determining whether USR is a domestically controlled QIE. Under paragraph (c)(3)(ii)(C) of this section, the USR stock held directly or indirectly by X is not considered held directly or indirectly by any other person, including the shareholders of X. Because X is not a foreign person as defined in paragraph (k) of this section and holds directly or indirectly 51 percent of the single class of outstanding stock of USR, foreign persons hold directly or indirectly less than 50 percent of the fair market value of the stock of USR, and USR therefore is a domestically controlled QIE under paragraph (c)(3)(i) of this section.

(*3*) *Alternative facts*: *QIE stock held by domestic partnership*. The facts are the same as in paragraph (c)(3)(vii)(A)(*1*) of this section (*Example 1*), except that, instead of being a public domestic C corporation, X is a domestic partnership that is not a publicly traded partnership as defined in paragraph (c)(3)(v)(J) of this section. In addition, FC1, a foreign corporation, holds a 50 percent interest in X, and the remaining interests in X are held by U.S. citizens. X is not a non-look-through person as defined in paragraph (c)(3)(v)(D) of this section and, therefore, is a look-through person as defined in paragraph (c)(3)(v)(C) of this section. Accordingly, under paragraph (c)(3)(ii)(A) of this section, X is not considered as holding directly or indirectly stock of USR for purposes of determining whether USR is a domestically controlled QIE. Under paragraph (c)(3)(ii)(B) of this section, the stock of USR that, but for paragraph (c)(3)(ii)(A) of this section, is considered held by X, a look-through person, is instead considered held proportionately by X's partners that are non-look-through persons. Accordingly, because FC1 and the U.S. citizen partners in X are non-look-through persons as defined in paragraph (c)(3)(v)(D) of this section, 25.5 percent of the stock of USR is considered as held directly or indirectly by FC1 (50% x 51%), a foreign person as defined in paragraph (k) of this section, and 25.5 percent (in the aggregate) of the stock of USR is considered as held directly or indirectly by the U.S. citizen partners in X (50% x 51%), who are not foreign persons as defined in paragraph (k) of this section. Foreign persons therefore hold directly or indirectly 74.5 percent of the stock of USR (49 percent of the stock of USR held directly or indirectly by nonresident alien individuals, who are non-look-through persons as defined in paragraph (c)(3)(v)(D) of this section, plus the 25.5 percent held directly or indirectly by FC1), and USR is not a domestically controlled QIE under paragraph (c)(3)(i) of this section. The result described in this paragraph (c)(3)(vii)(A)(*3*) would be the same if, instead of being a domestic partnership, X were a foreign partnership.

(*4*) *Alternative facts*: *QIE stock held by a qualified foreign pension fund*. The facts are the same as in paragraph (c)(3)(vii)(A)(*3*) of this section (*Example 1*), except that, instead of being a foreign corporation, FC1 is a qualified foreign pension fund. The analysis is the same as in paragraph (c)(3)(vii)(A)(*3*) (*Example 1*) regarding the treatment of X as a look-through person as defined in paragraph (c)(3)(v)(C) of this section. In addition, FC1, a foreign person under paragraph (c)(3)(iv)(A) of this section, is a non-look-through person as defined in paragraph (c)(3)(v)(D) of this section. Because FC1 and the U.S. citizen partners in X are non-look-through persons, 25.5 percent of the stock of USR is considered as held directly or indirectly by FC1 (50% x 51%), and 25.5 percent (in the aggregate) of the stock of USR is considered as held directly or indirectly by the U.S. citizen partners in X (50% x 51%). Thus, for the same reasons described in paragraph (c)(3)(vii)(A)(*3*) (*Example 1*), foreign persons hold directly or indirectly 74.5 percent of the stock of USR, and USR is not a domestically controlled QIE under paragraph (c)(3)(i) of this section.

(B) *Example 2*: *QIE stock held by non-public domestic C corporation that is a foreign-controlled domestic corporation*—(*1*) *Facts*. USR is a REIT, 51 percent of the stock of which is held by X, a non-public domestic C corporation as defined in paragraph (c)(3)(v)(E) of this section, and 49 percent of the stock of which is held by nonresident alien individuals, which are foreign persons as defined in paragraph (k) of this section. FC1, a foreign corporation, holds 40 percent of the stock of X, and Y, a nonresident alien individual, holds 15 percent of the stock of X. The remaining 45 percent of the stock of X is held by U.S. citizens.

(*2*) *Analysis*. Under paragraph (c)(3)(v)(M) of this section, USR is a QIE. X, a non-public domestic C corporation, is a non-look-through person as defined under paragraph (c)(3)(v)(D) of this section, unless paragraph (c)(3)(iii)(B) of this section applies to treat X as a look-through person because X is a foreign-controlled domestic corporation. FC1, Y, and the U.S. citizen shareholders of X are non-look-through persons as defined under paragraph (c)(3)(v)(D). Under paragraph (c)(3)(v)(B)(*1*) of this section, FC1, Y, and the U.S. citizen shareholders are all considered as holding directly or indirectly stock of X for purposes of determining whether X is a foreign-controlled domestic corporation. Under paragraph (c)(3)(v)(B)(*1*) of this section, the stock held directly or indirectly by FC1, Y, and the U.S. citizen shareholders is not considered held directly or indirectly by any other person. Because FC1 and Y, both foreign persons as defined in paragraph (k) of this section, hold directly or indirectly 40 percent and 15 percent of the stock of X, respectively, foreign persons hold directly or indirectly more than 50 percent of the fair market value of the stock of X, and X is a foreign-controlled domestic corporation under paragraph (c)(3)(v)(B) of this section. Accordingly, under paragraph (c)(3)(iii)(B) of this section, X is a look-through person as defined in paragraph (c)(3)(v)(C) of this section and, therefore, under paragraph (c)(3)(ii)(A) of this section is not considered as holding directly or indirectly stock of USR for purposes of determining whether USR is a domestically controlled QIE. Under paragraph (c)(3)(ii)(B) of this section, the stock of USR that, but for paragraph (c)(3)(ii)(A), is considered held by X, a look-through person, is instead considered held proportionately by X's shareholders that are non-look-through persons. Accordingly, because FC1, Y, and the U.S. citizen shareholders of X are non-look-through persons, 20.4 percent of the stock of USR is considered as held directly or indirectly by FC1 (40% x 51%), 7.65 percent of the stock of USR is considered as held directly or indirectly by Y (15% x 51%), and 22.95 percent (in the aggregate) of the stock of USR is considered as held directly or indirectly by the U.S. citizen shareholders (45% x 51%). Foreign persons therefore hold directly or indirectly 77.05 percent of the stock of USR (49 percent of the stock of USR held directly by nonresident alien individuals, who are foreign persons and non-look-through persons as defined in paragraph (c)(3)(v)(D), plus the 20.4 percent and 7.65 percent held indirectly by FC1 and Y, respectively), and USR is not a domestically controlled QIE under paragraph (c)(3)(i) of this section. The result described in this paragraph (c)(3)(vii)(B)(*2*) would be different if Y were a U.S. citizen instead of a nonresident alien individual, in which case X would be a non-look-through person because it is not a foreign-controlled domestic corporation under paragraph (c)(3)(v)(B) (the only foreign non-look-through person to hold directly or indirectly stock in X is FC1, which holds a 40-percent interest). Consequently, USR would be a domestically controlled QIE under paragraph (c)(3)(i) of this section because foreign persons hold directly or indirectly less than 50 percent of the stock of USR.

(C) *Example 3*: *QIE stock held by public QIE that is a domestically controlled QIE*—(*1*) *Facts*. USR2 is a REIT, 51 percent of the stock of which is held by USR1, a REIT that is a public QIE as defined in paragraph (c)(3)(v)(H) of this section, and 49 percent of the stock of which is held by nonresident alien individuals, which are foreign persons as defined in paragraph (k) of this section. The stock of USR1 is U.S. publicly traded QIE stock as defined in paragraph (c)(3)(v)(O) of this section. FC1 and FC2, both foreign corporations, each hold 20 percent of the stock of USR1. The remaining 60 percent of the stock of USR1 is held by persons that each hold less than 5 percent of the stock of USR1 and with respect to which USR1 has no actual knowledge that such person is not a United States person or is foreign controlled (as determined under paragraph (c)(3)(v)(B) of this section by treating any person that is not a non-public domestic C corporation as if it were a non-public domestic C corporation for this purpose) (USR1 less than five-percent public shareholders).

(*2*) *Analysis*. Under paragraph (c)(3)(v)(M) of this section, USR2 and USR1 are QIEs. Under paragraph (c)(3)(iii)(A) of this section, each of the USR1 less than five-percent public shareholders is treated as a United States person that is a non-look-through person. Consequently, under paragraph (c)(3)(i) of this section USR1 is a domestically controlled QIE because FC1 and FC2, each a foreign person as defined in paragraph (k) of this section that is a non-look-through person under paragraph (c)(3)(v)(D) of this section, together hold directly or indirectly only 40 percent of the stock of USR1 and, thus, foreign persons hold directly or indirectly less than 50 percent of the fair market value of the stock of USR1. In addition, the USR2 stock held by USR1 is treated as held directly or indirectly by a United States person that is a non-look-through person under paragraph (c)(3)(iii)(C) of this section. Because USR1 holds directly or indirectly 51 percent of the stock of USR2, foreign persons hold directly or indirectly less than 50 percent of the fair market value of the stock of USR2, and USR2 is a domestically controlled QIE under paragraph (c)(3)(i) of this section.

(*3*) *Alternative facts: QIE stock held by public QIE that is not a domestically controlled QIE*. The facts are the same as in paragraph (c)(3)(vii)(C)(*1*) of this section (*Example 3*), except that 25 percent of the stock of USR1 is held by each of FC1 and FC2, with the remaining 50 percent of the stock of USR1 held by the USR1 less than five-percent public shareholders. Regardless of the treatment of the USR1 less than five-percent public shareholders, USR1 is not a domestically controlled QIE under paragraph (c)(3)(i) of this section because FC1 and FC2, each a foreign person as defined in paragraph (k) of this section that is a non-look-through person under paragraph (c)(3)(v)(D) of this section, together hold directly or indirectly 50 percent of the stock of USR1 and, thus, foreign persons do not hold directly or indirectly less than 50 percent of the fair market value of the stock of USR1. In addition, the USR2 stock held by USR1 is treated as held by a foreign person that is a non-look-through person under paragraph (c)(3)(iii)(C) of this section. Because USR1 holds directly or indirectly 51 percent of the stock of USR2, foreign persons do not hold directly or indirectly less than 50 percent of the fair market value of the stock of USR2, and USR2 is not a domestically controlled QIE under paragraph (c)(3)(i) of this section.

(D) *Example 4*: *QIE stock held by non-public QIE*—(*1*) *Facts*. USR2 is a REIT, 49 percent of the stock of which is held by nonresident alien individuals, and 51 percent of the stock of which is held by USR1, a REIT. USR1 is not a public QIE as defined in paragraph (c)(3)(v)(H) of this section. U.S. citizens hold 50 percent of the stock of USR1. The remaining 50 percent of the stock of USR1 is held by PRS, a domestic partnership, 50 percent of the interests in which are held by DC, a public domestic C corporation as defined in paragraph (c)(3)(v)(G) of this section, and 50 percent of the interests in which are held by nonresident alien individuals.

(*2*) *Analysis*. Under paragraph (c)(3)(v)(M) of this section, USR2 and USR1 are QIEs. USR1 is not treated as a non-look-through person under paragraph (c)(3)(iii)(C) of this section because USR1 is not a public QIE as defined in paragraph (c)(3)(v)(H) of this section. Each of USR1 and PRS is a look-through person as defined in paragraph (c)(3)(v)(C) of this section that is not treated as holding directly or indirectly stock in USR2 for purposes of determining whether USR2 is a domestically controlled QIE under paragraph (c)(3)(ii)(A) of this section. Because the U.S. citizens who hold USR1 stock are non-look-through persons as defined in paragraph (c)(3)(v)(D) of this section, those U.S. citizens are treated under paragraph (c)(3)(ii)(B) of this section as holding directly or indirectly 25.5 percent of the stock of USR2 through their USR1 stock interest (50% x 51%) in accordance with paragraph (c)(3)(ii)(A) of this section. Similarly, because DC and the nonresident alien partners in PRS are non-look-through persons, each is treated under paragraph (c)(3)(ii)(B) of this section as holding directly or indirectly the stock of USR2 through its interest in PRS and PRS's interest in USR1. Thus, DC is treated as holding directly or indirectly 12.75 percent of the stock of USR2 (50% x 50% x 51%) and the nonresident alien individual partners, which are foreign persons as defined in paragraph (k) of this section, are treated as directly or indirectly holding a 12.75 percent aggregate interest in the stock of USR2 (50% x 50% x 51%). Foreign persons therefore hold directly or indirectly 61.75 percent of the stock of USR2 (the 49 percent stock in USR2 directly held by nonresident alien individuals, who are foreign persons and non-look-through persons as defined in paragraph (c)(3)(v)(D), plus the 12.75 percent in stock indirectly held by the nonresident alien individual partners in PRS), and USR2 is not a domestically controlled QIE under paragraph (c)(3)(i) of this section.

(E) *Example 5*: *Transition rule asset requirement*—(*1*) *Facts*. USR is a REIT formed on January 1, 2018. From formation, 51 percent of the stock of USR is held by X, a non-public domestic C corporation as defined in paragraph (c)(3)(v)(E) of this section, 25 percent of the stock of USR is held by FC1, a foreign corporation, and 24 percent of the stock of USR is held by nonresident alien individuals. FC2, a foreign corporation, and FC3, also a foreign corporation, each hold 50 percent of the stock of X. On April 24, 2024, USR's only property is Asset 1, a United States real property interest. The value of Asset 1, calculated under section 856(c)(4) as of the most recent quarter of USR's taxable year before April 24, 2024, is $100x. On January 1, 2026, USR borrows $30x and acquires Asset 2, a United States real property interest, for $30x.

(*2*) *Analysis*. As of April 24, 2024, USR is a domestically controlled QIE under paragraph (c)(3)(i) of this section, because, as determined without regard to paragraph (c)(3)(iii)(B) of this section, X is a non-look-through person and, consequently, foreign persons hold directly or indirectly less than 50 percent of the stock of USR. Accordingly, USR satisfies the requirement under paragraph (c)(3)(vi)(A)(*1*) of this section. USR also satisfies the requirements under paragraphs (c)(3)(vi)(A)(*2*) and (*3*) of this section, respectively, as of such date, because USR has not acquired directly or indirectly any United States real property interests, and the ownership of stock of USR has not changed. Thus, as of April 24, 2024, USR qualifies for the transition relief under paragraph (c)(3)(vi)(A) of this section. However, on January 1, 2026, USR no longer meets the requirement for transition relief in paragraph (c)(3)(vi)(A)(*2*) of this section because the fair market value of Asset 2, $30x, is 30 percent (which is more than 20 percent) of $100x, which (as calculated in accordance with paragraphs (c)(3)(vi)(A)(*2*) and (c)(3)(vi)(D) of this section) is the fair market value of USR's United States real property interests, namely Asset 1, as of April 24, 2024. Therefore, under paragraph (c)(3)(vi)(B)(*1*) of this section the transition rule ceases to apply to USR and, thus, paragraph (c)(3)(iii)(B) applies for purposes of determining whether USR is domestically controlled with respect to transactions occurring after January 1, 2026. Because FC2 and FC3 are non-look-through persons that hold more than 50 percent of the stock of X, X is a foreign-controlled domestic corporation under paragraph (c)(3)(iii)(B), and USR will not be a domestically controlled QIE under paragraph (c)(3)(i) of this section as of January 2, 2026, because foreign non-look-through persons (FC1, 25 percent, FC2, 25.5 percent, FC3, 25.5 percent, and the nonresident alien individuals, 24 percent) directly or indirectly hold more than 50 percent of the stock of USR.

(*3*) *Alternative facts*: *transition rule ownership requirement*. The facts are the same as in paragraph (c)(3)(vii)(E)(*1*) of this section (*Example 5*), except that instead of USR borrowing funds and acquiring Asset 2, FC3 sells its 50-percent stock interest in X to FC2 on June 1, 2024, and, on January 1, 2026, FC1 sells its 25-percent stock interest in USR to FC4, a foreign corporation. Following FC3's sale of its X stock to FC2 on June 1, 2024, FC2's stock interest in USR has increased by 25.5 percentage points, from 25.5 percent on April 24, 2024 (which is 50 percent of 51 percent), to 51 percent. Following FC1's sale of its USR stock to FC4 on January 1, 2026, FC4's stock interest in USR has increased by 25 percentage points, from zero percent on April 24, 2024, to 25 percent. Accordingly, in the aggregate, non-look-through persons have increased their ownership in USR by 50.5 percentage points (25.5 percent and 25 percent for FC2 and FC4, respectively), and USR no longer meets the requirement for transition relief in paragraph (c)(3)(vi)(A)(*3*) of this section as of January 1, 2026. Therefore, under paragraph (c)(3)(vi)(B)(*1*) of this section the transition rule ceases to apply to USR and, thus, paragraph (c)(3)(iii)(B) of this section applies for purposes of determining whether USR is domestically controlled with respect to transactions occurring after January 1, 2026. Because FC2, a non-look-through person, holds more than 50 percent of the stock of X, X is a foreign-controlled domestic corporation under paragraph (c)(3)(iii)(B) of this section, and USR will not be a domestically controlled QIE under paragraph (c)(3)(i) of this section because foreign non-look-through persons (FC2, 51 percent, FC4, 25 percent, and the nonresident alien individuals, 24 percent) directly or indirectly hold more than 50 percent of the stock of USR.

(4) *Foreign ownership percentage*. For purposes of calculating the foreign ownership percentage under section 897(h)(4)(C), the determination of the QIE stock that was held directly or indirectly by for-

eign persons is made under the rules of paragraphs (c)(3)(ii) through (vii) of this section.

* * * * *

(k) *Foreign person*. The term *foreign person* means a nonresident alien individual (including an individual subject to the provisions of section 877), a foreign corporation as defined in paragraph (l) of this section, a foreign partnership, a foreign trust or a foreign estate, as such persons are defined by section 7701 and the regulations in this chapter under section 7701. A resident alien individual, including a nonresident alien individual with respect to whom there is in effect an election under section 6013(g) or (h) to be treated as United States resident, is not a foreign person. With respect to the status of foreign governments and international organizations, *see* §1.897-9T(e). *See* paragraph (c)(3)(iv)(A) of this section regarding the treatment of qualified foreign pension funds and qualified controlled entities as foreign persons for purposes of section 897(h)(4)(B).

(l) *Foreign corporation*. The term *foreign corporation* has the meaning ascribed to such term in section 7701(a)(3) and (5) and § 301.7701-5. For purposes of sections 897 and 6039C, however, the term does not include a foreign corporation with respect to which there is in effect an election under section 897(i) and §1.897-3 to be treated as a domestic corporation. For purposes of section 897, the term does not include a qualified holder described in §1.897(l)-1(d); *see* paragraph (c)(3)(iv)(A) of this section regarding the treatment of qualified foreign pension funds and qualified controlled entities as foreign persons for purposes of section 897(h)(4)(B).

* * * * *

(n) *Regularly traded cross-reference*. *See* §1.897-9T(d) for a definition of regularly traded for purposes of sections 897, 1445, and 6039C.

* * * * *

Par. 3. Section 1.897-2 is amended by revising paragraph (h)(3) to read as follows:

§1.897-2 United States real property holding corporations.

* * * * *

(h) * * *

(3) *Requirements not applicable*. The requirements of this paragraph (h) do not apply to domestically-controlled qualified investment entities, as defined in section 897(h)(4)(B). *But see* §1.1445-2(c)(3) for rules providing that no withholding is required under section 1445(a) in certain cases when a statement is voluntarily issued by the corporation and otherwise complies with the requirements of this paragraph (h). The requirements of this paragraph (h) also do not apply to a corporation any class of stock in which is regularly traded on an established securities market at any time during the calendar year. However, such a corporation may voluntarily choose to comply with the requirements of paragraph (h)(4) of this section.

* * * * *

Par. 4. Section 1.897-9T is amended by:

1. Removing and reserving paragraph (c); and
2. Revising and republishing paragraph (e).

The revision reads as follows:

§1.897-9T Treatment of certain interest in publicly traded corporations, definition of foreign person, and foreign governments and international organizations (temporary).

* * * * *

(e) *Foreign governments and international organizations*. A foreign government shall be treated as a foreign person with respect to U.S. real property interests, and shall be subject to sections 897, 1445, and 6039C on the disposition of a U.S. real property interest except to the extent specifically otherwise provided in the regulations in this chapter issued under section 892. An international organization (as defined in section 7701(a)(18)) is not a foreign person with respect to U.S. real property interests, and is not subject to sections 897, 1445, and 6039C on the disposition of a U.S. real property interest. *See* §1.897-1(c)(3)(iv)(B) regarding the treatment of international organizations as foreign persons for purposes of section 897(h)(4)(B). Buildings or parts of buildings and the land ancillary thereto (including the residence of the head of the diplomatic mission) used by the foreign government for a diplomatic mission shall not be a U.S. real property interest in the hands of the respective foreign government.

* * * * *

Par. 5. Section 1.1445-2 is amended by:

1. Revising paragraph (c)(3)(i); and
2. Adding two sentences at the end of paragraph (e).

The revision and additions read as follows:

§1.1445-2 Situations in which withholding is not required under section 1445(a).

* * * * *

(c) * * *

(3) * * *

(i) *In general*. No withholding is required under section 1445(a) upon the acquisition of an interest in a domestic corporation, if the transferor provides the transferee with a copy of a statement, issued by the corporation pursuant to §1.897–2(h), certifying that the interest is not a U.S. real property interest, or if the transferor provides the transferee with a statement certifying that the corporation is a domestically controlled qualified investment entity (as determined under §1.897-1(c)(3)) that is voluntarily issued by the corporation but otherwise complies with the requirements of §1.897-2(h). In general, a corporation may issue such a statement only if the corporation was not a U.S. real property holding corporation at any time during the previous five years (or the period in which the interest was held by its present holder, if shorter), the corporation is a domestically controlled qualified investment entity (as determined under §1.897–1(c)(3)), or if interests in the corporation ceased to be United States real property interests under section 897(c)(1)(B). (A corporation may not provide such a statement based on its determination that the interest in question is an interest solely as a creditor.) *See* §1.897–2(f) and (h). The corporation may provide such a statement directly to the transferee at the transferor's request. The transferor must request such a statement before the transfer, and shall, to the extent possible, specify the anticipated date of the transfer. A corporation's statement

may be relied upon for purposes of this paragraph (c)(3) only if the statement is dated not more than 30 days before the date of the transfer. A transferee may also rely upon a corporation's statement that is voluntarily provided by the corporation in response to a request from the transferee, if that statement otherwise complies with the requirements of this paragraph (c)(3) and §1.897-2(h).

* * * * *

(e) * * * Paragraph (c)(3)(i) of this section applies with respect to dispositions of U.S. real property interests, and distributions described in section 897(h), occurring on or after April 25, 2024. For dispositions of U.S. real property interests, and distributions described in section 897(h), occurring before April 25, 2024, *see* §1.1445-2(c)(3)(i), as contained in 26 CFR part 1, revised as of April 1, 2024.

Douglas W. O'Donnell,
Deputy Commissioner.

Approved: April 2, 2024.

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

(Filed by the Office of the Federal Register April 24, 2024, 8:45 a.m., and published in the issue of the Federal Register for April 25, 2024, 89 FR 31618)

Part III

Sustainable Aviation Fuel Credit; Lifecycle Greenhouse Gas Emissions Reduction Percentage and Certification of Requirements Related to the Clean Air Act; Climate Smart Agriculture; Safe Harbors

Notice 2024-37

SECTION 1. PURPOSE

This notice provides additional guidance and safe harbors regarding the sustainable aviation fuel (SAF) credits under §§ 40B and 6426(k) of the Internal Revenue Code (collectively, SAF credit or SAF credits).[1] The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) issued prior guidance regarding SAF credits in Notice 2023-6, 2023-2 I.R.B. 328, and Notice 2024-6, 2024-2 I.R.B. 34. The Treasury Department and the IRS developed the guidance in this notice in consultation with the Environmental Protection Agency (EPA), the Department of Energy (DOE), the Department of Agriculture (USDA), and the Federal Aviation Administration (FAA) of the Department of Transportation (DOT).

SECTION 2. BACKGROUND

.01 *Overview*. This section provides an overview of this notice and relevant background. Section 3 of this notice provides a safe harbor for calculating the lifecycle greenhouse gas emissions reduction percentage under § 40B(e)(2) using the modified version of the Argonne National Laboratory's Greenhouse gases, Regulated Emissions, and Energy use in Technologies (R&D GREET)[2] model that satisfies the requirements of § 40B(e)(2) (40BSAF-GREET 2024). Section 3 of this notice also provides a safe harbor for certifying the related requirements under § 40B(f)(2)(A)(ii) for purposes of the 40BSAF-GREET 2024 model by using the California Air Resources Board's (CARB) Low Carbon Fuel Standard program (LCFS) accredited verifiers (CARB LCFS verifiers).

Section 4 of this notice provides a safe harbor for an additional reduction in calculating the lifecycle greenhouse gas emissions reduction percentage under § 40B(e)(2) using the 40BSAF-GREET 2024 model in conjunction with the USDA Climate Smart Agriculture Pilot Program (USDA CSA Pilot Program). The USDA CSA Pilot Program establishes climate smart agriculture (CSA) practices for cultivating domestic corn (CSA corn) and domestic soybeans (CSA soybean) (collectively, CSA crops) for use as SAF feedstocks. Section 4 of this notice also provides a safe harbor for certifying the related requirements under § 40B(f)(2)(A)(ii) for purposes of the USDA CSA Pilot Program by using an unrelated party certifier that meets the USDA CSA Pilot Program requirements for Eligible Unrelated Party Certification Bodies (CSA certifier).

