# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2023–2240; Project Identifier MCAI–2023–00936–T]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede Airworthiness Directive (AD) 2021–24–20, which apply to all Airbus SAS Model A350–941 and –1041 airplanes, and AD 2023–03–05, which apply to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2021–24–20 requires repetitive water drainage and plug cleaning of the left- and right-hand slat geared rotary actuators (SGRAs) having a certain part number installed on slat 5 track 12 with certain functional item numbers. AD 2023–03–05 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2021–24–20 and AD 2023–03–05, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require certain actions in AD 2021–24–20 and AD 2023–03–05 and would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by January 29, 2024.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2240; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

*Material Incorporated by Reference:*

- For EASA material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–2240.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

**FOR FURTHER INFORMATION CONTACT:** Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–2240; Project Identifier MCAI–2023–00936–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to regulations.gov, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

### Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

### Background

The FAA issued AD 2021–24–20, Amendment 39–21841 (86 FR 72838, December 23, 2021) (AD 2021–24–20), for all Airbus SAS Model A350–941 and –1041 airplanes. AD 2021–24–20 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2021–0130R1, dated June 10, 2021 (EASA 2021–0130R1) (which corresponds to FAA AD

2021–24–20), to correct an unsafe condition.

AD 2021–24–20 requires repetitive water drainage and plug cleaning of the left- and right-hand SGRAs having a certain part number installed on slat 5 track 12 with certain functional item numbers. The FAA issued AD 2021–24–20 to address SGRA jams, which could result in reduced control of the airplane.

The FAA also issued AD 2023–03–05, Amendment 39–22330 (88 FR 10011, February 16, 2023) (AD 2023–03–05), for certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2023–03–05 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2022–0127, dated June 28, 2022 (EASA 2022–0127) (which corresponds to FAA AD 2023–03–05), to correct an unsafe condition.

AD 2023–03–05 requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations. The FAA issued AD 2023–03–05 to address hazardous or catastrophic airplane system failures. In addition, paragraph (m) of AD 2023–03–05 specifies terminating action for repetitive greasing of certain thrust reverser actuators required by paragraph (g) of AD 2019–20–01, Amendment 39–19754 (84 FR 55495, October 17, 2019). This proposed AD would therefore continue to allow that terminating action.

**Actions Since AD 2021–24–20 and AD 2023–03–05 Were Issued**

Since the FAA issued AD 2021–24–20 and AD 2023–03–05, EASA superseded AD 2021–0130R1 and AD 2022–0127 and issued EASA AD 2023–0157, dated July 31, 2023 (EASA AD 2023–0157) (referred to after this as the MCAI), for all Airbus SAS Model A350–941 and –1041 airplanes. The MCAI states that new or more restrictive airworthiness limitations have been developed.

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after June 1, 2023, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

The FAA is proposing this AD to address hazardous or catastrophic airplane system failure. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–2240.

**Related Service Information Under 1 CFR Part 51**

The FAA reviewed EASA AD 2023–0157. This service information specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This proposed AD would also require EASA AD 2022–0127, dated June 28, 2022, which the Director of the Federal Register approved for incorporation by reference as of March 23, 2023 (88 FR 10011, February 16, 2023).

This proposed AD would also require EASA AD 2021–0130R1, dated June 10, 2021, which the Director of the Federal Register approved for incorporation by reference as of January 27, 2022 (86 FR 72838, December 23, 2021).

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

**FAA's Determination**

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

**Proposed AD Requirements in This NPRM**

This proposed AD would retain certain requirements of AD 2021–24–20 and AD 2023–03–05. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in EASA AD 2023–0157 already described, as proposed for incorporation by reference. Any differences with EASA AD 2023–0157 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (q)(1) of this proposed AD.

**Explanation of Required Compliance Information**

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA ADs by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA ADs through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in an EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0157. Service information required by EASA ADs for compliance will be available at regulations.gov by searching for and locating Docket No. FAA–2023–2240 after the FAA final rule is published.

**Airworthiness Limitation ADs Using the New Process**

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under ''Additional AD Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect 30 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR RETAINED ACTIONS FROM AD 2021–24–20

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Retained actions from AD 2021–24–20 ..... | 4 work-hours × $85 per hour = $340 ..... | $0 | $340 | $10,200 |

The FAA estimates the total cost per operator for the retained actions from AD 2023–03–05 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2021–24–20, Amendment 39–21841 (86 FR 72838, December 23, 2021); and AD 2023–03–05, Amendment 39–22330 (88 FR 10011, February 16, 2023); and

■ b. Adding the following new AD:

**Airbus SAS:** Docket No. FAA–2023–2240; Project Identifier MCAI–2023–00936–T.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by January 29, 2024.