Section 5 of this notice provides information about registration. Section 5 of this notice also provides guidance regarding claims for SAF credits that rely on the 40BSAF-GREET 2024 model and the USDA CSA Pilot Program to calculate the lifecycle greenhouse gas emissions reduction percentage.

.02 *Applicable law*. Section 13203 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022, added § 40B and amended §§ 38(b), 40A, 87, 4101(a), 6426, and 6427(e)(1), to establish the SAF credits, effective for certain fuel mixtures containing SAF sold or used after December 31, 2022, and before January 1, 2025. The SAF credit is equal to the product of (1) the number of gallons of SAF in a qualified mixture and (2) the sum of (A) $1.25 and (B) the "applicable supplementary amount" with respect to such SAF. In general, the applicable supplementary amount increases the $1.25 base credit by $0.01 for each percentage point by which the lifecycle greenhouse gas emissions reduction percentage of the SAF exceeds 50 percent, for a maximum increase of $0.50.[3] *See* §§ 40B(b) and 6426(k).

In addition to other requirements, under § 40B(d)(1)(D), SAF must be certified to have a lifecycle greenhouse gas emissions reduction percentage of at least 50 percent. Section 40B(e) defines the term "lifecycle greenhouse gas emissions reduction percentage" (emissions reduction percentage) to mean, with respect to any SAF, the percentage reduction in lifecycle greenhouse gas emissions achieved by such fuel, as compared with petroleum-based jet fuel, as defined in accordance with (1) the most recent Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) that has been adopted by the International Civil Aviation Organization (ICAO) with the agreement of the United States or (2) any similar methodology that satisfies the criteria under § 211(o)(1)(H) of the Clean Air Act (42 U.S.C. 7545(o)(1)(H)), as in effect on August 16, 2022 (CAA).

Section 40B(f)(2)(A) requires a producer or importer of SAF to provide certification (in the form and manner prescribed by the Secretary of the Treasury or her delegate (Secretary)) from an unrelated party demonstrating compliance with (i) any general requirements, sup-

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

[2] As of the date of publication of this notice in the Internal Revenue Bulletin, the term "R&D GREET model" refers to the following lifecycle analysis model: Wang, Michael, et al. (2023). Greenhouse gases, Regulated Emissions, and Energy use in Technologies Model ® (2023 Excel). Computer Software. USDOE Office of Energy Efficiency and Renewable Energy (EERE). 09 Oct. 2023. Web. https://www.osti.gov/doecode/biblio/113174. Notice 2024-6 uses the term "ANL-GREET" and defines it in footnote 2. DOE has since renamed ANL-GREET as R&D GREET. Argonne National Laboratory made this change on its website beginning in December 2023, to better distinguish between the different models and to draw a clear distinction between R&D GREET and the versions used for tax credit purposes. All references to R&D GREET in this notice are referring to the same model, including any subsequent updates, as references to ANL-GREET in Notice 2024-6.

[3] *See* sections 4.05 and 4.06 of Notice 2023-6 for instructions and an example of how to calculate the applicable supplementary amount for purposes of §§ 40B(b) and 6426(k).

ply chain traceability requirements, and information transmission requirements established under CORSIA as described in § 40B(e)(1), or (ii) in the case of any similar methodology established under § 40B(e)(2), requirements similar to the requirements described in § 40B(f)(2)(A)(i). Section 40B(f)(2)(B) requires SAF producers or importers to provide such other information with respect to such fuel as the Secretary may require for purposes of carrying out § 40B.

.03 *Notice 2023-6*. Notice 2023-6 provides guidance on the SAF credits and related credit and payment rules under §§ 34(a)(3), 38, 87, 6426(k), and 6427(e)(1), and procedures for claiming the SAF credit. Notice 2023-6 also provides guidance related to the registration requirements under § 4101 for persons producing or importing SAF synthetic blending component, a type of SAF. *See* section 3.01 of Notice 2023-6 for the definition of SAF synthetic blending component, and *see* Notice 2023-6 generally for definitions of other terms used in this notice and Notice 2024-6. Sections 4.04 and 5.01(4) of Notice 2023-6 include CORSIA-based safe harbors for determining the emissions reduction percentage under § 40B(e)(1) and for providing an unrelated party certification for demonstrating compliance with the requirements under § 40B(f)(2)(A)(i).

.04 *Notice 2024-6*. Section 3 of Notice 2024-6 provides safe harbors for using the EPA's Renewable Fuel Standard (RFS) program to calculate the emissions reduction percentage under § 40B(e)(2), and for using RFS guidance to certify the corresponding unrelated party certification requirements under § 40B(f)(2)(A)(ii). Section 4 of Notice 2024-6 provides an updated Model Certificate for SAF Synthetic Blending Component to be used when submitting a claim for a SAF credit. Section 5 of Notice 2024-6 informs the public that the existing R&D GREET[4] model and any other existing versions of GREET (for example, CA-GREET, ICAO-GREET) are methodologies that do not satisfy the requirements to calculate the emissions reduction percentage under § 40B(e)(2).

Section 6 of Notice 2024-6 announced that the DOE was collaborating with other Federal agencies to develop the 40BSAF-GREET 2024 model, and that it would be expected in early 2024. Section 6 of Notice 2024-6 also announced that subject to any further guidance from the Treasury Department and the IRS, it is anticipated that after the 40BSAF-GREET 2024 model is released, taxpayers will be able to use it to calculate the emissions reduction percentage for SAF sold or used after December 31, 2022, and prior to January 1, 2025.

SECTION 3. 40BSAF-GREET 2024 MODEL; CARB LCFS PROGRAM; SAFE HARBORS

.01 *Calculating emissions reduction percentage under § 40B(e)(2); safe harbor*.

(1) *In general*. Section 40B(e)(2) provides that the emissions reduction percentage may be calculated in accordance with any methodology that is similar to the most recent CORSIA and satisfies the criteria under § 211(o)(1)(H) of the CAA. Section 211(o)(1)(H) of the CAA defines the term "lifecycle greenhouse gas emissions" to mean "the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions such as significant emissions from land use changes), as determined by the [EPA] Administrator, related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential." *See also* 42 U.S.C. 7602(a).

(2) *40BSAF-GREET 2024 model*. DOE released the 40BSAF-GREET 2024 model on April 30, 2024, and it is available at https://www.energy.gov/media/322677. DOE worked with the Treasury Department and other Federal agencies to develop the 40BSAF-GREET 2024 model, including specifications for and limitations on taxpayer inputs and background inputs to the model, to satisfy the statutory requirements of § 40B(e)(2); DOE and EPA have described the parameters of the model that were included to satisfy the statutory requirements, including to address the issues EPA identified in its December 2023 letter to Treasury.[5] The EPA has concluded that the 40BSAF-GREET 2024 model addresses the issues it previously identified that made the R&D GREET model insufficient for calculating lifecycle greenhouse gas emissions for purposes of § 211(o)(1)(H) of the CAA.[6] The 40BSAF-GREET 2024 model is a "similar methodology" to the CORSIA methodology as both evaluate the full fuel lifecycle, including all stages of fuel and feedstock production through to the end use of the finished fuel. For those reasons, including the analysis provided by DOE and EPA in their respective letters, the Treasury Department and the IRS have determined that it is appropriate to provide the safe harbor described in section 3.01(3) of this notice for using the 40BSAF-GREET 2024 model to calculate the emissions reduction percentage under § 40B(e)(2).

(3) *Safe harbor for the 40BSAF-GREET 2024 model*. With respect to any claim for a SAF credit for a SAF qualified mixture, as defined in section 3.02(2) of Notice 2023-6, that meets the require-

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[4] *See* footnote 2 of this notice for an explanation of the name change from "ANL-GREET" to "R&D GREET."

[5] Letter from Carla Frisch, Acting Executive Director, Principal Deputy Director, Department of Energy Office of Policy, and Jeffrey M. Marootian, Acting Assistant Secretary, Principal Deputy Assistant Secretary, Department of Energy, Efficiency & Renewal Energy, to Aviva Aron-Dine, Acting Assistant Secretary for Tax Policy, U.S. Department of Treasury (April 30, 2024), (DOE Letter), *available at* : https://home.treasury.gov/system/files/136/April-2024-DOE-letter-to-UST-on-SAF-signed.pdf. U.S. Department of Energy, *Guidelines to Determine Life Cycle Greenhouse Gas Emissions of Sustainable Aviation Fuel Production Pathways using 40BSAF-GREET 2024* (40BSAF-GREET 2024 User Manual), *available at* https://www.energy.gov/media/322899. Letter from Joseph Goffman, Assistant Administrator for the Office of Air and Radiation, U.S. Environmental Protection Agency, to Aviva Aron-Dine, Acting Assistant Secretary for Tax Policy, U.S. Department of Treasury (April 25, 2024), (EPA Letter), *available at* https://home.treasury.gov/system/files/136/April-2024-EPA-letter-to-UST-on-SAF-signed.pdf. *See also* Letter from Joseph Goffman, Principal Deputy Assistant Administrator for the Office of Air and Radiation, U.S. Environmental Protection Agency, to Lily Batchelder, Assistant Secretary for Tax Policy, U.S. Department of Treasury (December 13, 2023), (EPA December 2023 Letter) *available at* https://home.treasury.gov/system/files/136/Final-EPA-letter-to-UST-on-SAF-signed.pdf.

[6] *See* EPA April 2024 Letter.

ments of ASTM International (ASTM) D7566,[7] the IRS will accept an emissions reduction percentage for the SAF synthetic blending component in the qualified SAF mixture that is calculated in accordance with the 40BSAF-GREET 2024 model, provided the certification requirements under § 40B(f)(2)(A)(ii) are satisfied. *See* section 3.02 of this notice for guidance regarding certification requirements under § 40B(f)(2)(A)(ii).

The 40BSAF-GREET 2024 model calculates lifecycle greenhouse gas emissions associated with SAF from two production pathways: (1) hydroprocessed esters and fatty acids (HEFA production pathway) and (2) alcohol-to-jet (ATJ-Ethanol production pathway). The HEFA production pathway corresponds to the ASTM-approved HEFA production pathway: HEFA-SPK, ASTM D7566, Annex A2 (approved in 2011 at a 50 percent blend limit with petroleum-derived jet fuel). The ATJ-Ethanol production pathway corresponds to the ASTM-approved alcohol-to-jet fuel pathway: ATJ-SPK, ASTM D7566, Annex A5 (approved in 2016 at a 30 percent blend limit). *See* 40BSAF-GREET 2024 User Manual for further information on eligible SAF pathways available at https://www.energy.gov/media/322899.

.02 *Unrelated party certification requirements under § 40B(f)(2)(A)(ii); safe harbor under CARB LCFS program*.

(1) *In general*. Under § 40B(f)(2)(A)(ii), a producer or importer of a SAF synthetic blending component calculating the emissions reduction percentage under § 40B(e)(2), must provide certification from an unrelated party demonstrating compliance with requirements similar to those that apply with respect to the CORSIA methodology. *See also* § 6426(k)(3).

(2) *CARB LCFS*. The CARB LCFS program is part of a comprehensive set of programs used by California to cut greenhouse gas emissions and other smog-forming and toxic air pollutants by improving vehicle technology, reducing fuel consumption, and increasing transportation mobility options. The CARB LCFS program is designed to encourage the use of cleaner transportation fuels, encourage the production of those fuels, and as a result, reduce greenhouse gas emissions and decrease petroleum dependence in the transportation sector. Additional information about the CARB LCFS program is available at https://ww2.arb.ca.gov/our-work/programs/low-carbon-fuel-standard/about.

The CARB LCFS program relies on accurate data monitoring, reporting, and verification using CARB LCFS verifiers. Only CARB LCFS verifiers may provide verification for the CARB LCFS program. Additional information about the CARB LCFS program verification rules and CARB LCFS verifiers is available at https://ww2.arb.ca.gov/lcfs-verification.

(3) *Safe harbor for certifications by CARB LCFS verifiers*. With respect to any SAF qualified mixture that meets the requirements of ASTM D7566 and for which the 40BSAF-GREET 2024 model is used to calculate the emissions reduction percentage, the IRS will consider a registered producer or importer of a SAF synthetic blending component (registered SAF producer) as having met the certification requirements of § 40B(f)(2)(A)(ii) for the SAF synthetic blending component if such registered SAF producer obtains the requisite certification from a CARB LCFS verifier and such certification is provided in a format that is substantially similar to an LCFS Verification Statement (CARB certification). *See* section 5.01 of this notice for guidance on registration.

The registered SAF producer must record the CARB LCFS Verifier Executive Order number of the CARB LCFS verifier who provides the CARB certification on the Certificate for SAF Synthetic Blending Component Using the 40BSAF-GREET 2024 Model required under section 3.03 of this notice. The registered SAF producer also must provide a copy to the CARB LCFS verifier of the 40BSAF-GREET 2024 model Excel workbook used to calculate the emissions reduction percentage the registered SAF producer enters on the Certificate for SAF Synthetic Blending Component Using the 40BSAF-GREET 2024 Model. *See* Appendix C of this notice for the model certificate.

(4) *Verification standards*. CARB LCFS verifiers must certify the foreground data of the 40BSAF-GREET 2024 model Excel workbook and other requirements as provided in the 40BSAF-GREET 2024 User Manual (including all updates to the user manual made by DOE) in accordance with CARB LCFS verifier practices and standards.[8]

(5) *Additional verification guidelines*. The registered SAF producer must make available certain information to assist the CARB LCFS verifier in certifying compliance pursuant to § 40B(f)(2)(A)(ii). The registered SAF producer may provide the CARB LCFS verifier with information consistent with that required in the proposed LCFS Tier 1 calculator Excel workbooks located at https://ww2.arb.ca.gov/resources/documents/lcfs-life-cycle-analysis-public-comment. For the HEFA production pathway, a registered SAF producer should use the Hydroprocessed Ester and Fatty Acid Fuels workbook. For the ATJ-Ethanol production pathway, a registered SAF producer should use either the Starch and Fiber Ethanol or Sugarcane Ethanol workbook. Alternatively, a registered SAF producer may, where applicable, provide a certified or CARB-approved Tier 2 pathway application to the CARB LCFS verifier.

.03 *Certificate for SAF Synthetic Blending Component*. For claims filed for SAF produced using the 40BSAF-GREET 2024 model, claimants must submit with their claim a Certificate for SAF Synthetic Blending Component Using the 40BSAF-GREET 2024 Model in. Such certificate must be in substantially the same form as the Model Certificate in Appendix C of this notice.

SECTION 4. CLIMATE SMART AGRICULTURE; USDA CSA PILOT PROGRAM USED WITH 40BSAF-GREET 2024; SAFE HARBORS

.01 *Calculating emissions reduction percentage under § 40B(e)(2); safe harbor*.

(1) *USDA CSA Pilot Program*. The USDA has determined that CSA practices

[7] This notice primarily addresses the SAF credit requirements applicable to a qualified mixture produced under ASTM D7566. The Treasury Department and the IRS, in consultation with the DOT and the FAA, understand that no jet fuel is currently produced in the United States under ASTM D1655 Annex A1 that would qualify for the SAF credit.

[8] *See* Cal. Code Regs. tit. 17, §§ 95480-95503; however, the requirement for CARB LCFS verifiers submit Conflict of Interest statements is waived for purposes of section 3.02 of this notice.

can result in lower emissions and greater carbon sequestration than conventional farming practices, but such practices are not incorporated into existing lifecycle greenhouse gas emissions models. The USDA CSA Pilot Program incorporates CSA practices for CSA crops that are used as feedstocks for SAF synthetic blending components, which results in estimated greenhouse gas reduction and carbon sequestration benefits. In recognition of the potential emissions reduction benefits of CSA but also of the limitations of currently available verification mechanisms, empirical data, and modeling, and to advance the development of such verification mechanisms, section 4.02 of this notice establishes a safe harbor for using CSA crops cultivated pursuant to the USDA CSA Pilot Program, as described in Appendix A, as feedstocks for SAF synthetic blending component.

For the ATJ-Ethanol production pathway using CSA corn, the USDA CSA Pilot Program requires that CSA farmers who qualify under the USDA CSA Pilot Program (USDA CSA Pilot Program farmers) and grow the CSA corn engage in three CSA practices on the same acreage: no-till farming, planting cover crops, and applying enhanced efficiency nitrogen fertilizer. For the HEFA production pathway using CSA soybean, the USDA CSA Pilot Program requires that USDA CSA Pilot Program farmers engage in two CSA practices on the same acreage: no-till farming and planting cover crops. In accordance with the USDA CSA Pilot Program, USDA CSA Pilot Program farmers must apply these practices to the entire acreage on which each CSA crop is grown and adhere to the definitions and practice requirements provided in the USDA CSA Pilot Program. *See* Appendix A of this notice. The USDA CSA Pilot Program may only be used in conjunction with the 40BSAF-GREET 2024 model for claims under §§ 40B and 6426(k).

(2) *Safe harbor*. The Treasury Department, in consultation with the USDA, has determined that for purposes of the USDA CSA Pilot Program, in lieu of a full lifecycle analysis incorporated into the relevant model, a SAF synthetic blending component produced from CSA corn or CSA soybean is eligible for an additional proxy reduction (CSA reduction) in the calculation of the emissions reduction percentage. The emissions reduction percentage is calculated for the SAF credit by multiplying a fraction, the numerator of which is the baseline for the lifecycle greenhouse gas emissions of petroleum-based jet fuel (LC) minus the lifecycle emissions value (LSf), and the denominator of which is the baseline (LC), by 100 percent ([(LC - LSf) / LC] × 100% = emissions reduction percentage).[9] The emissions reduction percentage must be rounded down to the nearest whole percent. *See* section 4 of Notice 2023-6.

The IRS will accept a CSA reduction for an LSf determined under the 40BSAF-GREET 2024 model, provided the requirements of the USDA CSA Pilot Program and this notice are met. Specifically, the CSA reduction for CSA corn is an additional 10 gCO2e/MJ reduction in the LSf, as calculated using the 40BSAF-GREET 2024 model. The CSA reduction for CSA soybean is an additional 5 gCO2e/MJ reduction in the LSf, as calculated using the 40BSAF-GREET 2024 model. The emissions reduction percentage formula accounting for CSA reduction is {[LC – (LSf - CSA reduction)] / LC} × 100%.

(3) *Example*. A registered SAF producer produces a SAF synthetic blending component via the ATJ-Ethanol production pathway using 100% CSA corn. Using the 40BSAF-GREET 2024 model, the SAF synthetic blending component produced via the ATJ-Ethanol production pathway has a calculated LSf of 51.8 gCO2e/MJ. This LSf can be reduced by the CSA reduction of 10 gCO2e/MJ. To calculate the emissions reduction percentage (rounding down to the nearest whole percent): [(89 gCO2e/MJ – (51.8 gCO2e/MJ – 10 gCO2e/MJ)) / 89 gCO2e/MJ] × 100% = 53.03%, rounded down to 53%.

.02 *Certification of compliance with the USDA CSA Pilot Program*.

(1) *In general*. The CSA practices incorporated into the USDA CSA Pilot Program are not a part of either the 40BSAF-GREET 2024 model or any CARB program including the LCFS program. Therefore, the Treasury Department and the USDA have developed additional unrelated party certification requirements for the USDA CSA Pilot Program.

(2) *Safe harbor*. To qualify for the CSA reduction, registered SAF producers using the ATJ-Ethanol or HEFA production pathways must obtain unrelated party certification of compliance with the USDA CSA Pilot Program practice requirements (CSA certification) in addition to the CARB certification required under section 3.02 of this notice. The IRS will consider a registered SAF producer as having met the unrelated party certification requirements of § 40B(f)(2)(A)(ii) if it satisfies all the requirements of this section and the USDA CSA Pilot Program. *See* Appendix A of this notice.

(3) *CSA certifier audit requirements*. A CSA certifier must audit records from the USDA CSA Pilot Program farmers to verify compliance with the USDA CSA Pilot Program. The CSA certifier must also audit supply chain records and complete a mass balance to verify traceability of the contracted quantity of CSA crops to the registered SAF producer.

(4) *CSA certifier accreditation and other requirements*. The CSA certifier must meet the requirements for Eligible Unrelated Party Certification Bodies in the USDA CSA Pilot Program. Generally, the CSA certifier must be accredited by the ANSI National Accreditation Board (ANAB) for ISO 14065. ISO 14065 specifies general principles and requirements for bodies performing validation and verification of environmental information, which is directly relevant to verifying reduced carbon intensity. In the United States, the ANAB Accreditation Program for Greenhouse Gas Validation and Verification Bodies operates according to ISO 14065.

In addition to being ISO 14065 accredited, the USDA CSA Pilot Program requires that the CSA certifier must demonstrate agricultural expertise by either assigning at least one individual to the CSA certification team who is a USDA

[9] Until further notice, for purposes of calculating the emissions reduction percentage, the IRS will treat the lifecycle greenhouse gas emissions of petroleum-based jet fuel as equal to 89 grams of carbon dioxide equivalent per megajoule of energy or 89 gCO2e/MJ as the baseline. This is the standard adopted by the ICAO. *See* section 4.03 of Notice 2023-6.

Technical Service Provider, or by assigning at least one individual to the CSA certification team who is a Certified Crop Advisor. For more information concerning these requirements, *see* USDA CSA Pilot Program, Appendix A of this notice.

(5) *Registered SAF producer requirements*. Registered SAF producers who want to use the CSA reduction for producing SAF from CSA crops must: (i) contract directly with USDA CSA Pilot Program farmers for CSA corn or CSA soybean in accordance with the requirements of the USDA CSA Pilot Program described in Appendix A of this notice; (ii) collect and maintain from the USDA CSA Pilot Program farmer a Certificate for Climate Smart Agriculture Crops with respect to each CSA crop; (iii) maintain all records described in the Practice Recordkeeping Requirements and Supply Chain Traceability Requirements and Recordkeeping sections of the description of the USDA CSA Pilot Program in Appendix A of this notice; (iv) make all such records available to the CSA certifier; and (v) maintain and make available for IRS inspection the CSA certification required by section 4.02(2) of this notice and the Certificate for Climate Smart Agriculture Crops. *See* section 4.03 of this notice for guidance regarding the Certificate for Climate Smart Agriculture Crops and Appendix B of this notice for the model certificate.

.03 *Certificate for Climate Smart Agriculture Crops*. The Certificate for Climate Smart Agriculture Crops required by section 4.02 of this notice (i) contains a statement acknowledging that the USDA CSA Pilot Program farmer understands that fraudulent use of the certificate may subject the USDA CSA Pilot Program farmer and all parties making such fraudulent use to a fine or imprisonment, or both, together with the costs of prosecution, (ii) is in substantially the same form as the model certificate in Appendix B of this notice, and (iii) contains all the information necessary to complete the certificate. The certificate identification number is determined by the USDA CSA Pilot Program farmer and must be unique to each certificate.

A USDA CSA Pilot Program farmer may, with respect to a particular sale of CSA corn or CSA soybean, provide multiple separate certificates, each applicable to a portion of the total volume of the CSA corn or CSA soybean sold. Thus, for example, a USDA CSA Pilot Program farmer that sells 5,000 bushels of CSA corn or CSA soybean in one transaction may provide its buyer with five certificates for 1,000 bushels each.

.04 *Certificate for SAF Synthetic Blending Component*. For claims that use the 40BSAF-GREET 2024 model and the USDA CSA Pilot Program safe harbors to calculate the emissions reduction percentage, claimants must submit with their claim a Certificate for SAF Synthetic Blending Component Using the 40BSAF-GREET 2024 Model and the USDA CSA Pilot Program for Corn and Soybean. Such certificate must be in substantially the same form as the model certificate in Appendix D of this notice.

SECTION 5. REGISTRATION; CLAIMS FOR THE SAF CREDITS USING 40BSAF-GREET 2024 MODEL AND CSA REDUCTION

.01 *Registration*. For a claimant to qualify for the SAF credit, the producer or importer of the SAF synthetic blending component must be registered with the IRS under § 4101. *See* §§ 40B(f)(1) and 6426(k)(3). Application for registration is made on Form 637, *Application for Registration (For Certain Excise Tax Activities),* under Activity Letter "SA," in accordance with instructions for that form. *See* also section 5 of Notice 2023-6 for additional information about registration.

Pursuant to § 48.4101-1(h)(1)(v) of the Manufacturers and Retailers Excise Tax Regulations (26 CFR part 48), each registrant must notify the IRS of any change in the information the registrant submitted in connection with its application for registration within 10 days after the change occurs. For registrations issued prior to the issuance of this notice and applications for registration that are pending as of the date of this notice:

(1) If a registrant has an Activity Letter "SA" issued prior to the issuance of this notice, before making a claim for the SAF credits or amending a prior claim for the SAF credits using the 40BSAF-GREET 2024 model or the 40BSAF-GREET 2024 model with the USDA CSA Pilot Program, the registrant must first inform the IRS of this change of methodology and update its registration by contacting the IRS office with which the registrant is registered.

(2) If an applicant has a pending application for registration as of the date of this notice and wishes to make claims for the SAF credits using the 40BSAF-GREET 2024 model or the 40BSAF-GREET 2024 model with the USDA CSA Pilot Program, the applicant must inform the IRS of this change of methodology by contacting the IRS office with which the applicant submitted its Form 637.

.02 *Eligibility*. A registered SAF producer that uses the safe harbors provided in this notice to calculate the emissions reduction percentage must meet all statutory requirements under § 40B, including registration, traceability, and unrelated party certification. The safe harbors for the 40BSAF-GREET 2024 model and the USDA CSA Pilot Program may be used in connection with §§ 40B, 6426(k), and 6427(e)(1) claims that relate to the sale or use of a SAF qualified mixture after December 31, 2022, and before January 1, 2025.

In cases where the registered SAF producer used the 40BSAF-GREET 2024 model to calculate the emissions reduction percentage, claimants must submit the Certificate for SAF Synthetic Blending Component Using the 40BSAF-GREET 2024 Model with their claim. *See* Appendix C of this notice for the model certificate. In cases where the registered SAF producer used the 40BSAF-GREET 2024 model in conjunction with the USDA CSA Pilot Program to calculate the emissions reduction percentage, the claimant must submit the Certificate for SAF Synthetic Blending Component Using the 40BSAF-GREET 2024 Model and the USDA CSA Pilot Program for Corn and Soybean with their claim. *See* Appendix D of this notice for the model certificate. *See* sections 3.02, 3.03, 4.01, and 4.02 of this notice, section 6 of Notice 2023-6, and section 4 of Notice 2024-6 for information about making claims for the SAF credits.

SECTION 6. 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. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Section 3 of this notice sets forth collections of information to be provided to the IRS with Form 637, and to determine whether a claimant qualifies for a SAF credit. The collections of information will be reflected in the submission to the OMB for review in accordance with the PRA that is associated with Form 637 (OMB control number 1545-1835). This submission will be updated in the ordinary course.

The collections of information proposed in section 4 of this notice would include reporting, third-party disclosure, and recordkeeping requirements. These collections are necessary in order for registered SAF producers to use the safe harbors provided in section 4 of this notice to calculate the emissions reduction percentage with respect to SAF synthetic blending component, for the IRS to validate that registered SAF producers have met the requirements of the safe harbors in section 4 of this notice, and for the IRS to verify that claimants are entitled to claim the SAF credit.

For the purposes of the collections of information proposed in section 4 of this notice, the IRS's PRA submission to the OMB for review in accordance with the PRA that is associated with Form 637 (OMB control number 1545-1835) and is pending with OMB. Once the IRS's PRA submission is approved by OMB, the burden for these requirements will be included in the instructions for Form 637.

SECTION 7. DRAFTING INFORMATION

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

Appendix A – United States Department of Agriculture Climate Smart Agriculture Pilot Program (USDA CSA Pilot Program)

Pilot Program for Certain Climate-Smart Agriculture Practices

Practice Requirements, Definitions, Quantification of Greenhouse Gas Benefits, and Unrelated Party Certification Solely for Sustainable Aviation Fuel (SAF) Production

This document outlines the requirements to participate in the Climate Smart Agriculture (CSA) pilot for sustainable aviation fuel (SAF) production, as it applies to SAF producers registering and producing SAF under section 40B of the Internal Revenue Code (IRC) and SAF produced directly from domestic corn or domestic soybeans that meets the requirements of ASTM D7566 Annex 5 or ASTM D7566 Annex 2, respectively.

The CSA Pilot Program (CSA pilot) incorporates the greenhouse gas (GHG) and carbon sequestration benefits of climate-smart feedstock production into the carbon intensity calculation for the purpose of the IRC 40B SAF tax credit (40B credit) in certain feedstocks. Incorporating CSA practices into the production of SAF provides multiple benefits. These include lower overall GHG emissions associated with SAF production, improved accuracy of overall carbon intensity estimation, sustainable production of domestically-produced aviation fuel, and increased adoption of farming practices that are associated with other environmental benefits, such as improved water quality and soil health. The CSA pilot is specific to the calculation of GHG emissions using the safe harbor for the 40BSAF-GREET 2024 model for purposes of the 40B credit and should not be used for the calculation of GHG emissions for any other purpose.

Practice Requirements

The CSA pilot for sustainable aviation fuel production is limited to two feedstocks: domestic corn and domestic soybeans. For corn-based alcohol-to-jet using ethanol (ATJ-Ethanol), the CSA pilot requires that growers engage in three CSA practices: no-till, cover crops, and enhanced efficiency nitrogen fertilizer on the same acreage. For soybean HEFA (hydro-processed esters and fatty acids), there are only two relevant practices that must be applied on the same acreage to receive the full values of the CSA reduction: no-till and cover crops. The practices must be applied at the field scale (that is, the entirety of the field(s) on which domestic corn or domestic soy feedstocks are produced) and adhere to the definitions and practice requirements provided below starting no later than the relevant growing season. The practice definitions and requirements in this document are in alignment with United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) practice standards and enhancements. The NRCS standards corresponding to each practice are cited for reference only, except where otherwise noted. The requirements of the CSA pilot are specified in this document.

Domestic corn and domestic soybean feedstocks produced using the combined CSA practices that will be used to produce SAF must be traced through the supply chain and verified by an unrelated party according to the requirements of the CSA pilot. A participating farmer must contract directly with a registered SAF producer to provide the domestic corn and/or domestic soybeans which the SAF producer will use as a feedstock to produce SAF (*see* specific contract and traceability requirements in the section Supply Chain Traceability Requirements and Recordkeeping of this document). The contract must also include recordkeeping requirements as outlined in the sections Practice Recordkeeping Requirements and Supply Chain Traceability Requirements and Recordkeeping of this document, in addition to a farmer attestation, in substantially the same form as the model certificate in Appendix B of Notice 2024-37, declaring that the farmer implemented the practice(s) according to the CSA pilot implementation guidelines. If all requirements of the CSA pilot are met, registered SAF producers that produce SAF under ASTM D7566 Annex 5 or ASTM D7566 Annex 2 directly from domestic corn or domestic soybeans may be eligible to reduce the carbon intensity estimates for their fuel by pre-determined values for purposes of the 40B credit.

No-Till[10] (domestic corn and domestic soybean feedstocks)

Definition: Limiting soil disturbance to manage the amount, orientation and distribution of crop and plant residue on the soil surface year-round.

[10] Portions are extracted and slightly modified from: Conservation Practice Standard Residue and Tillage Management No Till (Code 329) (https://www.nrcs.usda.gov/sites/default/files/2022-09/Residue_And_Tillage_Management_No_Till_329_CPS_0.pdf).

Annual Criteria (must be applied to the entire field):

- Residue must not be burned.
- Distribute all residues uniformly over the entire field. Removing residue from directly within the seeding or transplanting area prior to or as part of the planting operation is acceptable.
- This practice only allows an in-row soil disturbance operation during strip tillage, the planting operation, and a seed row/furrow closing device. Full-width soil disturbance is disallowed from the time immediately following harvest or termination of one cash crop through harvest or termination of the next cash crop in the rotation regardless of the depth of the tillage operation. The soil tillage intensity rating (STIR)[11] value must include all field operations that are performed during the crop interval between harvest and termination of the previous cash crop and harvest or termination of the current cash crop (includes fallow periods). The crop interval STIR value must be no greater than 20.

Cover Crop[12] (domestic corn and domestic soybean feedstocks)

Definition: Grasses, legumes, and forbs planted for seasonal vegetative cover.

Annual Criteria (must be applied to the entire field):

- Plant species, seedbed preparation, seeding rates, seeding dates, seeding depths, fertility requirements, and planting methods must be consistent with applicable local criteria and soil/site conditions.[13]
- Select species that are compatible with other components of the cropping system.
- Ensure herbicides used with crops are compatible with cover crop selections and purpose(s).
- Cover crops may be established during the fallow season prior to planting the feedstock crop, or companion planted or relay-planted into production crops.
- Must not burn cover crop residue.
- Determine the method and timing of termination to meet the grower's objective and the current NRCS Cover Crop Termination Guidelines.
- When a cover crop will be grazed or hayed, ensure the planned management will not compromise the soil health and organic matter content.
- Do not harvest cover crops for seed.
- If the specific rhizobium bacteria for the selected legume are not present in the soil, treat the seed with the appropriate inoculum at the time of planting.

Enhanced Efficiency Nitrogen Fertilizer (EENF) Practice Requirements[14] (domestic corn feedstocks)

Definition: Enhanced nutrient use efficiency technologies are utilized to improve nutrient use efficiency, reduce risk of nutrient losses to surface and groundwater, and reduce GHG emissions.

This CSA pilot applies to Land Grant University (LGU)[15] and Association of American Plant Food Control Officials (AAPFCO) definitions of Enhanced Efficiency Fertilizers (EEFs). EEFs are defined by AAPFCO as "fertilizer products with characteristics that allow increased plant uptake and reduce the potential of nutrient losses to the environment (for example, gaseous losses, leaching, or runoff) when compared to an appropriate reference product."[16] For the purposes of this pilot, qualified EEFs include only Enhanced Efficiency Nitrogen Fertilizers (EENF), as nitrogen is the primary carbon intensity-relevant nutrient. The three following strategies are extracted and slightly modified from the NRCS Conservation Enhancement Activity 590A. These three strategies are acceptable for the EENF practice in the CSA pilot. The farmer must implement at least one of these three strategies to fulfill EENF requirements.

[11] Natural Resources Conservation Service. (n.d.) *Soil Tillage Intensity Rating STIR*. Soil Tillage Intensity Rating STIR (https://www.nrcs.usda.gov/sites/default/files/2023-01/Soil-Tillage-Intensity-Rating-Fact-Sheet3-27-2020.pdf).

[12] Portions are extracted and slightly modified from: Conservation Practice Standard Cover Crop (Code 340) (https://www.nrcs.usda.gov/sites/default/files/2023-01/Soil-Tillage-Intensity-Rating-Fact-Sheet3-27-2020.pdf).

[13] Refer to USDA NRCS's Field Office Technical Guide documents by state for additional cover crop information relevant to practice code 340: Cover Crops (https://efotg.sc.egov.usda.gov/#/).

[14] Portions are extracted and slightly modified from: Conservation Enhancement Activity 590A (https://www.nrcs.usda.gov/sites/default/files/2023-10/E590A-May-2023-fy24.pdf).

[15] Participants should refer to the Land Grant University within their state on appropriate EENF use.

[16] Association of American Plant Food Control Officials. (2019, August 1). *Relationship Between Enhanced Efficiency Fertilizer Terms.* (https://www.aapfco.org/presentations/2019/2019_SA_slow_relationship.pdf).

Annual Criteria (must be applied to the entire field):

- **Select at least one of the following EENF strategies for nutrient use efficiency. For all strategies, the EENF must serve as at least 50% of the nitrogen source for the production of the feedstock:**
- **Strategy 1:** EENF that contain nitrification inhibitor products resulting in delayed nitrification processes, by eliminating the bacteria *Nitrosomonas* in the area where ammonium is to be present.
  - o Materials must be defined by the AAPFCO and be accepted for use by the State fertilizer control official, or similar authority, with responsibility for verification of product guarantees, ingredients (by AAPFCO definition) and label claims.
  - o Application timing, method, nitrogen source, soil texture, and tillage regime are all factors that should be evaluated to determine where nitrification inhibitors should be used. Before buying an inhibitor make sure scientific evidence backs up all claims. Producers and/or consultants should be wary of any product that does not have solid scientific data demonstrating that the inhibitor activity matches the advertised benefit.
  - o EENF products must be recommended by LGU and concurred with by NRCS on all treatment acres to supply at least 50% of the pre-emergent and early post emergent LGU recommended nitrogen budget requirements for the crop(s) grown. Common chemical products used to interrupt the nitrification process include dicyandiamide (DCD) and 2-chloro-6 (trichloromethyl) pyridine.
- **Strategy 2:** EENF products that contain urease inhibitor products to temporarily reduce the activity of the urease enzyme and slow the rate at which urea is hydrolyzed.
  - o Materials must be defined by AAPFCO and be accepted for use by the State fertilizer control official, or similar authority, with responsibility for verification of product guarantees, ingredients (by AAPFCO definition) and label claims.
  - o Application timing, method, nitrogen source, soil texture, and tillage regime are all factors that must be evaluated to determine where urease inhibitors should be used. Before buying an inhibitor make sure scientific evidence backs up all claims. Producers and/or consultants should be wary of any product that does not have solid scientific data demonstrating that the inhibitor activity matches the advertised benefit.
  - o EENF products must be recommended by LGU on all treatment acres to supply at least 50% of the pre-emergent and early post emergent LGU recommended nitrogen requirements for the crop(s) grown.
  - o Common chemical products that are known to affect urease formation are N-(n-butyl) thiophosphoric triamide (NBPT) and ammonium thiosulfate (ATS).
- **Strategy 3:** Slow-release or controlled release formulations of nitrogen fertilizer/EENF for at least 50% of the pre-plant and/or post emergent applications.
  - o Use of slow-release or controlled-release nitrogen fertilizer products to improve nutrient use efficiency.
  - o Uncoated Nitrogen Fertilizers include: ureaformaldehyde (UF) reaction products, ureaform and methylene ureas.
  - o Coated Nitrogen Fertilizers include: sulfur-coated fertilizers, polymer-coated fertilizers and polymer/sulfur coated fertilizers.

Practice Recordkeeping Requirements

Farmers must maintain an attestation of intent and records specific to each CSA practice to demonstrate implementation of the CSA pilot practices. Farmers must provide all listed documentation and records to the entity registering with the Internal Revenue Service under section 40B(f) of the Internal Revenue Code.

The required records must include a farmer attestation, in substantially the same form as the model certificate in Appendix B of IRS Notice 2024-37, declaring the farmer implemented the CSA practice(s) according to these implementation guidelines. Specific recordkeeping requirements are outlined below.

General Requirements

Farmers must provide an attestation of implementation, in substantially the same form as the model certificate in Appendix B of IRS Notice 2024-37, to the SAF producer. This attestation must include:

- Agricultural/farm company name, address, and contact information.
- Farm owner name, address, and contact information.
- Type and amount of feedstock produced, including units.
- A declaration that the farmer has ownership or operational control of the land enrolled. Where land is leased, the lessee must sign the declaration indicating that they have operational control.
- A declaration that the applicable CSA practices have been implemented simultaneously according to the implementation guidelines.

- Longevity: Farmers undertaking this pilot will sign a letter of intent acknowledging they intend to continue to practice no-till and cover crops on the same acreage so that the soil carbon continues to be sequestered and stored, except for a periodic tillage (no more than once every five or ten years).
- A declaration that the farmer has provided the contracted amount of feedstock produced pursuant to these CSA practices exclusively for the registered fuel producer's SAF production, and that the farmer has not and will not sell a greenhouse gas offset credit or otherwise sell associated greenhouse gas benefits.
- A statement that all records provided with the attestation will be made available upon request to an unrelated party verifier for certification purposes.
- A statement that to the best of the farmer's knowledge all information included herein and records provided are accurate and true.

No-Till Recordkeeping Requirements

Farmers must:
- Prior to implementation, document the planned crop rotation and tillage operation(s) used for each crop.
- During implementation, document any changes in crops, crop rotation, or field operations to verify the system meets the no-till practice requirements.

Farmers must make management records available for unrelated party certification, demonstrating:
- Management rotation, as implemented. Records must indicate field number(s) and location(s), planted crop(s) in sequence, planting date for each crop, harvest/termination date for each crop.
- Field operations, as implemented, for each crop. Records must indicate field number(s) and location(s), crop, field operation, and timing of field operation (month/year).
- Total planted acreage, harvest, and yield for crops produced using a no-till system and then sold to refiner(s) as sustainable aviation fuel feedstock.

Farmers must provide, for unrelated party certification, additional documents to support the management records described above, including:
- Records of feedstock crop seed purchase, with sufficient information to show the acquisition, type, quantity, and date of feedstock seed received (purchase receipts, seed tags, delivery receipts).
- Records of seeding in no-till fields including dates and seeding rates.
- Records of field locations, planted acreage, harvested acreage, and yield (Farm Service Agency (FSA) field maps or other farm maps, records of contracted field operations, harvest records).
- Records demonstrating the amount of sustainable aviation fuel feedstock crop delivered to an elevator, miller, refiner, or other delivery point (bushels produced and receipt of sale).

Cover Crop Recordkeeping Requirements

Farmers must:
- Prior to implementation, document the current planned crop rotation, cover crop information, and field operation(s) used for each crop.
- Prior to implementation, read and follow current NRCS Cover Crop Termination guidelines.[17]
- During implementation, document any changes in crops, crop rotation, or unharvested areas to verify the system meets the cover crop practice requirements.

Farmers must provide, for unrelated party certification, documents demonstrating:
- Management rotation, as implemented, including cover crops. Records must indicate field number(s) and location(s), planned crop(s)/cover crops in sequence, planting date for each planned crop/cover crop, harvest/termination date for each planned crop/cover crop.
- Field operations, as implemented, for each crop. Records must indicate field number(s) and location(s), crop, field operation, and timing of field operation (month/year).
- Cover crop mix and seeding rate, including species, variety, seed size, typical seeding depth, seeding rate (lbs./acre), percent of mix.
- Establishment and management considerations applicable to seedbed preparation, seeding date, seeding depth, seeding method, fertilizer (as needed), weed management (as needed), termination date, termination method.
- Total planted acreage, harvest, and yield for crops produced in rotation and sold to refiner(s) as sustainable aviation fuel feedstock.

[17] https://www.nrcs.usda.gov/sites/default/files/2023-03/cover-crops-termination-guidelines-designed-v4-2019-updated.pdf

Farmers must provide, for unrelated party certification, additional documents to support the management records described above, including:
- Records of cover crop seed purchase, with sufficient information to show the acquisition, type, quantity, and date of cover crop seed received (purchase receipts, seed tags, delivery receipts).
- Records of field locations, planted acreage, harvested acreage, and yield (FSA field maps or other farm maps, records of contracted field operations, harvest records).
- Records demonstrating the amount of sustainable aviation fuel feedstock crop delivered to an elevator, miller, refiner, or other delivery point (bushels produced and receipt of sale).

Enhanced Efficiency Nitrogen Fertilizer (EENF) Recordkeeping Requirements

Farmers must:
- Prior to implementation, develop and document a planned nutrient budget, yield goal, and applications (pounds/acre active ingredient, nutrients must include, at a minimum, nitrogen, phosphorous, and potassium (N-P-K)).
- Prior to implementation, select one or more EENF strategies or technologies and document selection.
- During implementation, keep records to document actual nutrient applications (pounds/acre active ingredient, nutrient records must include at a minimum N-P-K.

Farmers must provide management records, for unrelated party certification, demonstrating:
- Planned nutrient budget and yield goal.
- Actual nutrient applications (pounds/acre active ingredient, nutrients must include at a minimum N-P-K) including application date, application rate, field number(s) and location(s), and total acreage treated.
- Total planted acreage, harvest, and yield for crops produced and sold to refiner(s) as sustainable aviation fuel feedstock.

Farmers must provide, for unrelated party certification, additional documents to support the management records described above, including:
- Records of EENF purchase, including sufficient information to demonstrate the product type and composition (receipts, photographs of product tags/labels). Include reference from the appropriate state LGU[18] demonstrating that the product is recommended for the crop and geography.
- Records of feedstock crop seed purchase, with sufficient information to show the acquisition, type, quantity, and date of cover crop seed received (purchase receipts, seed tags, delivery receipts).
- Records demonstrating field locations, planted acreage, harvested acreage, and yield (FSA field maps or other farm maps, records of contracted field operations, harvest records).
- Records demonstrating the amount of sustainable aviation fuel feedstock crop delivered to an elevator, miller, refiner, or other delivery point (bushels produced and receipt of sale).

Supply Chain Traceability Requirements and Recordkeeping

The supplying farmer participating in the CSA pilot must have a direct contract with the SAF producer. The contract must specify the quantity of domestic corn and/or domestic soybean feedstock produced using CSA pilot practices for the SAF producer.

From each supplying farmer, the SAF producer must collect and maintain all records described in the Practice Recordkeeping Requirements section of this document (with the exception that farmers supplying only domestic soybean feedstock do not need to provide records related to EENF, as that practice is not relevant for soybean production to be eligible for the CSA reduction).

To ensure that domestic corn and domestic soybean feedstocks used for the production of SAF for the purposes of the CSA pilot were appropriately counted, records demonstrating full supply chain traceability are required.

The SAF producer and farmer may agree to use intermediary entities (such as grain elevators) to store the feedstock prior to delivery to the SAF producer. In this case, the SAF producer must collect and maintain the following records from each intermediary entity:
- Records demonstrating the amount of sustainable aviation fuel feedstock crop received by the elevator, miller, refiner, or other delivery point (bushels delivered and receipt of sale).
- Records demonstrating the amount of sustainable aviation fuel feedstock crop delivered to the next entity in the supply chain (bushels delivered and receipt of sale).

[18] Participants should refer to the Land Grant University within their state on appropriate EENF use.

These records must be readily available to demonstrate full traceability of the quantity of contracted feedstock, from the farm to the SAF producer.

In addition, each intermediary entity that takes physical possession of the feedstock, including the registered SAF producer, must comply with traceability requirements aligned with Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). The traceability requirements are outlined in "Table 1 – Traceability Requirements" below. Table 1 is based on Table 3 of the CORSIA Eligibility Framework and Requirements for Sustainability Certification schemes[19], In Table 1, entities are referred to as "economic operators."

Table 1 – Traceability Requirements

#	THEME	REQUIREMENTS
1)	Traceability: Mass Balance	• Economic operators must use a mass balance system that: a) Allows batches of sustainable materials with differing sustainability characteristics to be mixed. b) Requires information about the sustainability characteristics and sizes of the physical quantity (batches) referred to in point (a) to remain assigned to the mixture. c) Provides for the sum of all consignments withdrawn from the mixture to be described as having the same sustainability characteristics, in the same quantities, as the sum of all consignments added to the mixture. d) Demonstrates that the product claims are linked correctly to the feedstock quantities claimed.
2)	Traceability: Mass balance system documentation	• Economic operator must include, as part of its documentation management system, a system for documenting the mass balance. • Economic operator must assign a unique reference/identification number to each batch of certified product sold (also known as batch number).
3)	Traceability: Mass balance level of operation	• Economic operator must operate the mass balance system at a site level. • If more than one legal entity operates on a site, then each legal entity that is an economic operator is required to operate its own mass balance.
4)	Traceability: Mass balance timeframe	• Economic operator must monitor the balance of material withdrawn from and added to the mass balance system. • Economic operators must specify a timeframe over which they will ensure that the mass balance is respected. o The operator ensures that the balance is achieved over an appropriate period of time no longer than three months. A deficit is not allowed at the end of the period. • At the end of the reporting period, a positive balance can be forwarded to the next reporting period as long as an equivalent physical stock is available.

Eligible Unrelated Party Certification Bodies

This section explains the accreditations and qualification that unrelated party certification bodies and their verifiers must have to be eligible to perform certification services for the purposes of the CSA pilot.

Unrelated party certification bodies, verifier, and verification team are defined as follows, in accordance with International Organization for Standardization (ISO) 14065.

An unrelated party certification body (more commonly referred to as a verification body) is the organization, or part of an organization, that provides verification.

A verifier is a "competent and impartial person with responsibility for performing and reporting on a verification." They serve as part of a verification team which is "one or more persons conducting validation/verification activities."

[19] https://www.icao.int/environmental-protection/CORSIA/Documents/ICAO%20document%2003%20-%20Eligibility%20Framework%20and%20Requirements%20for%20SCS.pdf

Minimum Requirements: International Organization for Standardization (ISO)

Unrelated party certifiers that verify CSA practices and supply chain traceability, for the purposes of the CSA pilot must have accreditation from the ANSI National Accreditation Board (ANAB) for ISO 14065. ISO 14065 specifies general principles and requirements for bodies performing validation and verification of environmental information, which is directly relevant to verifying reduced carbon intensity. In the United States, the ANAB Accreditation Program for Greenhouse Gas Validation and Verification Bodies[20] operates according to ISO 14065.

ISO 14065 requires accredited certification bodies to have a management process for the competence of personnel. This includes: "defining required competencies for each [program] and sector in which it operates; ensuring that verifiers, validators, technical experts and reviewers have appropriate competencies; ensuring that there is access to relevant internal or external expertise for advice on specific matters relating to the environmental information [program], validation/verification activities, sectors or areas within the scope of their work."

In addition to being ISO 14065 accredited, unrelated party certifiers must demonstrate agricultural expertise in the verification team through one of the following two options:

Option 1: Technical Service Providers

Accredited certification bodies can demonstrate technical competency in agriculture by assigning at least one verifier who is a USDA Technical Service Provider (TSP).[21] USDA's Natural Resources Conservation Service (NRCS) maintains the TSP program, which requires training on agricultural conservation and aligns to NRCS practice standards. NRCS reviews and approves applications for TSP status and maintains a public database of TSPs.[22]

For the purposes of the CSA pilot, TSPs must be approved in the practice they are verifying. The relevant NRCS Practice Codes are 340 (cover crop), 329 (no-till), and 590 (nutrient management).

OR

Option 2: Certified Crop Advisors

Accredited certification bodies can demonstrate technical competency in agriculture by assigning at least one verifier who is a Certified Crop Advisor.[23] . The Certified Crop Adviser (CCA) and Certified Professional Agronomist (CPAg) programs of the American Society of Agronomy provide training and maintain certifications for agronomy professionals in the United States. The CCA program is widely recognized and provides expertise in sustainability and farm management.

Certification Requirements

Certification, by an eligible unrelated party certification body, occurs at the level of the SAF producer registering under section 40B of the IRC.

The SAF producer must make all records (as described in the Practice Recordkeeping Requirements and Supply Chain Traceability Requirements and Recordkeeping sections) available to the unrelated certification body. The unrelated certification body must audit records from supplying farms in the CSA pilot to verify compliance with the CSA practice requirements. Similarly, the unrelated certification body must audit supply chain records, including any mass balance, to verify traceability of the contracted quantity of feedstock produced with CSA practices from the farm to the SAF producer. The unrelated certification body must also conduct on-site audits at a representative sample of supplying farms and intermediary entities.

Contact Information

For questions on the CSA pilot, please contact the USDA at SM.OCE.OEEP.40BCSAPilot@USDA.GOV.

[20] https://anab.ansi.org/accreditation/greenhouse-gas-validation-verification/.
[21] https://www.nrcs.usda.gov/getting-assistance/technical-assistance/technical-service-providers.
[22] https://nrcs.my.salesforce-sites.com/FindaTSP.
[23] https://www.certifiedcropadviser.org/.

Appendix B – Model Certificate for Climate Smart Agriculture Crops

CERTIFICATE FOR CLIMATE SMART AGRICULTURE CROPS

Certificate Identification Number: _____

(To support a claim related to sustainable aviation fuel (SAF) under §§ 40B and 6426(k) of the Internal Revenue Code.)

The undersigned climate smart agriculture crop producer ("CSA Farmer") hereby certifies the following:

1. _____

_____

_____

CSA Farmer name, address, and contact information

2. _____

_____

_____

Name, address, and EIN of SAF producer buying the climate smart agriculture crops (CSA crops) from CSA Farmer

3. _____

Date and location of sale to buyer

4. This certificate applies to:

_____ bushels of domestic corn CSA crop.

_____ bushels of domestic soybean CSA crop.

CSA Farmer certifies that the CSA crop to which this certificate relates meets the following criteria:

- Applicable CSA practices have been implemented simultaneously and according to the implementation guidelines found in *USDA CSA Pilot Program/Appendix A of Notice 2024-37*.
- CSA Farmer intends to continue to practice no-till and cover crops on the same acreage so that the soil carbon mitigation is retained, except for a periodic tillage (no more than once every five or ten years).
- CSA Farmer has provided the contracted amount of CSA crop produced pursuant to these CSA practices exclusively for the registered fuel producer's SAF production.
- CSA Farmer will not participate in a greenhouse gas offset or other similar market to sell associated greenhouse gas benefits for the CSA crop covered in this certificate.
- All records provided with this certificate will be made available upon request to an unrelated party certifier for certification purposes. (*See USDA CSA Pilot Program/Appendix A of Notice 2024-37* for more information on unrelated party certifiers.)

This certificate applies to the following sale:

_____ Invoice or delivery ticket number

_____ Total number of bushels of CSA crop sold under that invoice or delivery ticket number (including CSA crop not covered by this certificate)

_____ Total number of certificates issued for that invoice or delivery ticket number

CSA Farmer declares that such CSA Farmer has ownership or operational control of the land used to produce CSA crop. Where the land is leased, the lessee must sign the declaration indicating that the CSA Farmer has operational control.

CSA Farmer declares that the information included herein and attached records are accurate and true to the best of the CSA Farmer's knowledge.

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

_____

Printed or typed name of person signing this certificate

_____

Title of person signing

_____

Signature and date signed

Appendix C – Model Certificate for SAF Synthetic Blending Component

CERTIFICATE FOR SAF SYNTHETIC BLENDING COMPONENT USING THE 40BSAF-GREET 2024 MODEL

Certificate Identification Number: _____

(To support a claim related to sustainable aviation fuel (SAF)
under §§ 40B and 6426(k) of the Internal Revenue Code (Code))

Note: In the case of a claimant that is also the producer or importer of the SAF synthetic blending component, the information required on lines 2, 3, and 11 of the model certificate is not applicable and those lines do not need to be completed.

The undersigned producer or importer of a SAF synthetic blending component (Producer) hereby certifies the following under penalties of perjury:

1. Producer's name, address, and employer identification number (EIN).

_____

_____

_____

2. Name, address, and EIN of person buying the SAF synthetic blending component from Producer.

_____

_____

_____

3. Date and location of sale to buyer.

_____

4. Name and address of the California Air Resources Board Low Carbon Fuel Standard (CARB LCFS) Verifier certifying compliance with the general requirements, supply chain traceability requirements, and information transmission requirements similar to the requirements established under Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) for lifecycle greenhouse gas emissions reduction percentage calculations made pursuant to the Department of Energy's 40BSAF-GREET 2024 model.

_____

_____

_____

5. CARB LCFS Verifier Executive Order Number:

_____

6. This certificate applies to _____ gallons of a SAF synthetic blending component.

7. Producer certifies that the SAF synthetic blending component to which this certificate relates:

   (A) Is not derived from co-processing an applicable material (monoglycerides, diglycerides, triglycerides, free fatty acids, or fatty acid esters) or materials derived from an applicable material with a feedstock that is not biomass (as defined in section 45K(c)(3) of the Code);

   (B) Is not derived from palm fatty acid distillates or petroleum; and

   (C) Has been certified in accordance with section 40B(e) of the Code as having a lifecycle greenhouse gas emissions reduction percentage of at least 50 percent.

8. The lifecycle greenhouse gas emissions reduction percentage of the SAF synthetic blending component to which this certificate relates is _____, which is calculated using the 40BSAF-GREET 2024 model. (This percent must be rounded down to the nearest whole percent.)

9. The applicable supplementary amount with respect to the SAF synthetic blending component to which this certificate relates is _____. In no event can the applicable supplementary amount exceed $0.50.

10. This certificate applies to the following sale:

    _____ Invoice or delivery ticket number

    _____ Total number of gallons of the SAF synthetic blending component sold under that invoice or delivery ticket number (including SAF synthetic blending component not covered by this certificate)

    _____ Total number of certificates issued for that invoice or delivery ticket number

11. Name, address, and EIN of reseller to whom certificate is issued (only in the case of certificates reissued to a reseller after the return of the original certificate).

    _____

    _____

    _____

12. _____ Original Certificate Identification Number (only in the case of certificates reissued to a reseller after return of the original certificate)

13. Producer is registered as a sustainable aviation fuel (activity letter SA) producer or importer with registration number _____. Producer's registration has not been suspended or revoked by the Internal Revenue Service.

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

_____
Printed or typed name of person signing this certificate

_____
Title of person signing

_____
Signature and date signed

Appendix D – Model Certificate for SAF Synthetic Blending Component

CERTIFICATE FOR SAF SYNTHETIC BLENDING COMPONENT USING THE 40BSAF-GREET 2024 MODEL AND USDA CSA PILOT PROGRAM FOR CORN AND SOYBEAN

Certificate Identification Number: _____

(To support a claim related to sustainable aviation fuel (SAF)
under §§ 40B and 6426(k) of the Internal Revenue Code (Code))

Note: In the case of a claimant that is also the producer or importer of the SAF synthetic blending component, the information required on lines 2, 3, and 14 of the model certificate is not applicable and those lines do not need to be completed.

The undersigned producer or importer of a SAF synthetic blending component (Producer) hereby certifies the following under penalties of perjury:

1. Producer's name, address, and employer identification number (EIN).

_____

_____

_____

2. Name, address, and EIN of person buying the SAF synthetic blending component from Producer.

_____

_____

_____

3. Date and location of sale to buyer.

_____

4. Name and address of the California Air Resources Board Low Carbon Fuel Standard (CARB LCFS) Verifier certifying compliance with the general requirements, supply chain traceability requirements, and information transmission requirements similar to the requirements established under Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) for lifecycle greenhouse gas emissions reduction percentage calculations made pursuant to the Department of Energy's 40BSAF-GREET 2024 model.

_____

_____

_____

5. CARB LCFS Verifier Executive Order Number:

_____

6. This certificate applies to _____ gallons of a SAF synthetic blending component.

7. Producer certifies that the SAF synthetic blending component to which this certificate relates:

(A) Meets the requirements of ASTM International (ASTM) D7566 Annex 2 for the soybean HEFA production pathway or Annex 5 corn Alcohol-to-Jet using Ethanol production pathway (the certificate of analysis reference number demonstrating conformance with such standard is _____, dated _____);

(B) Is not derived from co-processing an applicable material (monoglycerides, diglycerides, triglycerides, free fatty acids, or fatty acid esters) or materials derived from an applicable material with a feedstock that is not biomass (as defined in section 45K(c)(3) of the Code);

(C) Is not derived from palm fatty acid distillates or petroleum; and

(D) Has been certified in accordance with section 40B(e) of the Code as having a lifecycle greenhouse gas emissions reduction percentage of at least 50 percent.

8. Producer certifies that the Producer:

(A) Contracted directly with a farmer who cultivated corn or soybean crops under the requirements of the USDA CSA Pilot Program.

(B) Produced 100% of the SAF synthetic blending component to which this certificate relates from the corn or soybean crops directly purchased from the farmer through the contract described in 8(A) of this model certificate.

(C) Maintains adequate documentation including (1) the Certificate for Climate Smart Agriculture Crops from the farmer for the corn or soybean crops directly purchased from the farmer pursuant to the contract described in 8(A) of this model certificate; and (2) all other records described in the USDA CSA Pilot Program Practice Recordkeeping Requirements, and Supply Chain Traceability Requirements and Recordkeeping in Appendix A of Notice 2024-37.

9. The lifecycle greenhouse gas emissions reduction percentage of the SAF synthetic blending component to which this certificate relates is _____, which is calculated using the 40BSAF-GREET 2024 model and the USDA CSA Pilot Program. (This percent must be rounded down to the nearest whole percent.) Check which reduction is included in the calculation.

____USDA CSA Pilot Program Corn (Reduction of 10 gCO2e/MJ)

____USDA CSA Pilot Program Soybean (Reduction of 5 gCO2e/MJ)

10. ____Certificate Identification Number of Certificate for Climate Smart Agriculture Crops.

11(A). Name, address, and identification number or code of the unrelated party with an accreditation from a certification body that is accredited under the ANSI National Accreditation Board for International Organization for Standardization 14065 that is certifying compliance with practice recordkeeping requirements and supply chain traceability requirements established under the USDA CSA Pilot Program.

_____

_____

_____

11(B). Name, address, and identification number (such as a Technical Service Provider Number or other similar identifier) of at least one individual of the unrelated party certifier in 11(A) who is a USDA Technical Service Provider or a Certified Crop Advisor as described in the USDA CSA Pilot Program Eligible Unrelated Party Certification Bodies.

_____

_____

_____

12. The applicable supplementary amount with respect to the SAF synthetic blending component to which this certificate relates is _____. In no event can the applicable supplementary amount exceed $0.50.

13. This certificate applies to the following sale:

_____ Invoice or delivery ticket number

_____ Total number of gallons of the SAF synthetic blending component sold under that invoice or delivery ticket number (including SAF synthetic blending component not covered by this certificate)

_____ Total number of certificates issued for that invoice or delivery ticket number

14. Name, address, and EIN of reseller to whom certificate is issued (only in the case of certificates reissued to a reseller after the return of the original certificate).

_____

_____

_____

15. _____ Original Certificate Identification Number (only in the case of certificates reissued to a reseller after return of the original certificate)

16. Producer is registered as a sustainable aviation fuel (activity letter SA) producer or importer with registration number _____. Producer's registration has not been suspended or revoked by the Internal Revenue Service.

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

_____
Printed or typed name of person signing this certificate

_____
Title of person signing

_____
Signature and date signed

Request for Feedback Regarding Certain Matters Relating to Section 355 Transactions

Notice 2024-38

SECTION 1. OVERVIEW AND PURPOSE

This notice accompanies Rev. Proc. 2024-24, published elsewhere in this Bulletin, which provides procedures for requesting private letter rulings (PLRs) from the Internal Revenue Service (IRS) regarding certain matters relating to Section 355 Transactions.[1] The Department of the Treasury (Treasury Department) and the IRS are continuing to study matters relating to Section 355 Transactions for purposes of developing potential published guidance and are issuing this notice to request public feedback on the provisions set forth in Rev. Proc. 2024-24. This notice also describes the Treasury Department's and IRS's views and concerns relating to certain matters addressed in Rev. Proc. 2024-24**,** and feedback is requested on these as well. Feedback provided in response to this notice will be considered in developing future guidance.

SECTION 2. REQUEST FOR FEEDBACK REGARDING MATTERS ADDRESSED BY REV. PROC. 2024-24

.01 *In General*. The Treasury Department and the IRS request feedback with respect to all provisions set forth in Rev. Proc. 2024-24, as well as on the views and concerns described in section 2.02 of this notice. The Treasury Department and the IRS request that such feedback take into account the following objectives for potential published guidance:

(1) The guidance will be consistent with all relevant provisions of the Code.

(2) The guidance will provide certainty to taxpayers and the IRS regarding the application of all relevant provisions of the Code to purported Section 355 Transactions.

(3) The guidance will be responsive to the manner in which Section 355 Transactions are engaged in by taxpayers and reflect current market practices and preferences to the extent that such approach does not conflict with the objectives set forth in sections 2.01(1) and (2) of this notice.

.02 *Views and Concerns Relating to Certain Matters Addressed by Rev. Proc. 2024-24*. This section 2.02 describes the Treasury Department's and IRS's views and concerns relating to certain matters addressed by Rev. Proc. 2024-24.

(1) *Distinction between Delayed Distributions of Controlled stock and securities and Retentions.* The Code provides separate and distinct treatment for three types of instances in which Distributing temporarily continues to hold Controlled stock or securities following the Control Distribution Date. These three instances occur with regard to: (a) a Delayed Distribution of Controlled stock or securities that is "part of the distribution" (within the meaning of § 355(a)(1)(D)); (b) a Delayed Distribution of Controlled stock or securities that is "in pursuance of the plan of reorganization" (within the meaning of § 361); and (c) a Retention. The Treasury Department and the IRS have provided required representations, information, and analysis in Rev. Proc. 2024-24 to reflect the discrete application of the Code to each of these instances.

(2) *Degree of connection between Distributing and Controlled that prevents genuine separations*. The Treasury Department and the IRS are considering the degree to which connections between Distributing and Controlled (and, as appropriate, the DSAG and CSAG) after the Control Distribution Date would prevent a transaction from qualifying under § 355. In particular, the Treasury Department and the IRS are considering the impact of (i) overlapping key employees between the DSAG and CSAG (determined immediately after the Control Distribution Date), (ii) overlapping directors or officers between Distributing and Controlled (determined immediately after the Control Distribution Date), and (iii) the existence of continuing contractual agreements between the DSAG and CSAG that include provisions that are not arm's-length. Section 1.355-2(e)(2) provides that, "[o]rdinarily, the corporate business purpose or purposes for the distribution will require the distribution of all of the stock and securities of the controlled corporation." If Distributing distributes an amount of stock in Controlled constituting control (within the meaning of § 368(c)) but retains Controlled stock or securities, the Distribution does not qualify for nonrecognition treatment under § 355(a)(1)(D)(ii) unless Distributing establishes to the satisfaction of the Secretary of the Treasury (through the IRS by delegation) that the Retention was not in pursuance of a plan having as *one of its principal purposes* the avoidance of Federal income tax. Therefore, the statute effectively creates a rebuttable presumption that any Retention evidences a plan to achieve a Federal income tax avoidance purpose. In addition, it is the view of the Treasury Department and the IRS that overlapping directors or officers between Distributing and Controlled, overlapping key employees between the DSAG and CSAG, and the existence of continuing contractual agreements between the DSAG and CSAG that include provisions that are not arm's-length, weigh against a determination of § 355 qualification—particularly, for example, if the purported business purpose for the Section 355 Transaction is to achieve a fit-and-focus business purpose. Solely for reference to examples of fit-and-focus business purposes, *see generally* Rev. Rul. 2003-75, 2003-2 C.B. 79; Rev. Rul. 2003-74, 2003-2 C.B. 77.

(3) *Solvency and continued viability of Distributing and Controlled.* The Treasury Department and the IRS are of the view that § 355 qualification is limited to Divisive Reorganizations after which Distributing and Controlled are capable of carrying on sustained businesses after the reorganization, and that § 355 and related Code provisions were not enacted to provide nonrecognition treatment for

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Internal Revenue Code (Code) or the Income Tax Regulations (26 CFR part 1). This notice incorporates the definitions set forth in the Appendix to Rev. Proc. 2024-24.

Divisive Reorganizations that burden Controlled with excessive leverage, jeopardizing its ability to continue as a viable going concern. *See*, for example, S. Rep. No. 82-781, at 58 (1951) (providing, in relevant part, that the predecessor statute to § 355 was drafted "so as to limit its benefits to reorganizations in which all of the new corporations as well as the parent are intended to carry on a business after the reorganization", and emphasizing that "all of the new corporations as well as the parent [must] carry on a business").

(4) *Plan of Reorganization requirement for Divisive Reorganizations.* The required representations, information, and analysis in Rev. Proc. 2024-24 are intended to ensure that Plans of Reorganization for purported Divisive Reorganizations provide adequate specificity and clarity to satisfy the requirements set forth in current Treasury Regulations. The Treasury Department and the IRS understand that confusion and disagreement exists regarding the application of the Plan of Reorganization requirement to Divisive Reorganizations. For instance, it is the understanding of the Treasury Department and the IRS that some tax advisors incorrectly view the applicability of the Plan of Reorganization requirement to be potentially obviated by the temporal requirements that were set forth in section 3.04(6) of Rev. Proc. 2018-53. The Treasury Department and the IRS view the Plan of Reorganization requirement as incorporating a degree of transactional flexibility, a view consistent with feedback received from tax advisors. However, the Treasury Department and the IRS also are of the view that such flexibility is limited by the current Treasury Regulations. *See* §§ 1.368-1(c); 1.368-2(g). In particular, the Treasury Department and the IRS view the Plan of Reorganization requirement as helpful to ensure that Delayed Distributions are not used to avoid the application of the repeal of *General Utilities & Operating Co. v. Helvering*, 296 U.S. 200 (1935).

(5) *Application of substance over form, agency, and other relevant theories to intermediated exchanges and direct issuance transactions.* The Treasury Department and the IRS are considering the application of the Code, as well as general principles of Federal income tax law (including substance over form, agency, or other relevant theories), to intermediated exchanges and direct issuance transactions (as those terms are described in Rev. Proc. 2024-24). With regard to a so-called direct issuance transaction in which Distributing Debt is issued to an Intermediary and redeemed in close temporal proximity, it is the view of the Treasury Department and the IRS that general principles of Federal income tax law could recast the transaction such that the Intermediary (that is, the direct holder) is not treated as a creditor described in § 361(b)(3) or (c)(3). Similarly, general principles of Federal income tax law potentially could recast an intermediated exchange, or treat the Intermediary engaged in that exchange as an agent of Distributing, such that Distributing likewise would not be treated as exchanging Section 361 Consideration for Distributing Debt. The Treasury Department and the IRS would welcome feedback from Intermediaries to help ensure that future guidance is responsive to the business and market-risk considerations that inform the mechanics of intermediated exchanges and direct issuance transactions, as opposed to mere differences in transaction costs (with the understanding that differences in transaction costs are one consequence of such business and market risk considerations).

(6) *Federal income tax treatment and consequences of Post-Distribution Payments.* The Treasury Department and the IRS are considering the application of the Code to Post-Distribution Payments. It is the view of the Treasury Department and the IRS that a Post-Distribution Payment is treated for Federal income tax purposes as Section 361 Consideration only if the taxpayer establishes that (i) the character of the Post-Distribution Payment is Section 361 Consideration, (ii) as of the First Distribution Date, the fair market value of Distributing's right to receive the Post-Distribution Payment was not (or will not be) reasonably ascertainable (within the meaning of that phrase as used in *Burnet v. Logan*, 283 U.S. 404, 413 (1931)), and (iii) the Post-Distribution Payment will be properly accounted for when the Post-Distribution Payment is received. For the avoidance of doubt, the Treasury Department and the IRS view *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952), as applying solely to the requirement described in clause (i) of the preceding sentence (that is, the characterization of the Post-Distribution Payment for Federal income tax purposes). *See generally* sections 3.05(10)(b) and (c) of Rev. Proc. 2024-24.

(7) *Effect of transaction related to Divisive Reorganization on Controlled securities.* The Treasury Department and the IRS are considering the impact of Controlled's modification (including refinancing) of any of its securities or other Debt on the qualification of those securities or other Debt as Section 361 Consideration. In particular, the Treasury Department and the IRS are considering the impact of the application of general principles of Federal income tax law (including substance over form and other relevant theories) to acquisitions of Controlled following the Control Distribution Date that result in a modification of Controlled's securities. For example, the Treasury Department and the IRS have considered such application to a merger of Controlled into an acquiring corporation following the Control Distribution Date for transactions in which Controlled had issued Controlled securities that were treated by the taxpayer as purported Section 361 Consideration in an exchange for Distributing Debt. It is the view of the Treasury Department and the IRS that general principles of Federal income tax law (including substance over form and other relevant theories) could apply to recast such a situation for Federal income tax purposes to preclude qualification under § 361(c)(3). As noted in section 3.05(11)(b) of Rev. Proc. 2024-24, Rev. Rul. 98-27, 1998-1 C.B. 1159, is not relevant to determine whether any such transaction or series of transactions should cause the Divisive Reorganization to be recast, because that revenue ruling addresses solely whether Controlled was a "controlled corporation" under § 355(a) immediately before the Distribution. *See also generally* Rev. Rul. 98-44, 1998-2 C.B. 315.

(8) *Replacement of Distributing Debt.* The Treasury Department and the IRS are considering the application of the Code to borrowings by Distributing that replace Distributing Debt satisfied with Section 361 Consideration in a Divisive Reorganization. As one example, the Treasury

Department and the IRS are considering situations in which Distributing, as of the date of the contribution of assets to Controlled, anticipates entering into a borrowing that reverses the de-leveraging that Distributing effectuated through the use of Section 361 Consideration as part of the Divisive Reorganization—effectively rendering such de-leveraging as merely transitory and without real economic effect. The Treasury Department and the IRS are of the view that, in certain circumstances, the replacement of Distributing Debt satisfied with Section 361 Consideration can be used as an artifice for increasing the aggregate Debt and other Liabilities of Distributing and Controlled. That result, in effect, replicates a tax-free sale of a portion of Controlled, which the Treasury Department and the IRS are of the view should not qualify for nonrecognition treatment under § 361. Tax advisors have provided feedback consistent with this view following the publication of Rev. Proc. 2018-53, in particular with regard to section 3.04(7) of that revenue procedure.

(9) *Separate and distinct relevance and application of §§ 357 and 361.* Section 357, which addresses the assumption by Controlled of a Liability of Distributing, generally functions to provide that the assumption is not treated as the receipt by Distributing of money or Other Property from Controlled. *See generally* § 357(a); H.R. Rep. No. 76-855, 18-19 (1939) (Conf. Rep.) ("The practical effect of [*United States v. Hendler*, 303 U.S. 564 (1938)] is to say that an *assumption of a liability* is property in the sense that it may be taxable immediately to the first corporation. . . . [W]e have, therefore, recommended that bona fide transactions of this type shall be carried on hereafter without the recognition of immediate gain taxable to the corporation going through reorganization.") (emphasis added). In contrast, § 361 generally permits Distributing to qualify for nonrecognition treatment on the transfer to Distributing's creditors in connection with a Divisive Reorganization of money, Other Property, or Controlled securities received from Controlled in the transaction. *See generally* § 361(b)(3) and (c)(3); S. Rep. No. 445, at 393 (1988) ("The bill amends prior law by providing that transfers of property to creditors in satisfaction of *the corporation's indebtedness* in connection with the reorganization are treated as distributions pursuant to the plan of reorganization for this purpose. . . . This overrules the holding in [*Minnesota Tea Co. v. Helvering*, 302 U.S. 609 (1938)].") (emphasis added). It is the understanding of the Treasury Department and the IRS that there is confusion and disagreement among some tax advisors regarding the interaction and separate operations of §§ 357 and 361 in situations, for example, in which Section 361 Consideration is used to satisfy Distributing Liabilities that do not qualify as Debt. Some tax advisors mistakenly believe that, in such a situation, the Section 361 Consideration would qualify for nonrecognition treatment under § 361. It is the understanding of the Treasury Department and the IRS that some tax advisors also incorrectly contend that Distributing would enjoy nonrecognition treatment under § 361 through the use of Section 361 Consideration to satisfy Distributing Contingent Liabilities, which are not subject to an adjusted basis limitation under § 357(c)(3) (and, therefore, would not be subject to an adjusted basis limitation under § 361(b)(3)). The Treasury Department and the IRS view such assertions as contrary to the plain language of the Code and violative of the text and policy of §§ 357 and 361, in general, and the adjusted basis limitations of § 357(c)(3) and 361(b)(3), in particular.

SECTION 3. PROCEDURES FOR SUBMITTING FEEDBACK

.01 *Deadline*. Written feedback should be submitted by July 30, 2024. However, consideration will be given to any written feedback submitted after July 30, 2024, if such consideration will not delay the issuance of future published guidance.

.02 *Form and Manner*. The subject line for the feedback should include a reference to Notice 2024-38. All stakeholders are strongly encouraged to submit feedback electronically. Feedback may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (type IRS-2024-0021 in the search field on the *https://www.regulations.gov* homepage to find this notice and submit feedback); or

(2) By mail to: Internal Revenue Service, CC:PA:01:PR (Notice 2024-38), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

.03 *Publication of Feedback*. The Treasury Department and the IRS will publish for public availability any feedback submitted electronically or on paper to its public docket on *https://www.regulations.gov*.

SECTION 4. DRAFTING AND CONTACT INFORMATION

The principal author of this notice is Grid Glyer of the Office of the Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, please contact Mr. Glyer at (202) 317-3181 (not a toll-free number).

26 CFR 601.201: Rulings and determination letters.
(Also Part I, §§ 355, 1.355-1.)

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SECTION 1. PURPOSE

.01 *In General*. This revenue procedure provides procedures for requesting private letter rulings from the Internal Revenue Service (IRS) regarding certain matters pertaining to Section 355 Transactions.

.02 *Representations, Information, and Analysis*. The procedures set forth in this revenue procedure include—

(1) Representations, information, and analysis that taxpayers must submit to request rulings regarding a Section 355 Transaction; and

(2) Additional representations, information, and analysis that taxpayers must submit to request rulings regarding a Divisive Reorganization, including with regard to the following matters:

(a) Controlled's Assumption of Distributing Liabilities (including Distributing Contingent Liabilities).

(b) Distributing's distribution of Section 361 Consideration to shareholders of Distributing.

(c) Distributing's transfer of Section 361 Consideration to a creditor of Distributing to satisfy Distributing Debt.

(d) Exchanges of Section 361 Consideration for Distributing Debt using an Intermediary.

(e) Direct issuances of Distributing Debt by Distributing to an Intermediary.

(f) Payments by Controlled to Distributing made subsequent to the Control Distribution Date (that is, Post-Distribution Payments).

(g) A Delayed Distribution of Controlled stock or securities.

(h) A Retention (that is, of Controlled stock or securities).

.03 *Defined Terms*. Capitalized terms used in this revenue procedure are defined in the Appendix to this revenue procedure.

.04 *References*. Unless otherwise specified, all "section" or "§" references are to sections of the Code or the Treasury Regulations. As the context requires, references to revenue rulings or to other revenue procedures include references to successor revenue rulings or revenue procedures, as applicable.

SECTION 2. BACKGROUND

.01 *Section 355 Transactions*.

(1) *In general*. A transaction intended to qualify under § 355 and related provisions of the Code may occur either as a separate Section 355(c) Distribution or as part of a Divisive Reorganization. Distributing may distribute all of its Controlled stock and securities (if any) or may retain some Controlled stock or securities after the Control Distribution Date. Section 355 Transactions may occur without recognition of gain or loss to Distributing, and without gain, loss, or income to Distributing's shareholders, if the requirements of § 355 and other relevant provisions of the Code and Treasury Regulations are satisfied.

(2) *Section 355(c) Distributions*. A Section 355(c) Distribution is not in pursuance of a plan of reorganization. Therefore, unlike a Divisive Reorganization, a Section 355(c) Distribution does not permit Distributing to satisfy Distributing Debt by distributing Section 361 Consideration to its creditors without recognition of gain or loss.

(3) *Divisive Reorganizations*. In a Divisive Reorganization, Distributing transfers assets to Controlled in exchange for Section 361 Consideration. Controlled also may Assume Distributing Liabilities, generally without Distributing recognizing gain or loss (subject to possible application of § 357(b) (the principal purpose for the Liability Assumption is to avoid Federal income tax or there is no bona fide business purpose) and § 357(c) (Assumption of an amount of Liabilities greater than the total adjusted basis of assets transferred)). To complete the Divisive Reorganization, Distributing distributes Controlled stock (or Controlled stock and securities) to its shareholders. Distributing also may distribute other Section

361 Consideration to its shareholders, or to Distributing's creditors in satisfaction of Distributing Debt held by those creditors, without recognition of gain or loss (subject to requirements and limitations in § 361(b) (possible gain but no loss recognition on asset transfer) and § 361(c) (possible gain but no loss recognition on distribution of Section 361 Consideration other than Controlled stock or other Qualified Property)).

(a) *Section 361(b)(1)(A)*. Under § 361(b)(1)(A), if Distributing receives money or Other Property from Controlled in exchange for Distributing assets in a Divisive Reorganization, Distributing does not recognize gain on the exchange if Distributing distributes the money or Other Property in pursuance of the plan of reorganization. For example, § 361(b)(1)(A) provides that, if Distributing receives money or Other Property from Controlled (for example, a Controlled note), Distributing would need to transfer that Controlled note to its shareholders or creditors, rather than cash or property other than the Controlled note, to qualify for nonrecognition treatment under § 361(b)(1)(A). Consistent with the legislative history of § 361(b), Distributing does not qualify for nonrecognition treatment on the receipt of money or Other Property under the statutory language of § 361(b)(1)(A) unless Distributing "acts merely as a conduit in passing the proceeds" (that is, the money or Other Property) to its shareholders. S. Rep. No. 398, 68th Cong., 1st Sess. 16 (Apr. 10, 1924). The statutory requirements mandated by § 361(b) help ensure that Distributing is not permitted to convert money or Other Property for any period of time into a discretionary fund that is invested in Distributing's business, thereby achieving the economic result of a sale of Controlled (in whole or in part) without recognition of gain or loss.

(b) *Enactment of § 361(b)(3) and (c)(3)*. Congress enacted § 361(b)(3) and (c)(3) to overrule the U.S. Supreme Court's holding in *Minnesota Tea Co. v. Helvering*, 302 U.S. 609 (1938), and therefore permit Distributing to qualify for nonrecognition treatment on the transfer of assets to Controlled even if Distributing transfers the money, Other Property, or Controlled securities received in the transaction from Controlled to Distributing's creditors in connection with the Divisive Reorganization. *See* S. Rep. No. 445 (Aug. 3, 1988), at 393 ("The bill amends prior law by providing that transfers of property to creditors in satisfaction of *the corporation's indebtedness* in connection with the reorganization are treated as distributions pursuant to the plan of reorganization for this purpose. . . . This overrules the holding in *Minnesota Tea*. . . . The bill also provides that the transfer of qualified property *by a corporation to its creditors in satisfaction of indebtedness* is treated as a distribution pursuant to the plan of reorganization." (emphasis added)). Based on this legislative history, this revenue procedure reflects the views of the Department of the Treasury (Treasury Department) and the IRS, that the phrases "pursuant to the plan of reorganization" and "in connection with the reorganization" are coextensive in scope.

(i) *Obligations pursuant to contingent payment debt instruments are indebtedness for Federal income tax purposes*. Distributing's obligations pursuant to "contingent payment debt instruments" (subject to § 1.1275-4) are Distributing Debts and not Distributing Contingent Liabilities, because they constitute Debt under general principles of Federal income tax law.

(ii) *Contingent Liabilities are not indebtedness for Federal income tax purposes*. Distributing's Liabilities of the type described in Rev. Rul. 95-74, 1995-2 C.B. 36 (*held*, transferor's environmental liabilities assumed in a § 351 transfer of business assets were not "liabilities" for § 357(c) purposes and, therefore, were deductible by transferee as incurred) and in *Pacific Transport Co. v. Commissioner*, 483 F.2d 209 (9th Cir. 1973) (claim for cargo lost at sea pending against seller of shipping business; buyer's payment to settle claim *held* capitalized; the fact that "liability was contingent and unliquidated…is of no significance") are Distributing Contingent Liabilities and not Distributing Debt, because they are not Debt under general principles of Federal income tax law.

(4) *Retention of Controlled stock or securities*.

(a) *Qualification for nonrecognition treatment*. If Distributing distributes an amount of stock in Controlled constituting control within the meaning of § 368(c), but retains Controlled stock or securities, under § 355(a)(1)(D)(ii), the distribution does not qualify for nonrecognition treatment under § 355 unless Distributing establishes to the satisfaction of the Secretary of the Treasury (through the IRS by delegation) that the retention by Distributing was not in pursuance of a plan having as *one of its principal purposes* the avoidance of Federal income tax, which effectively creates a rebuttable presumption that any retention evidences a plan to achieve a Federal income tax avoidance purpose. Accordingly, if a principal purpose of a retention was to avoid Federal income tax, the retention could violate the requirements of § 355(a)(1)(D)(ii) even if the taxpayer established that a business purpose existed for the retention.

(b) *Business purpose ordinarily requires distribution of all Controlled stock and securities*. Section 1.355-2(e)(2) provides that "[o]rdinarily, the corporate business purpose or purposes for the distribution will require the distribution of all of the stock and securities of the controlled corporation."

(c) *Factors for determining whether Retention is not a tax-avoidance purpose*.

(i) *Primary indicia*. Long-standing revenue rulings indicate that the IRS will not view a Retention to be in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax if the following requirements are satisfied: (1) a genuine separation of the corporate entities will be effected; (2) the Retention will not enable Distributing to maintain practical control of Controlled; and (3) a sufficient business purpose for the Retention is established. *See generally* Rev. Rul. 75-321, 1975-2 C.B. 123 (retention of *five percent* of Controlled's stock to ensure Distributing has sufficient collateral to obtain short-term financing for its business was not in pursuance to a plan having as one of its principal purposes the avoidance of Federal income tax; no overlapping directors, officers, or key employees, and no continuing arrangements between Distributing and Controlled) (emphasis added); Rev. Rul. 75-469, 1975-2 C.B. 126 (retention of Controlled security to be held by bank as collateral for a loan to Distributing on behalf of Controlled was not in pursuance to a plan having as one

of its principal purposes the avoidance of Federal income tax; no retained Controlled stock, no overlapping directors, officers, or key employees, and no continuing arrangements between Distributing and Controlled).

(ii) *Continuing relationships*. Based on the factors described in section 2.01(4)(c)(i) of this revenue procedure, the degree of continuing relationships between Distributing and Controlled will significantly inform a determination of whether a Retention would be in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax. *See generally* Rev. Rul. 75-321; Rev. Rul. 75-469.

(d) *Plan of reorganization*. Treasury Regulations provide guidance regarding the meaning and scope of the term "plan of reorganization." First, § 1.368-2(g) provides the following:

> The term plan of reorganization has reference to a consummated transaction specifically defined as a reorganization under section 368(a). The term is not to be construed as broadening the definition of reorganization as set forth in section 368(a), but is to be taken as limiting the nonrecognition of gain or loss to such exchanges or distributions as are directly a part of the transaction specifically described as a reorganization in section 368(a). Moreover, the transaction, or series of transactions, embraced in a plan of reorganization must not only come within the specific language of section 368(a), but the readjustments involved in the exchanges or distributions effected in the consummation thereof must be undertaken for reasons germane to the continuance of the business of a corporation a party to the reorganization. Section 368(a) contemplates genuine corporate reorganizations which are designed to effect a readjustment of continuing interests under modified corporate forms.

Second, § 1.368-1(c) provides the following additional guidance:

> A plan of reorganization must contemplate the bona fide execution of one of the transactions specifically described as a reorganization in section 368(a) and for the bona fide consummation of *each of the requisite acts* under which nonrecognition of gain is claimed. Such transaction and such acts must be an ordinary and necessary incident of the conduct of the enterprise and must provide for a continuation of the enterprise. A scheme, which involves an abrupt departure from normal reorganization procedure in connection with a transaction on which the imposition of tax is imminent, such as a mere device that puts on the form of a corporate reorganization as a disguise for concealing its real character, and the object and accomplishment of which is the consummation of a preconceived plan having no business or corporate purpose, is not a plan of reorganization. (Emphasis added.)

The Treasury Department and the IRS are of the view that, for purposes of this revenue procedure and the private letter ruling program, this guidance determines compliance with the plan of reorganization requirement. For purposes of this revenue procedure and the private letter ruling program, the Treasury Department and the IRS are of the view that the case law addressing the satisfaction of the plan of reorganization requirement, taken together, fails to provide sufficient consistency or clarity necessary for the administration and enforcement of the requirements that govern Divisive Reorganizations and related transactions.

.02 *Prior Revenue Procedures*.

(1) *Distributing Debt issued in close temporal proximity to the Divisive Reorganization*.

(a) *No-rule position of Rev. Proc. 2013-3*. In 2013, the Treasury Department and the IRS stated that private letter rulings no longer would be issued on whether § 355 or § 361 applies to Distributing's distribution of Controlled stock or securities in exchange for, and in retirement of, putative Distributing Debt, if such Debt was issued in anticipation of the distribution. *See* section 5.01(10) of Rev. Proc. 2013-3, 2013-1 I.R.B. 113. In particular, the Treasury Department and the IRS published the no-rule position due to the significant potential that Distributing Debt issued in close temporal proximity to the Divisive Reorganization could fail to qualify for nonrecognition treatment under § 361 (for example, because of a failure of the substance of the transaction to comply with the statutory requirements of § 361).

(b) *Modification of no-rule position*. Rev. Proc. 2017-38, 2017-22 I.R.B. 1258, modified Rev. Proc. 2017-3, 2017-1 I.R.B. 130, the successor to Rev. Proc. 2013-3, to remove this no-rule position because it was determined that issuing rulings in this area would be in the interest of sound tax administration, while noting that the IRS continued to study matters concerning issues in this area. *See* section 3 of Rev. Proc. 2017-38. The Treasury Department and the IRS continue to be of the view that entertaining ruling requests on such transactions will facilitate the IRS's ability to administer all relevant provisions of the Code with regard to Section 355 Transactions. Consistent with section 3 of Rev. Proc. 2017-38, the Treasury Department and the IRS are continuing to study the application of the Code, as well as general principles of Federal income tax law (including substance over form, agency, or other relevant theories), to the issuance of Debt in close temporal proximity with a Divisive Reorganization. The Treasury Department and the IRS are of the view that Distributing Debt issued in close temporal proximity of the Divisive Reorganization raises the concerns that resulted in the publication of the 2013 no-rule position. *See* section 3.05(5)(d)(iii) of this revenue procedure.

(2) *Significant issue rulings*.

(a) *Rev. Proc. 2013-32*. Rev. Proc. 2013-32, 2013-28 I.R.B. 55, provided that private letter rulings no longer would be issued on the Federal income tax consequences of various corporate transactions, including transactions intended to qualify as Section 355 Transactions, but instead would be issued only on significant issues presented in those transactions. The IRS's current ruling policies in this area are described in Rev. Proc. 2024-1, 2024-1 I.R.B. 1, and Rev. Proc. 2024-3, 2024-1 I.R.B. 143.

(b) *Rev. Proc. 2024-1 and Rev. Proc. 2024-3*. Rev. Proc. 2024-1, 2024-1 I.R.B. 1, and Rev. Proc. 2024-3, 2024-1 I.R.B. 143, removed the no-rule position on the Federal income tax consequences of various corporate transactions and eliminated the issuance of rulings on significant issues, including with respect to

Section 355 Transactions. *See* section 16 of Rev. Proc. 2024-1; section 1.02 of Rev. Proc. 2024-3. The Treasury Department and the IRS determined that a broader-scoped private letter ruling program would increase taxpayer certainty regarding the Federal income tax consequences of corporate transactions, enhance the visibility of the Treasury Department and the IRS with regard to current market practices, and ultimately result in a better-informed guidance process. In addition, the IRS determined that providing such rulings would be in the interest of sound tax administration.

(3) *Procedures for requesting private letter rulings regarding Section 355 Transactions*.

(a) *Rev. Proc. 2017-52*. Rev. Proc. 2017-52 provides procedures for requesting private letter rulings regarding Section 355 Transactions and superseded Rev. Proc. 96-30, 1996-1 C.B. 696. Rev. Proc. 2017-52 established a pilot program to issue private letter rulings that address the general Federal income tax consequences of a Section 355 Transaction. Rev. Proc. 2017-52 also provides procedures for requesting rulings that address the general Federal income tax consequences of a Section 355 Transaction and clarifies procedures for requesting rulings on significant issues presented in those transactions. This revenue procedure modifies Rev. Proc. 2017-52. *See generally* section 4.01(1) of this revenue procedure.

(b) *Rev. Proc. 2018-53*. Rev. Proc. 2018-53, 2018-43 I.R.B. 667, described the procedures for requesting rulings on issues relating to the assumption or satisfaction of Distributing Debt (as defined therein) in Divisive Reorganizations and the representations, information, and analysis to be submitted in those requests. Section 2 of Rev. Proc. 2018-53 reiterated that the Treasury Department and the IRS continue to study issues relating to the assumption and satisfaction of Distributing's obligations in Divisive Reorganizations. This revenue procedure supersedes Rev. Proc. 2018-53.

SECTION 3. APPLICATION AND PROCEDURES

.01 *Ruling Requests to Which Procedures Apply*.

(1) *Section 355 Transactions*.

(a) *In general*. This revenue procedure provides certain procedures for taxpayers requesting rulings on Section 355 Transactions, including representations, information, and analysis to be submitted with those requests. *See generally* section 3.03 of this revenue procedure.

(b) *Procedures for rulings on matters not addressed by Rev. Proc. 2017-52*. This revenue procedure provides additional procedures for requesting rulings on the following matters that are not addressed by Rev. Proc. 2017-52:

(i) *Delayed Distributions*. The IRS will entertain requests for rulings that Distributions over a period of time are, as applicable, "part of the distribution" (within the meaning of § 355(a)(1)(D)), or "in pursuance of the plan of reorganization" (within the meaning of § 361). *See generally* section 3.03(3) of this revenue procedure (setting forth representations, information, and analysis that must be submitted for such requested rulings).

(ii) *Retained Controlled Stock (or Securities)*. The IRS will entertain requests for rulings regarding the application of § 355(a)(1)(D)(ii) (Retentions). *See generally* section 3.03(4) of this revenue procedure (setting forth representations, information, and analysis that must be submitted for such requested rulings).

(2) *Divisive Reorganizations*.

(a) *Scope of rulings*. A taxpayer proposing to engage in a Divisive Reorganization may request rulings that no gain or loss will be recognized to Distributing upon—

(i) Controlled's Assumption of a Distributing Liability, including a Distributing Contingent Liability, under § 357(a);

(ii) Distributing's receipt of Section 361 Consideration from Controlled, including Post-Distribution Payments, under § 361(b); and

(iii) Distributing's distribution to a Distributing shareholder of Section 361 Consideration that consists of Controlled stock or other Qualified Property, or Distributing's transfer to a Distributing creditor of that consideration to satisfy Distributing Debt, under § 361(c).

(b) *Characterization of obligation*.

(i) *Relevance of characterization*. The characterization of an obligation relevant to the request as a Debt, as a Liability that is not a Debt, or as not a Liability, for Federal income tax purposes determines the application of the Code and Treasury Regulations to, and the Federal income tax consequences of, a Divisive Reorganization. Therefore, the characterization of an obligation for Federal income tax purposes determines the representations, information, and analysis to be submitted in accordance with section 3.03 of this revenue procedure.

(ii) *Procedure if characterization of obligation not entirely free from doubt*. If the characterization of an obligation for Federal income tax purposes is not entirely free from doubt, the taxpayer must submit a description of the obligation and information and analysis explaining the taxpayer's conclusion regarding the characterization of the obligation. *See* section 5.17(1) of Rev. Proc. 2024-1 (providing that "an Associate office may issue letter rulings … [i]f the letter ruling request presents an issue for which the answer seems clear by applying the statute, regulations, and applicable case law to the facts or for which the answer seems reasonably certain but not entirely free from doubt"). If a ruling depends, directly or indirectly, on the characterization of an obligation, the taxpayer must provide information and analysis sufficient for the IRS to determine the characterization of the obligation for Federal income tax purposes.

(3) *Section 355 Transactions involving § 368(a)(1)(G)*. This revenue procedure does not describe specific procedures for requesting rulings addressing the Federal income tax consequences of divisive reorganizations described in § 368(a)(1)(G). The Treasury Department and the IRS request comments regarding appropriate representations, information, and analysis that should be required for the issuance of such rulings. The Treasury Department and the IRS will consider these comments for purposes of future guidance.

.02 *Procedures*.

(1) *Procedures for requests for rulings common to both Section 355(c) Distributions and Divisive Reorganizations*. In any request for rulings described in section 3.01(1) of this revenue procedure, the taxpayer must submit the representations, information, and analysis set forth in Rev. Proc. 2017-52 and in section 3.03

of this revenue procedure. Unless otherwise modified by this revenue procedure, the taxpayer must submit such representations, information, and analysis in accordance with the procedures provided by Rev. Proc. 2017-52.

(2) *Procedures for requests for rulings regarding §§ 357 and 361 for Divisive Reorganizations*. In any request for rulings described in section 3.01(2) of this revenue procedure, the taxpayer must submit the representations, information, and analysis set forth in Rev. Proc. 2017-52 and in sections 3.03 through 3.05 of this revenue procedure. Unless otherwise modified by this revenue procedure, the taxpayer must submit such representations, information, and analysis in accordance with the procedures provided by section 3 of Rev. Proc. 2017-52.

(3) *Representations*.

(a) *Requirement to provide all representations*. Except as provided by section 3.02(3)(b) of this revenue procedure, each numbered representation set forth in section 3.03 or section 3.05 of this revenue procedure must be submitted precisely in the language requested.

(b) *Sole exception*. If the taxpayer cannot submit any representation set forth in section 3.03 or section 3.05 of this revenue procedure precisely as requested, the taxpayer must provide an explanation for why it would not be possible to provide that representation in the language requested. Variations of the language of such representations may delay processing the ruling request and will not be accepted unless the taxpayer submits reasons satisfactory to the Associate Chief Counsel (Corporate).

.03 *Representations, Information, and Analysis in All Requests for Rulings on Section 355 Transactions*.

(1) *Overview*. The following requirements apply to all representations, information, and analysis required by this revenue procedure.

(a) *Requirements*. If the taxpayer requests a ruling on any Section 355 Transaction, the taxpayer must submit the representations, information, and analysis set forth in section 3 of Rev. Proc. 2017-52 and the Appendix thereto (except to the extent superseded in this revenue procedure). The taxpayer also must submit the representations, information, and analysis set forth in this section 3.03. A taxpayer requesting a ruling on a Divisive Reorganization also must submit the representations, information, and analysis set forth in sections 3.04 and 3.05 of this revenue procedure.

(b) *Knowledge standard*. With regard to all representations, information, and analysis required by this revenue procedure, the taxpayer must satisfy all such requirements in accordance with the standard set forth in section 8.05(4) of Rev. Proc. 2024-1 ("Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.") or successor revenue procedure.

(2) *Delayed Distributions*.

(a) *Scope of rulings*. The IRS may entertain requests for rulings that a series of Distributions of Controlled stock (or Controlled stock and securities) over a period of time is, as applicable, "part of the distribution" (within the meaning of § 355(a)(1)(D)), or "in pursuance of the plan of reorganization" (within the meaning of § 361). To obtain a ruling that all the Controlled stock (or Controlled stock and securities) distributed to Distributing's shareholders and securityholders qualifies for nonrecognition (and non-inclusion) treatment under § 355, the taxpayer must submit one of the ALTERNATIVE REPRESENTATIONS in section 3.03(2)(b) of this revenue procedure, the information set forth in section 3.03(2)(c) of this revenue procedure, and the analysis set forth in section 3.03(2)(d) of this revenue procedure. *See* section 3.03(3) of this revenue procedure for the treatment of Retained Controlled Stock (or Securities).

(b) *ALTERNATIVE REPRESENTATIONS*. As applicable, submit one of the following ALTERNATIVE REPRESENTATIONS:

(i) ***ALTERNATIVE REPRESENTATION 1A***. *Distributing will distribute on the same date all the stock and securities of Controlled, and any options (or similar instruments) to acquire stock or securities of Controlled, that it holds immediately before the First Distribution.*

(ii) ***ALTERNATIVE REPRESENTATION 1B***. *The Distribution Period will be no longer than the period of time necessary to complete all Distributions, but in any event the Final Distribution Date will be no later than 12 months after the First Distribution Date.*

(c) *Information*.

(i) *General requirement*. The taxpayer must submit information on the expected percentage of Controlled stock or securities that will not be distributed in the First Distribution and the expected duration of the Distribution Period.

(ii) *Delay longer than 90 days*. If the Final Distribution Date will take place more than 90 days after the First Distribution Date, the taxpayer also must submit summaries of the following information:

(A) The expected percentage of Controlled stock or securities that will not be distributed within 90 days of the First Distribution and the duration of the Distribution Period.

(B) The business reasons for this percentage and duration (including any regulatory, business, or market constraints that require the extended duration).

(d) *Analysis*.

(i) *In general*. The taxpayer must submit relevant facts and analysis to establish that each Distribution is, as applicable, "part of the distribution" (within the meaning of § 355(a)(1)(D)) or "in pursuance of the plan of reorganization" (within the meaning of § 361).

(ii) *Treatment of passage of time*. In administering the private letter ruling program, the IRS will not treat the length of time between Distributions referred to in **ALTERNATIVE REPRESENTATION 1B** alone as preventing a Distribution from being "part of the distribution" (within the meaning of § 355(a)(1)(D)) or from being "in pursuance of the plan of reorganization" (within the meaning of § 361). However, the IRS will consider the length of time between Distributions as a primary factor for determining whether, as applicable, a Distribution is "part of the distribution" (within the meaning of § 355(a)(1)(D)), or "in pursuance of the plan of reorganization" (within the meaning of § 361).

(e) *Effect on Rev. Proc. 2017-52*. This section 3.03(2) supersedes representation 2 in section 3 of the Appendix to Rev. Proc. 2017-52.

(3) *Retained Controlled Stock (or Securities)*.

(a) *Scope of rulings*. The IRS will entertain requests for rulings regarding the application of § 355(a)(1)(D)(ii) (relating to Retained Controlled Stock (or Securities)).

(i) *General ruling on Retained Controlled Stock (or Securities)*. The IRS will entertain a request for a ruling that a Retention will not be in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax (within the meaning of § 355(a)(1)(D)(ii)).

(ii) *Section 355 Transactions involving Delayed Distributions and Retentions*. With regard to the same Section 355 Transaction, the IRS will entertain a request for rulings that—

(A) A Delayed Distribution of Controlled stock or securities will be, as applicable, "part of the distribution" (within the meaning of § 355(a)(1)(D)) or "in pursuance of the plan of reorganization" (within the meaning of § 361); and

(B) A Retention of Controlled stock or securities that are not included in a request for ruling described in section 3.03(3)(a)(ii)(A) of this revenue procedure (that is, the remaining Controlled stock or securities not distributed as "part of the distribution" (within the meaning of § 355(a)(1)(D)) or "in pursuance of the plan of reorganization" (within the meaning of § 361)) in the Section 355 Transaction) will not be in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax (within the meaning of § 355(a)(1)(D)(ii)).

(b) *General procedures*.

(i) *Requirements for ruling*. To obtain a ruling that a Retention will satisfy the requirements of § 355(a)(1)(D)(ii), the taxpayer must—

(A) Submit **REPRESENTATIONS 2 through 6**, as required by section 3.03(3)(c) of this revenue procedure (except as provided in section 3.03(3)(e)(iv) of this revenue procedure);

(B) Submit all information and analysis required by section 3.03(3)(d) of this revenue procedure; and

(C) Satisfy the principal purpose standard set forth by section 3.03(3)(e) of this revenue procedure.

(ii) *Certain Distributing Related Person ownership treated as Distributing ownership*. For purposes of this section 3.03(3), Controlled stock, Controlled securities, options (or similar instruments) to acquire Controlled stock or securities, or Controlled stock or securities acquired upon exercise of an option (or settlement of any similar instrument) held, directly or indirectly, by any Distributing Related Person (determined immediately before the Control Distribution Date) that is part of the DSAG will be treated as Retained Controlled Stock (or Securities).

(iii) *Clarification regarding rulings under §§ 355(a)(1)(D) and 361*. The IRS will not entertain a simultaneous request for the rulings described in section 3.03(3)(a)(ii)(A) and (B) of this revenue procedure with respect to the same Controlled stock or securities. Instead, the IRS will entertain a ruling either that such stock or securities is—

(A) Distributed by Distributing as "part of the distribution" (within the meaning of § 355(a)(1)(D)) or "in pursuance of the plan of reorganization" (within the meaning of § 361); or

(B) Retained by Distributing (within the meaning of § 355(a)(1)(D)(ii)).

(c) *REPRESENTATIONS*. Submit the following REPRESENTATIONS if there is a Retention:

(i) ***REPRESENTATION 2***. *After the Control Distribution Date, the Controlled stock will be widely held.*

(ii) ***REPRESENTATION 3***. *Each business purpose for the Retention exists as of the time of the Retention and is not speculative or otherwise contingent upon events that potentially could occur after the Control Distribution Date.*

(iii) ***REPRESENTATION 4***. *None of Distributing's directors, officers, or key employees will serve as a director, an officer, or a key employee of Controlled during the period in which Distributing retains Retained Controlled Stock (or Securities).* In the event that the taxpayer does not submit this **REPRESENTATION 4**, *see* section 3.03(3)(e)(iv) of this revenue procedure (providing procedures regarding overlapping directors, officers, or key employees).

(iv) ***REPRESENTATION 5***. *Any Retained Controlled Stock (or Securities) will be disposed of as soon as a disposition is warranted, consistent with the business purpose or purposes specified in response to the relevant request for information in section 3.03(3) of Rev. Proc. 2024-24, but in any event, not later than five years after the Control Distribution Date.*

(v) ***REPRESENTATION 6***. *Distributing will vote any Retained Controlled Stock, and any other Controlled stock with respect to which it has voting power, in proportion to the votes cast by Controlled's other shareholders of the same class (other than Distributing Related Persons).* For example, if, after the Control Distribution Date, the other shareholders of the same class of Controlled stock (other than Distributing Related Persons) vote 70 percent in favor of, and 30 percent against, a matter, Distributing would be required to vote its Controlled stock 70 percent in favor of, and 30 percent against, the matter.

(d) *Information*.

(i) *General information*. The taxpayer must submit the following information:

(A) The number of shares and percentage of each class of stock in, and the principal amount of each series of securities of, Controlled to be held by Distributing after the Control Distribution Date.

(B) A description of any options or similar instruments to acquire Controlled stock or securities that Distributing will hold after the Control Distribution Date.

(C) An explanation for why the Retention is necessary, including a description of each business reason for the Retention and any other cause for the Retention that is not a business reason (for example, taking an investment position in Retained Controlled Stock).

(D) The expected duration of the Retention and the timing for each disposition of Retained Controlled Stock (or Securities), with reference to a specific period or events.

(ii) *Information regarding Federal income tax benefit*.

(A) *In general*. The taxpayer must submit information describing any Federal income tax benefit resulting from, or any advantage relating to the Federal income tax treatment of—

(I) The Retention; and

(II) The disposition of the Retained Controlled Stock (or Securities).

(B) *Examples of relevant Federal income tax benefits and advantages*. Examples of the Federal income tax benefits and advantages referred to in section 3.03(3)(d)(ii)(A) of this revenue procedure with regard to a Retention include the following:

(I) Anticipated recognition of loss (or gain that is offset by expiring loss) on a disposition of Controlled stock or securities (directly or indirectly).

(II) Ineligibility for nonrecognition of gain or loss upon a distribution of Controlled stock or securities, including stock subject to § 355(a)(3)(B) and § 1.355-2(g).

(III) Any other Federal income tax benefit or advantage, including a reduction of the amount of Federal income tax that otherwise would have resulted from the Section 355 Transaction, that results (directly or indirectly) from the Retention.

(e) *Satisfaction of "a principal purpose" standard*.

(i) *Rebuttable presumption*. The existence of a Retention effectively creates a rebuttable presumption that the Retention is in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax. To rebut this presumption, the taxpayer must establish to the satisfaction of the Associate Chief Counsel (Corporate) that the Retention is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax.

(ii) *Factors significantly indicative of impermissible Retention*. The following factors provide significant indicia that a Retention will be in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax.

(A) A Federal income tax benefit or advantage referred to in section 3.03(3)(d)(ii)(A) of this revenue procedure (including any example set forth in section 3.03(3)(d)(ii)(B) of this revenue procedure).

(B) One or more overlapping key employees between the DSAG and CSAG (determined immediately after the Control Distribution).

(C) One or more overlapping directors or officers between Distributing and Controlled (determined immediately after the Control Distribution).

(D) The existence of continuing contractual agreements between the DSAG and CSAG that include provisions that are not arm's-length.

(iii) *Procedures regarding existence of one or more factors*.

(A) *Existence of one factor*. The IRS will apply significantly increased scrutiny to any ruling request regarding a Retention that involves the existence of any factor described in section 3.03(3)(e)(ii) of this revenue procedure.

(B) *Existence of two or more factors*. In the event that two or more of the factors described in section 3.03(3)(e)(ii) of this revenue procedure exist with regard to a Retention, the taxpayer must establish to the satisfaction of the Associate Chief Counsel (Corporate) that—

(I) A business exigency exists that outweighs those factors and directly causes the need for the Retention; and

(II) In light of that business exigency, the Retention should not be viewed as in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax.

(iv) *Procedures regarding overlapping directors, officers, or key employees*.

(A) *In general*. In the event that the taxpayer does not submit **REPRESENTATION 4** precisely in the language requested, the IRS may issue favorable rulings, based upon all relevant facts and circumstances, regarding the application of § 355(a)(1)(D)(ii) if the taxpayer has submitted **REPRESENTATIONS 3**, **5**, and **6**.

(B) *Controlled business requirement*. The IRS may issue a favorable ruling if a director, officer, or key employee of Distributing serves as a director, officer, or key employee of Controlled solely to accommodate Controlled's business needs.

(C) *Limitation on overlap*. The number of overlapping Distributing directors must not constitute a majority of Controlled's board, and the duration of the overlap must be for an identified, limited period of time. For purposes of calculating compliance with this requirement, each overlapping Distributing officer is treated as an overlapping Distributing director.

(v) *General analysis*. Except as otherwise provided by section 3.03(3)(e)(iii)(B) of this revenue procedure, submit analysis to establish the following:

(A) The Retention should not be viewed as in pursuance of a plan having as one of its principal purposes avoiding Federal income tax.

(B) There is a sufficient business purpose for any such Retention or disposition, and the Retention or disposition is consistent with the business purpose for the Distribution.

(4) *Retention of Controlled Debt*.

(a) *REPRESENTATION*. If Controlled will owe Debt to Distributing after the Control Distribution Date, submit the following **REPRESENTATION 7**: *No Debt owed by Controlled, or by any Controlled Related Person, to Distributing, or to any Distributing Related Person, after the Control Distribution will constitute stock or securities*.

(b) *Information*. The taxpayer must submit information describing any Debt to be owed by Controlled (or by any Controlled Related Person) to Distributing (or to any Distributing Related Person) after the Control Distribution Date and analysis that establishes that any such Debt does not constitute stock or securities.

(c) *Effect on Rev. Proc. 2017-52*. **REPRESENTATION 7** supersedes representation 4 in section 3 of the Appendix to Rev. Proc. 2017-52.

(5) *Solvency and viability of Distributing and Controlled*.

(a) *REPRESENTATIONS*. Submit the following REPRESENTATIONS:

(i) ***REPRESENTATION 8***. *Immediately after the Control Distribution Date, the fair market value of the assets of Distributing and Controlled will, in each case, exceed the Amount of its Liabilities.*

(ii) ***REPRESENTATION 9***. *Immediately after the Control Distribution Date, Controlled will be adequately capitalized and, therefore, is expected to (A) have the means to satisfy all its Liabilities incurred as part of the Plan of Reorganization with regard to the Divisive Reorganization, including any securities and other Debt issued as Section 361 Consideration and any Distributing Liabilities that Controlled Assumes, and (B) continue as an economically viable entity, taking solely into account solely the Liabilities described in clause (A) (including, in the case of a pre-existing Controlled, any pre-existing Liabilities) as they come due.* For the avoidance of doubt, the expecta-

tions described in clauses (A) and (B) of **REPRESENTATION 9** are the expectations of the taxpayer. For purposes of this **REPRESENTATION 9**, Controlled is not treated as satisfying a Liability as a result of Controlled refinancing that Liability.

(b) *Information*. Submit information and analysis to support the taxpayer's ability to provide **REPRESENTATIONS 8** and **9**. The taxpayer may submit projections and other financial information to establish the accuracy and reasonableness of **REPRESENTATIONS 8** and **9**.

(c) *Effect on Rev. Proc. 2017-52*. **REPRESENTATION 8** supersedes representation 21 in section 3 of the Appendix to Rev. Proc. 2017-52.

(6) *Additional information and analysis*. Submit information and analysis to establish that, under general principles of Federal income tax law, the transactions should not be recast, recharacterized, or otherwise treated as one or more transactions that would not qualify under the relevant provisions of the Code.

.04 *General Information and Analysis in Requests for Rulings on Divisive Reorganizations*. In a request for a ruling on a Divisive Reorganization (in addition to all requirements imposed by sections 3.03 and 3.05 of this revenue procedure) the taxpayer must submit the following information and analysis:

(1) Information that describes—

(a) Each Distributing Debt that will be satisfied with Section 361 Consideration or other Distributing Liability that will be Assumed by Controlled (including the relevant terms of the instruments, agreements, and arrangements that evidence the Distributing Debt or other Distributing Liability and the date or dates on which the Distributing Debt or other Distributing Liability was incurred);

(b) The Section 361 Consideration that will be distributed to Distributing's shareholders or transferred to Distributing's creditors in satisfaction of Distributing Debt; and

(c) The transactions that will implement—

(i) Controlled's Assumption of each Distributing Liability to be Assumed;

(ii) Each distribution of Section 361 Consideration to Distributing's shareholders; and

(iii) Each transfer of Section 361 Consideration to Distributing's creditors in satisfaction of Distributing Debt.

(2) Information and analysis to establish that—

(a) Any Assumption of a Distributing Liability by Controlled will be subject to § 357; and

(b) Any transfer of Section 361 Consideration by Distributing to its creditors in satisfaction of Distributing Debt will be in connection with the Divisive Reorganization, and any distribution of Section 361 Consideration to Distributing's shareholders will be in pursuance of the Plan of Reorganization.

.05 *Representations, Information, and Analysis in Requests for Rulings on Divisive Reorganizations*. A taxpayer that requests a ruling on matters pertaining to a Divisive Reorganization must submit the applicable representations, information, and analysis set forth in Rev. Proc. 2017-52 (except to the extent superseded in this revenue procedure), in sections 3.03 and 3.04 of this revenue procedure, and in this section 3.05.

(1) *Scope of Plan of Reorganization*.

(a) *REPRESENTATIONS*. Submit the following REPRESENTATIONS:

(i) ***REPRESENTATION 10***. *Each specific step of the Proposed Transaction will be specified and described clearly in the Plan of Reorganization, including any step of the Proposed Transaction the execution of which is a contemplated possibility by any party to the Proposed Transaction but that is properly included as part of the Plan of Reorganization.* For purposes of this **REPRESENTATION 10**, a contemplated possibility with regard to a specific step of the Proposed Transaction includes a step that is subject to any contingency or alternative.

(ii) ***REPRESENTATION 11***. *Each specific step of the Proposed Transaction is (i) necessary to effectuate the business purposes of the Proposed Transaction, (ii) carried out for reasons germane to the continuance of the business of each corporation a party to the Proposed Transaction, and (iii) directly a part of the Proposed Transaction*.

(iii) ***REPRESENTATION 12***. *Before the first step of the Proposed Transaction, each party to the Proposed Transaction will have adopted the Plan of Reorganization for the Proposed Transaction*.

(b) *Analysis*. The taxpayer must establish that each specific step of the Proposed Transaction is part of the Plan of Reorganization with regard to the Proposed Transaction.

(c) *Documentation*. The taxpayer must submit as an exhibit to the ruling request a copy of the Plan of Reorganization with regard to the Proposed Transaction. For the avoidance of doubt, an adequate description of each specific step within the meaning of **REPRESENTATION 10** must identify each party to such step. Similar to ruling request exhibits that contain public filings with regard to a proposed transaction (such as filings with the Securities and Exchange Commission), the IRS will accept copies of the Plan of Reorganization that are marked as "draft." In order to provide all relevant rulings with regard to the Proposed Transaction, once the Plan of Reorganization is finalized, the IRS will accept a copy of that document through a supplemental submission.

(2) *Distributing as Obligor*.

(a) *REPRESENTATION*. Submit the following **REPRESENTATION 13**: *Distributing is the Obligor of (i) each Distributing Debt that will be satisfied with Section 361 Consideration and (ii) each other Distributing Liability (including each Distributing Contingent Liability) that will be Assumed by Controlled*.

(b) *Information and analysis*. With regard to each Distributing Debt or other Distributing Liability described in **REPRESENTATION 13**, the taxpayer must submit the following:

(i) Information regarding any co-obligation, guarantee, indemnity, surety, make-well, keep-well, or similar arrangement, including security provided by any person other than Distributing.

(ii) Analysis to establish that, taking into account any such arrangement, Distributing is the Obligor of that Distributing Debt or other Distributing Liability (including a Distributing Contingent Liability) for Federal income tax purposes.

(3) *Asset basis limitations*.

(a) *REPRESENTATION*. Submit the following **REPRESENTATION 14**: *The total adjusted basis of the assets transferred by Distributing to Controlled will equal or exceed the sum of—*

(i) *The total amount of the Liabilities Assumed by Controlled (within the meaning of § 357(d)); and*

(ii) *The total amount of any money and the fair market value of any Other Property (regardless of whether the money or Other Property is distributed to Distributing's shareholders or transferred to Distributing's creditors)*.

(b) *Information*. If the taxpayer does not submit **REPRESENTATION 14**, the taxpayer must submit information regarding the amounts referred to in **REPRESENTATION 14** and the computation of any gain to be realized and recognized in the transaction.

(c) *Effect on Rev. Proc. 2017-52*. This section 3.05(3) supersedes representation 18 in section 3 of the Appendix to Rev. Proc. 2017-52.

(4) *Holders of Distributing Debt or other Distributing Liabilities*.

(a) *ALTERNATIVE REPRESENTATIONS*. As applicable, submit one of the following ALTERNATIVE REPRESENTATIONS:

(i) *Holder not a Related Person*. If the holder of Distributing Debt or other Distributing Liabilities is not a Related Person, submit the following **ALTERNATIVE REPRESENTATION 15A**: *No holder of a Distributing Debt that will be satisfied with Section 361 Consideration, or of a Distributing Liability that will be Assumed by Controlled (including a Distributing Contingent Liability), is a Distributing Related Person or a Controlled Related Person*.

(ii) *Holder of Distributing Debt a Related Person*. If the holder of a Distributing Debt that will be satisfied with Section 361 Consideration is a Distributing Related Person, submit the following **ALTERNATIVE REPRESENTATION 15B**: *If any Section 361 Consideration is received by a creditor of Distributing that is a Distributing Related Person, that Section 361 Consideration will be transferred no later than the date that is 12 months after the First Distribution Date to a creditor of that Distributing Related Person to satisfy Debt owed by that Distributing Related Person to that creditor*. *The creditor described in the preceding sentence (that is, the ultimate creditor) will not be a Distributing Related Person or a Related Person with regard to any Distributing Related Person. In addition, all Debt for which Section 361 Consideration will be exchanged as part of the series of transfers described in this* ***REPRESENTATION 15B*** *will have been in existence as of the Earliest Applicable Date.* For purposes of this **REPRESENTATION 15B**, the status of a person as a Distributing Related Person, or a Related Person with regard to any Distributing Related Person, is determined at the time at which that person receives Section 361 Consideration in a transfer described in this **REPRESENTATION 15B**.

(iii) *Applicability of revenue procedure*. All relevant provisions of this revenue procedure apply to all the transactions that will implement the series of transfers of Section 361 Consideration required by **ALTERNATIVE REPRESENTATION 15B** (as potentially modified under section 3.05(4)(b)(ii) of this revenue procedure).

(b) *Information and analysis*.

(i) *Complete description of transfers*. If the taxpayer submits **ALTERNATIVE REPRESENTATION 15B**, the taxpayer must describe the steps and timing of all the transactions that will implement the series of transfers of the Section 361 Consideration required by **ALTERNATIVE REPRESENTATION 15B** (as potentially modified under section 3.05(4)(b)(ii) of this revenue procedure).

(ii) *Modification of representation*. **ALTERNATIVE REPRESENTATION 15B** may be modified solely to reflect one or more series of intermediate transfers of Section 361 Consideration between Distributing Related Persons to satisfy Debts (including the initial Distributing Debt), if that series of intermediate transfers—

(A) Culminates in a transfer of Section 361 Consideration to a creditor that is not a Distributing Related Person or a Related Person with regard to any Distributing Related Person; and

(B) Satisfies all other requirements described in **ALTERNATIVE REPRESENTATION 15B**.

(iii) *Application of consolidated return regulations*. The taxpayer must submit information and analysis to address any potential application of the Treasury Regulations under § 1502.

(5) *Intermediaries*.

(a) *In general*. If an Intermediary will acquire historical Distributing Debt (as determined in accordance with section 3.05(8) of this revenue procedure) to be satisfied with Section 361 Consideration, the taxpayer must submit the REPRESENTATIONS required by section 3.05(5)(b) of this revenue procedure, the information required by section 3.05(5)(c) of this revenue procedure, and the analysis required by section 3.05(5)(d) of this revenue procedure.

(b) *REPRESENTATIONS*. Submit the following REPRESENTATIONS:

(i) ***REPRESENTATION 16***. *No holder of a Distributing Debt that will be satisfied with Section 361 Consideration, or of other Distributing Liability (including a Distributing Contingent Liability) that will be Assumed by Controlled, will hold the Debt or other Liability for the benefit of Distributing, Controlled, a Distributing Related Person, or a Controlled Related Person.* For purposes of this **REPRESENTATION 16**, a collateral benefit received by Distributing from an arrangement with an Intermediary (for example, facilitation of a transfer of Section 361 Consideration in satisfaction of Distributing Debt) will not be treated as the Intermediary holding Distributing Debt for the benefit of Distributing, Controlled, or any Distributing Related Person or Controlled Related Person.

(ii) *Direct issuances generally prohibited*. As applicable, submit one of the following ALTERNATIVE REPRESENTATIONS:

(A) *General prohibition*. Submit ***ALTERNATIVE REPRESENTATION 17A***: *An Intermediary will not acquire Distributing Debt (that will be satisfied with Section 361 Consideration) from Distributing, from Controlled, or from any Distributing Related Person or Controlled Related Person.*

(B) *Sole exception*. Submit ***ALTERNATIVE REPRESENTATION 17B***: *All Distributing Debt directly acquired by an Intermediary from Distributing (that will be satisfied with Section 361 Consideration) will be acquired before the Earliest Applicable Date.* For the avoidance of doubt, one example of a direct acquisition of Distributing Debt by an Intermediary from Distributing would be an issuance by Distributing of a Distributing Debt to the Intermediary in exchange for cash.

(iii) ***REPRESENTATION 18***. *Each exchange of Section 361 Consideration for Distributing Debt between Distributing and an Intermediary will be effectuated*

based on terms and conditions arrived at by the parties bargaining at arm's length.

(iv) ***REPRESENTATION 19***. *Neither Distributing, nor Controlled, nor any Distributing Related Person or Controlled Related Person, will participate in any profit gained by Intermediary upon an exchange of Section 361 Consideration; nor will any such profit be limited by agreement or other arrangement.*

(v) ***REPRESENTATION 20***. *The Intermediary will (i) act for its own account, and (ii) bear the risk of loss with respect to (A) the Distributing Debt and (B) any subsequent sale or other disposition of Section 361 Consideration transferred to the Intermediary to satisfy the Distributing Debt.* **REPRESENTATION 20** cannot be submitted if the Intermediary enters into a variable pricing agreement or similar arrangement with Distributing (or Controlled, a Distributing Related Person, or a Controlled Related Person) with regard to any Section 361 Consideration. An agreement or arrangement described in the preceding sentence could involve, for example, "true-up" payments, forward exchange agreements, or any other similar agreement or arrangement. A collateral benefit received by Distributing from an arrangement with an Intermediary (for example, facilitation of exchanges of Section 361 Consideration for Distributing Debt) will not be considered inconsistent with this representation.

(c) *Information*. A taxpayer must submit the following information:

(i) The name of each Intermediary and a description of the terms of all agreements, understandings, and arrangements pertaining to the proposed transactions or any related transactions between the Intermediary and Distributing (or Controlled or any Distributing Related Person or Controlled Related Person). The description of the terms must include—

(A) The terms of any Distributing Debt, Distributing stock, or Section 361 Consideration to be acquired by the Intermediary; and

(B) The terms of all agreements, understandings, and arrangements relating to those acquisitions.

(ii) A description of any co-obligation, guarantee, indemnity, surety, make-well, keep-well, or similar arrangement, including—

(A) Security provided to the Intermediary by Distributing (or by Controlled, or any Distributing Related Person or Controlled Related Person); or

(B) Any other undertaking that results in the protection of the Intermediary against the risk of loss with regard to the Section 361 Consideration or Distributing Debt.

(iii) The length of time expected to elapse between the Intermediary's acquisition of a Distributing Debt and the satisfaction of that Debt with Section 361 Consideration.

(iv) Information to establish that the exchange of Section 361 Consideration for Distributing Debt between Distributing and the Intermediary will be effectuated based on terms and conditions arrived at by the parties bargaining at arm's length.

(d) *Analysis*.

(i) *Consistency with representations*. The taxpayer must provide analysis to establish that the terms of all agreements, understandings, and arrangements with an Intermediary, and all activities by that Intermediary, are consistent with **REPRESENTATIONS 16** through **20**. In particular, **REPRESENTATIONS 16** through **20** will not be treated as provided by the taxpayer unless the taxpayer provides analysis that establishes that the Intermediary is a creditor of Distributing and participates as a principal for its own account in the exchange with Distributing, and that the transfer of Section 361 Consideration to the Intermediary should be respected and not recast or recharacterized under any principles of Federal income tax law (including the substance over form doctrine), agency, or any similar theory.

(ii) *Agreement, understanding, or arrangement*. An agreement, understanding, or arrangement, and an Intermediary's activities, will not be considered to be inconsistent with any of **REPRESENTATIONS 16** through **20** solely because the agreement, understanding, or arrangement is entered into before, at the same time as, or after the Intermediary acquires Distributing Debt. However, the analysis described in section 3.05(5)(d)(i) of this revenue procedure must establish that an agreement, understanding, or arrangement entered into before, or at the same time as, the Intermediary acquires Distributing Debt satisfies all requirements set forth in § 361, particularly by taking into account general principles of Federal income tax law (including substance over form), agency, or other relevant theory.

(iii) *Period during which an Intermediary holds Distributing Debt*. The shortness of time during which an Intermediary will hold the Distributing Debt will not be considered inconsistent with any of **REPRESENTATIONS 16** through **20**. However, if a short time is expected to elapse between an Intermediary's acquisition of a Distributing Debt and the satisfaction of that Debt with Section 361 Consideration, the analysis described in section 3.05(5)(d)(i) of this revenue procedure must establish that the expected short time should not cause the form of the transactions to be recast for Federal income tax purposes. The IRS will consider the length of time between an Intermediary's acquisition of a Distributing Debt and the satisfaction of that Debt with Section 361 Consideration as a primary factor in determining whether the form of the transactions should be recast for Federal income tax purposes. For the avoidance of doubt, the shorter the length of time between an Intermediary's acquisition of a Distributing Debt and the satisfaction of that Debt with Section 361 Consideration, the greater the scrutiny the IRS will apply to the ruling request.

(iv) *Plan of Reorganization*.

(A) *In general*. The taxpayer must provide analysis to establish that the exchange of Distributing Debt for Section 361 Consideration contemplated by any agreement, understanding, or arrangement between Intermediary and Distributing (or Controlled or any Distributing Related Person or Controlled Related Person) will be in pursuance of the Plan of Reorganization.

(B) *Consistency with Plan of Reorganization procedures*. The analysis required by section 3.05(5)(d)(iv)(A) of this revenue procedure must incorporate similar representations, information, and procedures to those required by section 3.05(1) of this revenue procedure for determining whether a Distribution is "in pursuance of the plan of reorganization" (within the meaning of § 361).

(6) *Distributing Debt and other Distributing Liabilities must be historical*.

(a) *REPRESENTATION*. Submit the following **REPRESENTATION 21**: *Dis-*

tributing incurred each Distributing Debt that will be satisfied with Section 361 Consideration, and each Distributing Liability that will be Assumed by Controlled (except with regard to any Distributing Contingent Liability), before the Earliest Applicable Date.

(b) *Amount of Debt*. For purposes of **REPRESENTATION 21**, the Amount of Debt incurred by Distributing under a revolving credit agreement or similar arrangement on the Earliest Applicable Date, rather than the maximum Amount that could be incurred by Distributing under that arrangement, is the Amount incurred by Distributing.

(7) *Distributing Contingent Liabilities*.

(a) *REPRESENTATION*. Submit the following **REPRESENTATION 22**: *Each Distributing Contingent Liability to be Assumed by Controlled is economically attributable to the period of time ending on the Contribution Date*.

(b) *Continuing activities*. The taxpayer is not foreclosed from submitting **REPRESENTATION 22** even if, after the Earliest Applicable Date, Distributing continues to engage in the same type of activities that generated the Distributing Contingent Liability (and, therefore, the specific Amount included in the projection required by section 3.03(5)(b) of this revenue procedure) described in **REPRESENTATION 22**. In this case, the taxpayer must submit a description of the continuing activities and explain the effect of these continuing activities on the Contingent Liability.

(8) *Limitation to historical average Distributing Debt*.

(a) *REPRESENTATION*. Submit the following **REPRESENTATION 23**: *The total Amount of Distributing Debt that will be satisfied with Section 361 Consideration or Assumed by Controlled will not exceed the historical average of the total Amount of Distributing Debt owed to persons other than Distributing Related Persons*. *This historical average of the total Amount of Debt was determined pursuant to section 3.05(8)(b) of Rev. Proc. 2024-24*.

(b) *Historical average Amount*.

(i) *In general*. The historical average of the total Amount of Distributing Debt described in **REPRESENTATION 23** is determined based on the Distributing Debt outstanding as of the close of the eight fiscal quarters that ended or will end immediately before the Earliest Applicable Date, taking into account the limitation described in section 3.05(8)(b)(ii) of this revenue procedure.

(ii) *Distributing Debt held by Distributing Related Person*. If the taxpayer provides **ALTERNATIVE REPRESENTATION 15B**, the historical average of the total Amount of Distributing Debt owed to persons other than Distributing Related Persons described in **REPRESENTATION 23** must include an Amount equal to the lesser of the following:

(A) The Amount of Distributing Debt held by the Distributing Related Person that directly holds the Distributing Debt (that is, the first Distributing Related Person described in **ALTERNATIVE REPRESENTATION 15B**); and

(B) The Amount of Debt held by the ultimate creditor described in **ALTERNATIVE REPRESENTATION 15B**.

(iii) *Adjustments*. The total Amount of Distributing Debt to be satisfied with Section 361 Consideration or assumed by Controlled, and the historical average described in section 3.05(8)(b)(i) of this revenue procedure (determined in accordance with **REPRESENTATION 23**), each must be adjusted to prevent duplication or omission of Debt or any other distortion. The taxpayer must submit information and analysis to explain any such adjustments and establish that such adjustments were made to prevent duplication or omission of Debt or any other distortion.

(9) *Distribution of Qualified Property, money, and Other Property*.

(a) *REPRESENTATIONS*. Submit the following REPRESENTATIONS:

(i) ***REPRESENTATION 24***. *All Qualified Property, money, and Other Property transferred, by Controlled to Distributing in pursuance of the Plan of Reorganization will be distributed by Distributing to its shareholders in pursuance of the Plan of Reorganization or transferred to its creditors in connection with the Divisive Reorganization.*

(ii) ***REPRESENTATION 25***. *No money or Other Property that is transferred by Controlled to Distributing in pursuance of the Plan of Reorganization will be distributed by Distributing to its shareholders in pursuance of the Plan of Reorganization or transferred to its creditors in connection with the Divisive Reorganization on a date that is earlier than the First Distribution Date.*

(b) *Information*. The taxpayer must submit the following information:

(i) A description of any Qualified Property, money, or Other Property to be transferred by Controlled to Distributing.

(ii) A description of the transactions in which Distributing will distribute the Qualified Property, money, or Other Property to its shareholders or transfer the Qualified Property, money, or Other Property to its creditors.

(c) *Analysis*. The taxpayer must submit analysis to establish that any Qualified Property (to the extent not part of a Retention), money, or Other Property to be transferred by Controlled to Distributing in pursuance of the Plan of Reorganization will be distributed by Distributing to its shareholders in pursuance of the Plan of Reorganization or transferred to its creditors in connection with the reorganization.

(d) *Additional information*. If the taxpayer does not submit **REPRESENTATION 25**, the taxpayer must submit—

(i) Information describing any transaction involving Qualified Property, money, or Other Property transferred by Controlled to Distributing that will not be distributed or transferred as described in **REPRESENTATION 25**; and

(ii) Analysis of the Federal income tax treatment of any transaction described in section 3.05(9)(d)(i) of this revenue procedure.

(e) *Effect on Rev. Proc. 2017-52*. **REPRESENTATION 25** supersedes representations 19 and 20 in section 3 of the Appendix to Rev. Proc. 2017-52.

(10) *Delayed transfers to creditors in satisfaction of Distributing Debt in connection with the Plan of Reorganization*.

(a) *REPRESENTATIONS*. With respect to any transfer of Section 361 Consideration in satisfaction of Distributing Debt that is intended to be in connection with the Plan of Reorganization, submit the following REPRESENTATIONS:

(i) ***REPRESENTATION 26***. *There are one or more substantial business reasons for any delay in transferring Section 361 Consideration to Distributing's creditors in satisfaction of Distributing Debt more*

than 90 days after the First Distribution Date.

(ii) ***REPRESENTATION 27***. *With the exception of Post-Distribution Payments, all transfers of Section 361 Consideration by Distributing to Distributing's creditors in satisfaction of Distributing Debt will be made no later than 12 months after the First Distribution Date.*

(b) *Additional REPRESENTATION*. If a possibility exists that Distributing will receive a Post-Distribution Payment, submit the following **REPRESENTATION 28**: *Distributing will use a segregated account to deposit any Post-Distribution Payment that Distributing receives from Controlled. Not later than 90 days after the date on which Distributing receives a Post-Distribution Payment from Controlled, Distributing will distribute that Post-Distribution Payment (including any interest earned on the segregated account) to its shareholders or transfer that Post-Distribution Payment to its creditors in satisfaction of Distributing Debt that was in existence as of the Earliest Applicable Date.* For the avoidance of doubt, the Distributing Debt described in this **REPRESENTATION 28** must be Distributing Debt that is identified in **REPRESENTATION 23** and included in the determination of the historical average of the total Amount of Distributing Debt under **REPRESENTATION 23**.

(c) *Information and analysis*.

(i) *Delay beyond 90 days; 12-month distribution period*.

(A) *Requirements*. With regard to **REPRESENTATIONS 27** and **28**, the taxpayer must submit information and analysis to establish—

(I) The substantial business reasons for any delay in satisfying Distributing Debt beyond 90 days after the First Distribution Date; and

(II) That the satisfaction of Distributing Debt more than 90 days thereafter, will be in connection with the Plan of Reorganization.

(B) *Documentation*. Except with regard to the Plan of Reorganization, documentation of the matters described in section 3.05(10)(c)(i)(A) of this revenue procedure should be submitted only if requested by the IRS.

(ii) *Post-Distribution Payments*. With regard to **REPRESENTATION 28**, the taxpayer must submit information and analysis to establish the following:

(A) In character, the Post-Distribution Payment will constitute Section 361 Consideration and not, for example, a payment for goods or services separate from the Divisive Reorganization. *See Arrowsmith v. Comm'r*, 344 U.S. 6 (1952).

(B) Whether, as of the First Distribution Date, the fair market value of Distributing's right to receive the Post-Distribution Payment will be reasonably ascertainable (within the meaning of that phrase, as used in *Burnet v. Logan*, 283 U.S. 404, 413 (1931)), and the Post-Distribution Payment will be properly accounted for when the Post-Distribution Payment is received. *See Burnet v. Logan*, 283 U.S. at 413 ("The consideration for the sale was $2,200,000 in cash and the promise of future money payments wholly contingent upon facts and circumstances not possible to foretell with anything like fair certainty. The promise was in no proper sense equivalent to cash. It had no ascertainable fair market value. The transaction was not a closed one."); § 1.1001-1(a), (g)(2)(ii).

(C) Whether Distributing will account for its right to receive the Post-Distribution Payment under the installment method. *See generally* § 15a.453-1(c)(1) (regarding contingent payment obligations).

(11) *Effect of transaction related to Divisive Reorganization on Controlled securities*.

(a) If any transaction related to the Divisive Reorganization may affect the terms of any Controlled securities received by Distributing in pursuance of the Plan of Reorganization, submit the following **REPRESENTATION 29**: *No transaction (or series of transactions) that is directly or indirectly related to the Divisive Reorganization will result in a deemed exchange, pursuant to § 1.1001-3, of any Controlled securities received by Distributing in pursuance of the Plan of Reorganization. Controlled will continue as the Obligor of any such securities after any such transaction or series of transactions.*

(b) *Information and analysis*. The taxpayer must describe any change, resulting from or in connection with the related transaction, in the terms of any Controlled securities or other Qualified Property received by Distributing in pursuance of the Plan of Reorganization, and must submit analysis to support the conclusion that no such change will constitute a deemed exchange pursuant to § 1.1001-3. In addition, the taxpayer must submit analysis to support the conclusion that Controlled will continue as the Obligor of any such securities or other Qualified Property after any such transaction or series of transactions. For this purpose, Rev. Rul. 98-27, 1998-1 C.B. 1159, is not relevant to determine whether any such transaction or series of transactions should cause the Divisive Reorganization to be recast because that revenue ruling addresses solely whether Controlled was a "controlled corporation" immediately before the Distribution under § 355(a). *See also generally* Rev. Rul. 98-44, 1998-2 C.B. 315.

(12) *No replacement of Distributing Debt*.

(a) *REPRESENTATION*. Submit the following **REPRESENTATION 30**: *Neither Distributing nor any Distributing Related Person (determined immediately after the Control Distribution), will replace, directly or indirectly, any Amount of Distributing Debt that will be satisfied with Section 361 Consideration with borrowing that Distributing or any Distributing Related Person (determined immediately after the Control Distribution) anticipates or is committed to, directly or indirectly, before the Control Distribution Date.*

(b) *Treatment of borrowing*. If the taxpayer does not submit **REPRESENTATION 30**, and the requirements set forth in section 3.02(3) of this revenue procedure are not satisfied, the IRS will consider issuing a favorable ruling only if the taxpayer establishes one of the following:

(i) The borrowing is incurred in the ordinary course of business pursuant to a revolving credit agreement or similar arrangement that is unrelated, and would have been incurred without regard, to the Section 355 Transaction or any transaction related to the Section 355 Transaction.

(ii) The borrowing results from an event, unrelated to the Section 355 Transaction and not in the ordinary course of business of Distributing, directly arising from changed circumstances that were not anticipated prior to the Control Distribution Date (that is, unrelated to the Section

355 Transaction or any transaction related to the Section 355 Transaction).

(c) *Information and analysis*. The purpose of **REPRESENTATION 30**, and the information and analysis required by this section 3.05(12)(c), is to establish that the application of § 361 to the proposed transactions is consistent with the text and purpose of § 361, so that issuing a private letter ruling would be in the interest of sound tax administration. *See* section 2.01(4) of this revenue procedure. Accordingly, the taxpayer must submit the following information and analysis:

(i) *Revolving credit agreement or a similar arrangement*.

(A) *Scope*. This section 3.05(12)(c)(i) applies if Distributing or any Distributing Related Person (determined immediately after the Control Distribution) is a borrower pursuant to a revolving credit agreement or similar arrangement in existence as of the Earliest Applicable Date.

(B) *Requirements*. If this section 3.05(12)(c)(i) applies, to rely on the exception described in section 3.05(12)(b)(i) of this revenue procedure, the taxpayer must submit information and analysis to establish that any increase either in the Amount of borrowing provided for therein or the actual Amount borrowed—

(I) Did not occur in connection with the Section 355 Transaction, and would have occurred without regard to the Section 355 Transaction or any transaction related to the Section 355 Transaction; and

(II) Was incurred in the ordinary course of business (that is, demonstrably independent of the Section 355 Transaction or any transaction related to the Section 355 Transaction).

(ii) *Event arising from unanticipated, changed circumstances*.

(A) *Scope*. This section 3.05(12)(c)(ii) applies if Distributing or a Distributing Related Person (determined immediately after the Control Distribution) is a prospective or an actual borrower as a result of an event described in section 3.05(12)(b)(ii) of this revenue procedure.

(B) *Requirements*. If this section 3.05(12)(c)(ii) applies, to rely on the exception described in section 3.05(12)(b)(ii) of this revenue procedure, the taxpayer must submit information and analysis to establish that—

(I) The event did not occur in the ordinary course of business of Distributing or in connection with the Section 355 Transaction and the borrowing would have been incurred without regard to the Section 355 Transaction or any transaction related to the Section 355 Transaction; and

(II) The event directly arose from changed circumstances that were unanticipated prior to the Control Distribution Date (that is, demonstrably independent of the Section 355 Transaction or any transaction related to the Section 355 Transaction).

(13) *Assumption of Distributing Liabilities*.

(a) *Ruling on Assumption of a Distributing Liability*. The IRS will entertain a request for a ruling that a transaction or series of transactions pursuant to an agreement or arrangement between Distributing and Controlled constitutes an Assumption of a Distributing Liability.

(b) *REPRESENTATIONS*. If the taxpayer requests a ruling described in section 3.05(13)(a) of this revenue procedure, the taxpayer must submit the following REPRESENTATIONS, information, and analysis. Separate REPRESENTATIONS must be submitted with respect to each Liability or group of Liabilities. If any transaction described in section 3.05(13)(a) of this revenue procedure will occur at the same time as or after a related Section 355 Transaction, the REPRESENTATIONS in this section 3.05(13)(b) and the information and analysis required by section 3.05(13)(c) of this revenue procedure must be submitted both as of immediately after the Section 355 Transaction at issue and as of immediately after each such transaction.

(i) ***REPRESENTATION 31***. *No payment by Controlled to satisfy a Distributing Liability (including a Distributing Contingent Liability) that Controlled Assumes will be made, directly or indirectly, to Distributing or to a Distributing Related Person or made in any manner that results in Distributing or a Distributing Related Person having legal or practical dominion or control over any part of the payment. See* section 3.05(13)(e)(ii) of this revenue procedure for information regarding the facts and circumstances analysis regarding the "legal or practical dominion or control standard."

(ii) ***REPRESENTATION 32***. *Controlled has agreed, and is expected, to satisfy each Distributing Liability (including each Distributing Contingent Liability) that Controlled Assumes.*

(iii) ***REPRESENTATION 33***. *The Assumption of each Distributing Liability (including each Distributing Contingent Liability) that Controlled Assumes will have been provided for in an agreement entered into between Distributing and Controlled before the First Distribution Date.*

(iv) ***REPRESENTATION 34***. *Each Distributing Liability (including each Distributing Contingent Liability) that Controlled Assumes will have been incurred in the ordinary course of business and will be associated with Controlled's assets and business.*

(v) ***REPRESENTATION 35***. *All payments in satisfaction of each Distributing Contingent Liability will be made as soon as practicable after the amounts of those payments are substantially determined.*

(c) *Information and analysis*. Submit the following information and analysis:

(i) A description of each Distributing Liability to be Assumed by Controlled, including the circumstances in which the Distributing Liability was incurred.

(ii) A description of each agreement or arrangement at issue, including the rights and obligations of Distributing, Controlled, and any other parties. If a payment will be made to a trust, an escrow agent, or a person in a similar role, submit information and analysis to establish that neither Distributing nor any Distributing Related Person will have legal or practical dominion or control over any part of the payment.

(d) *Additional information and analysis relating to Assumption of a Distributing Contingent Liability*. If Controlled will Assume a Distributing Contingent Liability, the taxpayer must submit the following additional information and analysis:

(i) A description of each Distributing Contingent Liability to be Assumed by Controlled, including the circumstances in which the Distributing Contingent Liability was incurred, the length of time expected before amounts to be paid will be substantially determined, the relationship of the Distributing Contingent Liability to Controlled's business and assets,

and the current and anticipated disclosure of the Distributing Contingent Liability on financial statements of Distributing, Controlled, any Distributing Related Person, or any Controlled Related Person.

(ii) A statement as to whether Distributing or Controlled (or another person) will deduct or capitalize, under its respective method of accounting, payments to satisfy the Assumed Liability. *See* Rev. Rul. 95-74.

(e) *Dominion or control*.

(i) *Segregated account is within legal or practical dominion or control*. A payment may be considered to be within Distributing's legal or practical dominion or control even if made to a segregated account of Distributing, a Distributing Related Person, or any person through which Distributing or a Distributing Related Person can direct the treatment or disposition of the payment.

(ii) *Facts and circumstances analysis*. Based on all the facts and circumstances, a payment may be considered not to be in Distributing's legal or practical dominion or control if—

(A) The payment is dedicated to the satisfaction of a Liability that was a Distributing Liability (including a Distributing Contingent Liability) identified in an agreement described in **REPRESENTATION 33**;

(B) The payment is made to an independent trustee or escrow agent that is not affiliated with Distributing;

(C) The payment is not made to any account of Distributing, a Distributing Related Person, or any person through which Distributing or a Distributing Related Person could direct the payment, regardless of the brevity, or transitory nature, of the period in which the payment is in such an account;

(D) The parties will treat any income, gain, or loss on the payment proceeds as income, gain, or loss to Controlled; and

(E) Any excess of the payment amount (and any income or gain thereon) over the amount paid to satisfy the Liability will revert to Controlled.

(f) *Consequences of legal or practical dominion or control of Distributing or Distributing Related Person*. If Controlled makes a payment to satisfy a Distributing Liability, and any part of the payment is made to Distributing or to a Distributing Related Person, or is made in a manner that results in any part of the payment being within the legal or practical dominion or control of Distributing or a Distributing Related Person, one of the following three consequences will result:

(i) *Section 361 Consideration*. The IRS may rule that the payment constitutes Section 361 Consideration and not a payment of an Assumed Liability. Consequently, all representations, information, and analysis required by this revenue procedure will apply to that payment of Section 361 Consideration (including such representations, information, and analysis regarding Post-Distribution Payments).

(ii) *Plan of Reorganization*. The IRS may rule that the payment is not made in connection with the Plan of Reorganization.

(iii) *No ruling*. The IRS may decline to rule on the issues.

(g) *Effect on Rev. Proc. 2017-52*. **REPRESENTATION 34** supersedes representation 17 in section 3 of the Appendix to Rev. Proc. 2017-52.

(14) *No avoidance of Federal income tax*.

(a) *REPRESENTATIONS*. Submit the following REPRESENTATIONS:

(i) ***REPRESENTATION 36***. *No Assumption by Controlled of any Distributing Liability (including a Distributing Contingent Liability) will have as a principal purpose (1) the avoidance of Federal income tax or (2) any other purpose that is not a bona fide business purpose (within the meaning of § 357(b)(1))*.

(ii) ***REPRESENTATION 37***. *No proposed transaction or series of transactions will have as a principal purpose the avoidance of any requirement or limitation in § 357 or § 361*.

(b) *Information and analysis*. The taxpayer must submit information and analysis to establish that **REPRESENTATIONS 36** and **37** are accurate.

SECTION 4. EFFECT ON OTHER DOCUMENTS

.01 *Rev. Proc. 2017-52*. Rev. Proc. 2017-52 is modified by deleting Representations 2, 4, and 17 through 21 in section 3 of the Appendix.

.02 *Rev. Proc. 2018-53*. Rev. Proc. 2018-53 is superseded.

SECTION 5. EFFECTIVE DATE

This revenue procedure will apply to all ruling requests postmarked or, if not mailed, received by the IRS after May 31, 2024.

SECTION 6. PAPERWORK REDUCTION ACT

The collections of information in this revenue procedure have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1522.

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

The collections of information in this revenue procedure are in section 3. This information is required to determine whether a taxpayer would qualify for tax-free treatment to the extent allowed under §§ 357 and 361. The collections of information are required to obtain a benefit. The likely respondents are corporations that control another corporation, as well as the management of the corporation the stock of which is being distributed or of the corporation that controls the corporation the stock of which is being distributed.

The estimated total annual reporting burden for Rev. Proc. 2024-1 is 316,020 hours.

The estimated annual burden per respondent for Rev. Proc. 2024-1 varies from 1 to 200 hours, depending on individual circumstances, with an estimated average of 80 hours. The estimated number of respondents is 3,956.

The estimated total annual reporting burden for this revenue procedure adds 955 hours to the burden imposed by Rev. Proc. 2024-1, Rev. Proc. 2017-52, which is modified by this revenue procedure, and Rev. Proc. 2018-53, which is superseded by this revenue procedure.

The estimated annual burden per respondent for this revenue procedure varies from 5 to 50 hours, depending on individual circumstances, with an estimated average of 15 hours. The estimated

number of additional respondents added to Rev. Proc. 2024-1 and Rev. Proc. 2018-53 by this revenue procedure is 2, increasing the estimated number of respondents to Rev. Proc. 2024-1 to 3,958.

The estimated average burden for Rev. Proc. 2024-1, Rev. Proc. 2017-52, and Rev. Proc. 2018-53, as increased by this revenue procedure, is 0 hours.

The estimated annual frequency of responses is on occasion.

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 tax law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Grid Glyer of the Office of the Associate Chief Counsel (Corporate). For further information regarding this revenue procedure, please contact Mr. Glyer at (202) 317-3181.

APPENDIX

SECTION 1. GENERAL

.01 *Overview*. The terms defined in section 2 of this Appendix are used solely for purposes of this revenue procedure. No inference, implication, or presumption of the meaning of any term used in the Code, Treasury Regulations, or any other guidance of the Treasury Department or the IRS should be drawn or made by reason of any definition provided in section 2 of this Appendix.

.02 *Defined Terms in Ruling Requests*.

(1) *In general*. In requests for rulings to which this revenue procedure applies, taxpayers must include a statement confirming that these defined terms are used.

(2) *Modifications*.

(a) *Conditions*. A taxpayer is permitted to modify the definition of any term defined in section 2 of the Appendix only if—

(i) the taxpayer identifies and describes the modification;

(ii) the modification to the definition does not alter any material requirements of this revenue procedure; and

(iii) the definition does not involve, in whole or in part, an expression of Federal tax law (in other words, the taxpayer is not permitted to modify a legal standard that is incorporated into the definition).

(b) *Consequences*. If a taxpayer modifies the definition of any term that is used in a representation, the taxpayer is treated as failing to submit precisely the requested language of the representation, as required by section 3.02(3) of this revenue procedure. Variations of the language of the representations may delay processing the ruling request and will not be accepted unless reasons satisfactory to the Associate Chief Counsel (Corporate) are submitted. The degree to which the definition of a term is material to a representation, the greater the scrutiny that will be applied to any proposed deviation from that definition in reviewing the ruling request.

(3) *Additional defined terms*. Taxpayers are encouraged to use additional defined terms where appropriate.

SECTION 2. DEFINITIONS

.01 *Amount*. Determinations of Amount and other determinations required by this section 2.01 must be made as of the Earliest Applicable Date (unless otherwise specified in this revenue procedure):

(1) *With regard to Debt*. Except as provided in section 2.01(2) of this Appendix, with regard to Debt, the term *Amount* means adjusted issue price (as defined in § 1.1275-1(b)). *See also* § 1.446-2.

(2) *With regard to certain convertible Debt*. With regard to Debt with a conversion option described in § 1.1275-4(a)(4), if the conversion option is reasonably certain to be exercised, the term *Amount* means the fair market value of the instrument. The determination of whether a conversion option is reasonably certain to be exercised is based on all the facts and circumstances, including those described in § 1.1504-4(g) (to the extent relevant). For purposes of the preceding sentence, the safe harbors described in § 1.1504-4(g)(3) do not apply.

(3) *With regard to other Liabilities*. With regard to any Liability that is not Debt, the term *Amount* means the amount of cash that a willing assignor would pay to a willing assignee to Assume the Liability in an arm's-length transaction.

.02 *Assume; Assumption*. With respect to a Liability, the terms *Assume*, *Assumption*, and similar terms have the meaning of "assumed" as set forth in § 357(d).

.03 *Code*. The term *Code* means the Internal Revenue Code of 1986, as amended.

.04 *Contingent Liability*. The term *Contingent Liability* means a Liability (other than a Debt) that includes one or more contingent payments.

.05 *Control Distribution*. The term *Control Distribution* means a distribution of Controlled stock, or of Controlled stock and securities, as a result of which Distributing has distributed an amount of Controlled stock constituting "control" (within the meaning of § 368(c)).

.06 *Control Distribution Date*. The term *Control Distribution Date* means the date of the Control Distribution.

.07 *Controlled*. The term *Controlled* means the controlled corporation described in § 355(a)(1)(A).

.08 *Controlled Debt*. The term *Controlled Debt* means Debt for which Controlled is the Obligor.

.09 *Controlled Related Person*. The term *Controlled Related Person* means a Related Person with regard to Controlled.

.10 *CSAG*. The term *CSAG* means the SAG of which Controlled is the common parent. If no CSAG exists, the term *CSAG* refers to Controlled.

.11 *Debt*. The term *Debt* means a Liability pursuant to an instrument or a contractual arrangement that constitutes debt under general principles of Federal income tax law. *See* § 1.1275-1(d).

.12 *Delayed Distribution*. The term *Delayed Distribution* means a Distribution that takes place after the First Distribution Date and is intended to be "part of the Distribution" (within the meaning of § 355(a)(1)(D)) or "in pursuance of the plan of reorganization" (within the meaning of § 361), as applicable.

.13 *Distributing*. The term *Distributing* means the distributing corporation described in § 355(a)(1)(A). As the context requires, a reference to Distributing may include a reference to more than one Controlled (for example, in the case of a Split-Up, as defined in section 2.11 of the Appendix to Rev. Proc. 2017-52).

.14 *Distributing Contingent Liability*. The term *Distributing Contingent Liability* means a Contingent Liability for which Distributing is the Obligor.

.15 *Distributing Debt*.

(1) *In general*. The term *Distributing Debt* means Debt for which Distributing is the Obligor.

(2) *Inclusions*. The term *Distributing Debt* includes a Debt that Distributing Assumed as Obligor in a transaction to which § 381(a) does apply only if that Debt was issued prior to the Earliest Applicable Date.

.16 *Distributing Liability*.

(1) *In general*. The term *Distributing Liability* means a Liability for which Distributing is the Obligor.

(2) *Inclusions*. The term *Distributing Liability* includes a Liability that Distributing Assumed as Obligor in a transaction to which § 381(a) does apply only if that Liability was incurred prior to the Earliest Applicable Date.

.17 *Distributing Related Person*. The term *Distributing Related Person* means

a Related Person with respect to Distributing.

.18 *Distribution*. The term *Distribution* means a distribution, or one of a series of planned distributions, of Controlled stock, or of Controlled stock and securities, intended to qualify as a Section 355 Transaction.

.19 *Distribution Date*. If all Distributions comprising an intended Section 355 Transaction take place on one date—

(1) The term *Distribution Date* means that date; and

(2) Each of the terms *First Distribution Date*, *Control Distribution Date*, and *Final Distribution Date* refers to the Distribution Date.

.20 *Distribution Period*. The term *Distribution Period* means the period of time that—

(1) Begins immediately before the First Distribution; and

(2) Ends immediately after the Final Distribution.

.21 *Divisive Reorganization*. The term *Divisive Reorganization* means a series of transactions that qualify as a reorganization described in §§ 355(a) and 368(a)(1)(D).

.22 *DSAG*. The term *DSAG* means the SAG of which Distributing is the common parent. If no DSAG exists, the term *DSAG* refers to Distributing.

.23 *Earliest Applicable Date*.

(1) *In general*. The term *Earliest Applicable Date* means the date that is 60 days before the earliest of the following dates—

(a) The date of the first public announcement (as defined in § 1.355-7(h)(10)) of the Divisive Reorganization or a similar transaction;

(b) The date of entry by Distributing into a binding agreement to engage in the Divisive Reorganization or a similar transaction; and

(c) The date of approval of the Divisive Reorganization or a similar transaction by the board of directors of Distributing.

(2) *Similar transaction*. For purposes of section 2.23(1) of this Appendix, a transaction is a similar transaction if it would have effected a direct or indirect separation of all, or a significant portion of, the same assets as the Divisive Reorganization that is the subject of the taxpayer's ruling request. *Cf.* § 1.355-7(h)(12) and (13) (describing the terms "similar acquisition (not involving a public offering)" and "similar acquisition involving a public offering," respectively).

.24 *Final Distribution*. The term *Final Distribution* means the last Distribution in a series of planned Distributions.

.25 *Final Distribution Date*. The term *Final Distribution Date* means the date of the Final Distribution.

.26 *First Distribution*. The term *First Distribution* means the earliest Distribution in a series of planned Distributions.

.27 *First Distribution Date*. The term *First Distribution Date* means the date of the First Distribution.

.28 *Intermediary*.

(1) *In general*. The term *Intermediary* means an investment bank or other person that—

(a) Is not a Distributing Related Person or a Controlled Related Person; and

(b) Provides capital or financial services to Distributing or Controlled, directly or indirectly, to facilitate the Section 355 Transaction.

(2) *Inclusion*. The term *Intermediary* includes a Related Person of the Intermediary.

.29 *Liability*.

(1) *In general*. The term *Liability* means a Debt, a Contingent Liability, or any other fixed or contingent obligation, without regard to whether the obligation otherwise has been taken into account for Federal income tax purposes. For example, a Liability of a person includes a Liability described in Rev. Rul. 80-323, 1980-2 C.B. 124 (in transfer of partnership interest qualifying under § 351(a), transferor's share of partnership Liabilities considered an Assumed Liability for purposes of § 357(c) and as money received for purposes of § 358(d)).

(2) *Certain obligations incurred in ordinary course of business*. An obligation incurred in the ordinary course of business pursuant to a bilateral contract generally is not a Liability. However, such an obligation may be a Liability, in whole or in part, if it is reflected in the financial statement of the obligor as a liability, reserve, or similar item.

.30 *Obligor*. With respect to a Liability, the term *Obligor* means the person that has agreed, and is expected, as determined on the basis of all facts and circumstances, to satisfy the Liability, taking into account all relevant provisions of the Code (including the principles of § 357(d) (liability treated as Assumed)), Treasury Regulations, and general principles of Federal income tax law, including the substance-over-form doctrine. *See*, for example, *Plantation Patterns, Inc. v. Comm'r*, 462 F.2d 712 (5th Cir. 1972), *cert. denied*, 409 U.S. 1076 (1972); *Intergraph Corp. v. Comm'r*, 106 T.C. 312, 323 (1996), *aff'd*, 121 F.3d 723 (11th Cir. 1997).

.31 *Other Property*. The term *Other Property* means Section 361 Consideration other than Qualified Property and money.

.32 *Plan of Reorganization*. The term *Plan of Reorganization* has the meaning given the term in § 1.368-2(g), taking into account § 1.368-1(c).

.33 *Post-Distribution Payment*. The term *Post-Distribution Payment* means a transfer of money or Other Property by Controlled to Distributing that—

(1) Distributing receives from Controlled subsequent to the Control Distribution Date; and

(2) For Federal tax purposes, constitutes Section 361 Consideration and not, for example, a payment for goods or services separate from the Divisive Reorganization.

.34 *Proposed Transaction*. The term *Proposed Transaction* means the aggregate transaction that consists of all the specific steps—

(1) For which a ruling is requested;

(2) That the IRS determines to be relevant to determine whether to issue a requested ruling described in section 2.34(1) of this Appendix; and

(3) Included in the Plan of Reorganization, the submission of which is required by section 3.05(1)(c) of this revenue procedure.

.35 *Qualified Property*. The term *Qualified Property* has the meaning provided in §§ 355(c)(2)(B) and 361(c)(2)(B).

.36 *Related Person*. The term *Related Person*, with regard to a person, means a person that is related to that person within the meaning of § 267(b) or § 707(b)(1).

.37 *Retained Controlled Stock*; *Retained Controlled Stock (or Securities)*. The terms *Retained Controlled Stock* and *Retained Controlled Stock (or Securities)* mean, as applicable, Controlled stock, Controlled securities, options or similar

instruments to acquire Controlled stock or securities, or Controlled stock or securities acquired upon exercise of an option or settlement of any similar instrument, that Distributing does not intend to distribute or otherwise dispose of—

(1) As "part of the Distribution" (within the meaning of § 355(a)(1)(D)); or

(2) "in pursuance of the plan of reorganization" (within the meaning of § 361).

.38 *Retention*. The term *Retention* means the continued ownership by Distributing of Retained Controlled Stock (or Securities) after the Control Distribution Date.

.39 *SAG*. The term *SAG* means a separate affiliated group (as defined in § 355(b)(3)(B)).

.40 *Section 355 Transaction*. The term *Section 355 Transaction* means either a Section 355(c) Distribution or a Divisive Reorganization.

.41 *Section 355(c) Distribution*. The term *Section 355(c) Distribution* means a Distribution that qualifies under § 355(a) (or so much of § 356 as relates to § 355) and § 355(c).

.42 *Section 361 Consideration*.

(1) *In general*. The term *Section 361 Consideration* means the consideration received by Distributing from Controlled in exchange for property transferred by Distributing to Controlled in a Divisive Reorganization.

(2) *Inclusions*. The term *Section 361 Consideration* includes Controlled stock, Controlled securities, Controlled non-security Debt, money, and Other Property.

(3) *Exclusion*. The term *Section 361 Consideration* does not include an Assumption of a Liability described in § 357(a).

.43 *Treasury Regulations*. The term *Treasury Regulations* means the provisions of 26 CFR chapter 1.

Part IV

Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

Announcement 2024-18

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, appraisers, and unenrolled/unlicensed return preparers (individuals who are not enrolled to practice and are not licensed as attorneys or certified public accountants). Licensed or enrolled practitioners are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Subtitle A, Part 10, and which are released as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations. Unenrolled/unlicensed return preparers are subject to Revenue Procedure 81-38 and superseding guidance in Revenue Procedure 2014-42, which govern a preparer's eligibility to represent taxpayers before the IRS in examinations of tax returns the preparer both prepared for the taxpayer **and** signed as the preparer. Additionally, unenrolled/unlicensed return preparers who voluntarily participate in the Annual Filing Season Program under Revenue Procedure 2014-42 agree to be subject to the duties and restrictions in Circular 230, including the restrictions on incompetent or disreputable conduct.

The disciplinary sanctions to be imposed for violation of the applicable standards are:

Disbarred from practice before the IRS—An individual who is disbarred is not eligible to practice before the IRS as defined at 31 C.F.R. § 10.2(a)(4) for a minimum period of five (5) years.

Suspended from practice before the IRS—An individual who is suspended is not eligible to practice before the IRS as defined at 31 C.F.R. § 10.2(a)(4) during the term of the suspension.

Censured in practice before the IRS—Censure is a public reprimand. Unlike disbarment or suspension, censure does not affect an individual's eligibility to practice before the IRS, but OPR may subject the individual's future practice rights to conditions designed to promote high standards of conduct.

Monetary penalty—A monetary penalty may be imposed on an individual who engages in conduct subject to sanction, or on an employer, firm, or entity if the individual was acting on its behalf and it knew, or reasonably should have known, of the individual's conduct.

Disqualification of appraiser—An appraiser who is disqualified is barred from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the IRS.

Ineligible for limited practice—An unenrolled/unlicensed return preparer who fails to comply with the requirements in Revenue Procedure 81-38 or to comply with Circular 230 as required by Revenue Procedure 2014-42 may be determined ineligible to engage in limited practice as a representative of any taxpayer.

Under the regulations, individuals subject to Circular 230 may not assist, or accept assistance from, individuals who are suspended or disbarred with respect to matters constituting practice (*i.e.*, representation) before the IRS, and they may not aid or abet suspended or disbarred individuals to practice before the IRS.

Disciplinary sanctions are described in these terms:

Disbarred by decision, Suspended by decision, Censured by decision, Monetary penalty imposed by decision, and Disqualified after hearing—An administrative law judge (ALJ) issued a decision imposing one of these sanctions after the ALJ either (1) granted the government's summary judgment motion or (2) conducted an evidentiary hearing upon OPR's complaint alleging violation of the regulations. After 30 days from the issuance of the decision, in the absence of an appeal, the ALJ's decision becomes the final agency decision.

Disbarred by default decision, Suspended by default decision, Censured by default decision, Monetary penalty imposed by default decision, and Disqualified by default decision—An ALJ, after finding that no answer to OPR's complaint was filed, granted OPR's motion for a default judgment and issued a decision imposing one of these sanctions.

Disbarment by decision on appeal, Suspended by decision on appeal, Censured by decision on appeal, Monetary penalty imposed by decision on appeal, and Disqualified by decision on appeal—The decision of the ALJ was appealed to the agency appeal authority, acting as the delegate of the Secretary of the Treasury, and the appeal authority issued a decision imposing one of these sanctions.

Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a consent to one of these sanctions and OPR accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual's opportunity, after a stated number of months, to file with OPR a petition for reinstatement affirming compliance with the terms of the consent and affirming current fitness and eligibility to practice (*i.e.*, an active professional license or active enrollment status, with no intervening violations of the regulations).

Suspended indefinitely by decision in expedited proceeding, Suspended indefinitely by default decision in expedited proceeding, Suspended by consent in expedited proceeding—OPR instituted an expedited proceeding for suspension (based on certain limited grounds, including loss of a professional license for cause, and criminal convictions).

Determined ineligible for limited practice—-There has been a final determination that an unenrolled/unlicensed return preparer is not eligible for limited representation of any taxpayer because the preparer violated standards of conduct or failed to comply with any of the requirements to act as a representative.

A practitioner who has been disbarred or suspended under 31 C.F.R. § 10.60, or suspended under § 10.82, or a disqualified appraiser may petition for reinstatement before the IRS after the expiration of 5 years following such disbarment, suspension, or disqualification (or immediately following the expiration of the suspension or disqualification period if shorter than 5 years). Reinstatement will not be granted unless the IRS is satisfied that the petitioner is not likely to engage thereafter in conduct contrary to Circular 230, and that granting such reinstatement would not be contrary to the public interest.

Reinstatement decisions are published at the individual's request, and described in these terms:

Reinstated to practice before the IRS—-The individual's petition for reinstatement has been granted. The agent, and eligible to practice before the IRS, or in the case of an appraiser, the individual is no longer disqualified.

Reinstated to engage in limited practice before the IRS—-The individual's petition for reinstatement has been granted. The individual is an unenrolled/unlicensed return preparer and eligible to engage in limited practice before the IRS, subject to requirements the IRS has prescribed for limited practice by tax return preparers.

OPR has authority to disclose the grounds for disciplinary sanctions in these situations: (1) an ALJ or the Secretary's delegate on appeal has issued a final decision; (2) the individual has settled a disciplinary case by signing OPR's "consent to sanction" agreement admitting to one or more violations of the regulations and consenting to the disclosure of the admitted violations (for example, failure to file Federal income tax returns, lack of due diligence, conflict of interest, etc.); (3) OPR has issued a decision in an expedited proceeding for indefinite suspension; or (4) OPR has made a final determination (including any decision on appeal) that an unenrolled/unlicensed return preparer is ineligible to represent any taxpayer before the IRS.

Announcements of disciplinary sanctions appear in the Internal Revenue Bulletin at the earliest practicable date. The sanctions announced below are alphabetized first by state and second by the last names of the sanctioned individuals.

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Alabama				
Cullman	Thompson, Barry S.	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from January 29, 2024
California				
Desert Hot Springs	Gerold, Sean M.	CPA	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from January 30, 2024
Florida				
Boca Raton	Lenz, Randall A.	Attorney/CPA	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from January 9, 2024
Georgia				
	Lenz, Randall A., see Florida			
Massachusetts				
Boston	Tariri, Benjamin B.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from February 13, 2024
North Carolina				
Moncure	Russell, Kathie L.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from February 5, 2024
Ohio				
Lebanon	Strickling, Edwin P.	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from January 23, 2024
Philadelphia				
Warminster	Kane, Alan B.	Attorney/CPA	Suspended by consent for admitted violations of 31 C.F.R. § 10.51(a)	Indefinite from December 11, 2023

Deletions From Cumulative List of Organizations, Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2024-21

Table of Contents

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the IRS will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the IRS is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on May 20, 2024 and would end on the date the court first determines the organization is not described in section 170(c)(2) as more particularly set for in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Name Of Organization	Effective Date of Revocation	Location
Cohen University & Theological Seminary	9/1/2020	Torrance, CA
Francis University	7/1/2019	Los Angeles, CA

Notice of Proposed Rulemaking

Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election to Treat Clean Hydrogen Production Facilities as Energy Property

REG-117631-23

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On December 26, 2023, the Department of the Treasury (Treasury Department) and the IRS issued a notice of proposed rulemaking (NPRM) relating to the credit for production of clean hydrogen and the election to treat clean hydrogen production facilities as energy property, as established and amended by the Inflation Reduction Act of 2022, respectively. The NPRM referred to the collection of information associated with the process for taxpayers to request an emissions value from the Department of Energy (DOE) to petition the Secretary of the Treasury or her delegate (Secretary) for a provisional emissions rate (PER). This document invites comments on the information collection related to that process.

DATES: Written comments must be received by May 13, 2024.

ADDRESSES: Written comments to OIRA for the proposed information collection should be submitted within 30 days of this document's publication at https://www.reginfo.gov/public/do/PRAMain.

Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

A copy of the information collection request is available through the docket on the internet at https://www.regulations.gov.

In addition to the submission of comments to https://www.reginfo.gov as indicated above, a copy of all comments submitted to OIRA may also be submitted to the DOE at 45VemissionsRequest@ee.doe.gov, with the subject line "SNPRM Comment".

FOR FURTHER INFORMATION CONTACT: For questions concerning this document, the Office of Chief Counsel (Passthroughs and Special Industries) at (202) 317-6853 (not a toll-free number). For questions concerning the submission of comments regarding the emissions value request process, Karen Dandridge at (202) 586-3388 or by email (preferred) at 45VemissionsRequest@ee.doe.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 13204 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), added new sections 45V and 48(a)(15) of the Internal Revenue Code (Code) to provide a credit for the production of, and investment in, clean hydrogen. On December 26, 2023, the Treasury Department and the IRS published in the ***Federal Register*** proposed regulations to amend the Income Tax Regulations (26 CFR part 1) under sections 45V and 48(a)(15). 88 FR 89220.

The NPRM references the DOE's process for applicants to request an emissions value from the DOE that could then be used to file a petition with the Secretary for determination of a PER as detailed in proposed §1.45V-4. The petition to the Secretary will be made by attaching a copy of the letter from the DOE stating the emissions value to Form 7210, *Clean Hydrogen Production Credit* or Form 3468, *Investment Credit*.[1] This document contains supplemental information relating to the PER petition process for applicants that request an emissions value from the DOE and invites comments on the DOE's emissions value request process.

The public comment period for the NPRM closed on February 26, 2024, and a public hearing was held on March 24, 25, and 26, 2024. The public comments received are being considered. This document opens a 30-day period for comments on the DOE's emissions value request process. Comments received in response to this document must pertain to that process. Comments outside the scope of this document will not be considered.

Explanation of Provisions

This document supplements the guidance provided in the NPRM to specify the DOE's emissions value request process.

I. *DOE Emissions Value Request Process*

The Treasury Department and the IRS proposed that, to obtain an emissions value from the DOE based on the DOE's analytical assessment of the lifecycle greenhouse gas (GHG) emissions associated with a hydrogen production facility's production pathway, in addition to meeting the requirements set forth in the NPRM, an applicant must first complete a front-end engineering and design (FEED) study or similar indicia of project maturity, as determined by the DOE, and then request an emissions value from the DOE. The term "emissions value" means the DOE's analytical assessment of the lifecycle GHG emissions rate of a hydrogen production facility's hydrogen production process.[2]

A. *FEED study*

The NPRM provided that applicants may only request an emissions value after having completed a FEED study or similar

[1] *The PER petition filed with the Secretary is performed by attaching the emissions value obtained from the DOE to the filing of Form 7210 or Form 3468. The burden is included within the Forms 7210 and 3468 and their respective instructions. Forms 7210 and 3468 are, and will be, approved by OMB, in accordance with 5 CFR 1320.10, under the following OMB Control Numbers: 1545-0074 for individual filers, 1545-0123 for business filers, 1545-0047 for tax-exempt organization filers, and 1545-NEW for trust and estate filers of Form 7210 and 1545-0155 for trust and estate filers of Form 3468.*

[2] *DOE's evaluation of lifecycle greenhouse gas emissions corresponds with how the term is defined in 26 U.S.C. 45V(c)(1).*

indicia of project maturity, as determined by the DOE, such as project specification and cost estimate sufficient to inform a final investment decision. The DOE has determined that, at this time, a FEED study completed based on an Association for Advanced Cost Engineering Class 3 Cost Estimate is necessary to sufficiently indicate commercial project maturity for robust emissions analysis. The Treasury Department and the IRS continue to seek comments on whether alternative appropriate pathways to demonstrating project readiness exist. Comments received in response to the NPRM and this document will be considered and these requirements may be revised accordingly.

B. *Emissions Value Request Application*

In order to request an emissions value from the DOE for a given hydrogen facility, applicants must submit the following information to the DOE: (1) specific sections of the FEED study, as described in the DOE's emissions value request process instructions (Instructions); and (2) a completed Emissions Value Request Form, as described in the Instructions. Additionally, the Emissions Value Request Application may contain any additional information that may be beneficial to the DOE in completing a lifecycle GHG analysis of the hydrogen production pathway for which the applicant is requesting an emissions value. Such additional information would be optional, and the applicant's Emissions Value Request Application would be considered complete regardless of whether any additional information is provided.

In order to file an Emissions Value Request Application, applicants would first be required to send an email to the DOE at 45VemissionsRequest@ee.doe.gov, stating their intent to submit an Emissions Value Request Application and the name of the applicant's organization. The DOE would then send the applicant an email with a link to a secure folder to which the applicant would upload the Emissions Value Request Application.

Additional information about the emissions value request process will be available at: https://www.reginfo.gov.

II. *Request for Comments*

Comments are requested on the DOE's Emissions Value Request Application process, including (1) whether additional procedures should be implemented to effectuate the Emissions Value Request Application process; (2) information to be collected and whether additional information should be considered by the DOE in evaluating an Emissions Value Request Application; and (3) any other aspects of the emissions value request process.

Once approved by the Office of Management and Budget (OMB) under the DOE OMB Control Number 1910-NEW, notice will be given in the ***Federal Register*** that the emissions value request process is open.

Special Analyses

I. *Regulatory Planning and Review*

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

II. *Paperwork Reduction Act*

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

The collection of information described in this document would include reporting and third-party disclosure requirements. This collection is necessary for certain hydrogen producers to obtain an emissions value which they may use to claim the section 45V credit, or the section 48 credit with respect to a specified clean hydrogen production facility. This information would generally be used by the DOE to assist applicants in obtaining their emissions values and may be provided to the IRS for tax compliance purposes.

This document addresses a collection of information related to submitting an Emissions Value Request Application and supporting documentation to the DOE to enable the DOE to provide an analytical assessment of the lifecycle GHG emissions of the applicant's facility's hydrogen production process. Prior to the opening of the emissions value request process, the DOE will publish on its website Instructions for submitting an Emissions Value Request Application and other application material at the following URL: https://www.energy.gov/eere/emissions-value-request-process.[3]

The Emissions Value Request Application will require that applicants provide specific sections of a FEED Study based on an AACE Class 3 Cost Estimate and other detailed hydrogen production and emissions information as described in this document. The information submitted with Emissions Value Request Applications would allow the DOE to prepare its analytical assessments of the hydrogen production pathways for which applicants are requesting emissions values, which are necessary for hydrogen producers whose hydrogen production pathways are not included in the 45VH2-GREET model[4] to petition the Secretary for a PER and which support DOE in updating the 45VH2-GREET model to include new hydrogen production pathways.[5] To assist

[3] *This link will not be live until the emissions value request process is available.*

[4] *Available at: https://www.energy.gov/eere/greet.*

[5] *26 U.S.C. 45V(c)(1). Other examples of federal lifecycle greenhouse gas emissions analysis include: DOE's Interagency Statement announcing modifications to GREET to assess Sustainable Aviation Fuel lifecycle GHG emissions (available at: https://www.energy.gov/articles/interagency-statement-agencies-participating-sustainable-aviation-fuels-lifecycle-analysis), and the Environmental Protection Agency's Model Comparison Technical Document, EPA-420-R-23-017 (available at: https://www.epa.gov/renewable-fuel-standard-program/final-renewable-fuels-standards-rule-2023-2024-and-2025). Additionally, updating the 45VH2-GREET model with new hydrogen production pathways will reduce the burden on hydrogen producers by allowing them to rely on 45VH2-GREET instead of submitting Emissions Value Request Applications to the DOE.*

with the collection of information, the DOE will provide administration services for the emissions value request process. Among other things, the DOE will utilize Kiteworks file sharing system to receive and review Emissions Value Request Applications and to provide Response Letters to applicants. The DOE may provide information received or developed by the DOE to the IRS. These collection requirements will be submitted to OMB under 1910-NEW for review and approval in accordance with 5 CFR 1320.11. The likely respondents are businesses, individuals, and tax-exempt organizations.

A summary of paperwork burden estimates for the emissions value request process is as follows:

Estimated number of respondents: 100
Estimated burden per response: 40
Estimated frequency of response: 1
Estimated total burden hours: 4,000

Comments are requested on the collection requirements for the DOE's Emissions Value Request Application process. Written comments for the proposed information collection should be submitted through *https://www.reginfo.gov/public/do/PRAMain*. Comments must contain the OMB Control Number of the information collection request. They must also contain the docket number of the request, [REG-117631-23]. Find this particular information collection by selecting "*Currently under Review—Open for Public Comments*" then by using the search function. Comments on the collection of information should be received by May 13, 2024. Comments are specifically requested concerning:

1. Whether the proposed collection of information is necessary for the proper performance of the functions of the DOE, including whether the information will have practical utility.
2. The accuracy of the estimated burden associated with the proposed collection of information.
3. How the quality, utility, and clarity of the information to be collected may be enhanced.
4. How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.
5. Estimates of capital costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Once approved by OMB under the DOE OMB Control Number 1910-NEW, notice will be given in the ***Federal Register*** that the emissions value request process is open.

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 Procedures 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. See the NPRM for the initial regulatory flexibility analysis.

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 document does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. *Executive Order 13132: Federalism*

Executive Order 13132 (Federalism) prohibits an agency 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 document 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.

Drafting Information

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

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

(Filed by the Office of the Federal Register April 10, 2024, 8:45 a.m., and published in the issue of the Federal Register for April 11, 2024, 89 FR 25551)

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]

Bulletin 2024–21

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Notices:

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Revenue Procedures:

Revenue Rulings:

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Treasury Decisions:—Continued

[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]

Bulletin 2024–21

[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.

Internal Revenue Service
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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/*.

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