**(b) Affected ADs**

(1) This AD replaces AD 2021–24–20, Amendment 39–21841 (86 FR 72838, December 23, 2021) (AD 2021–24–20); and AD 2023–03–05, Amendment 39–22330 (88 FR 10011, February 16, 2023) (AD 2023–03–05).

(2) This AD affects AD 2019–20–01, Amendment 39–19754 (84 FR 55495, October 17, 2019) (AD 2019–20–01).

**(c) Applicability**

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 1, 2023.

**(d) Subject**

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

**(e) Unsafe Condition**

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address hazardous or catastrophic airplane system failures.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Retained Requirements of AD 2021–24–20, With No Changes**

This paragraph restates the requirements of paragraph (g) of AD 2021–24–20, with no changes. Except as specified in paragraph (h) of this AD, comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0130R1, dated June 10, 2021 (EASA AD 2021–0130R1). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (m) of this AD terminates the requirements of this paragraph.

**(h) Retained Exceptions to EASA AD 2021–0130R1, With No Changes**

This paragraph restates the exceptions specified in paragraph (h) of AD 2021–24–20, with no changes.

(1) Where EASA AD 2021–0130R1 refers to ''the effective date of the original issue of this [EASA] AD,'' this AD requires using January 27, 2022 (the effective date of AD 2021–24–20).

(2) The ''Remarks'' section of EASA AD 2021–0130R1 does not apply to this AD.

**(i) Retained No Reporting for EASA AD 2021–0130R1, With No Changes**

This paragraph restates the no reporting requirement of paragraph (i) of AD 2021–24–20, with no changes. Although the service information referenced in EASA AD 2021–0130R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(j) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes**

This paragraph restates the requirements of paragraph (j) of AD 2023–03–05, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before May 2, 2022: Except as specified in paragraph (k) of this AD, comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0127, dated June 28, 2022 (EASA AD 2022–0127). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (m) of this AD terminates the requirements of this paragraph.

**(k) Retained Exceptions to EASA AD 2022–0127, With No Changes**

This paragraph restates the exceptions specified in paragraph (k) of AD 2023–03–05, with no changes.

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0127 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0127 specifies to revise ''the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after March 23, 2023 (the effective date of AD 2023–03–05).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0127 is at the applicable ''limitations'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0127, or within 90 days after March 23, 2023 (the effective date of AD 2023–03–05), whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0127 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2022–0127 does not apply to this AD.

**(l) Retained Restrictions on Alternative Actions and Intervals With a New Exception**

This paragraph restates the requirements of paragraph (l) of AD 2022–0127, with a new exception. Except as required by paragraph (m) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0127.

**(m) New Revision of the Existing Maintenance or Inspection Program**

Except as specified in paragraph (n) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0157, dated July 31, 2023 (EASA AD 2023–0157). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraphs (g) and (j) of this AD.

**(n) Exceptions to EASA AD 2023–0157**

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2023–0157.

(2) Paragraph (3) of EASA AD 2023–0157 specifies revising ''the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA 2023–0157 is at the applicable ''limitations'' and ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2023–0157, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2023–0157.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0157.

**(o) New Provisions for Alternative Actions and Intervals**

After the existing maintenance or inspection program has been revised as required by paragraph (m) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2023–0157.

**(p) Terminating Action for Certain Tasks Required by AD 2019–20–01**

After the maintenance or inspection program has been revised as required by paragraph (j) or (m) of this AD, the repetitive greasing specified in EASA AD 2018–0234R1, dated November 13, 2018, and EASA AD 2018–0234R2, dated September 17, 2019, as required by AD 2019–20–01, is terminated for thrust reverser actuators, having part number (P/N) 351D9908–689, P/N 351D9908–691 or P/N 351D9908–693.

**(q) Additional AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (r) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

**(r) Additional Information**

For more information about this AD, contact Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov*.

**(s) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2023–0157.

(ii) [Reserved]

(4) The following service information was approved for IBR on March 23, 2023 (88 FR 10011, February 16, 2023).

(i) European Union Aviation Safety Agency (EASA) AD 2022–0127, dated June 28, 2022.

(ii) [Reserved]

(5) The following service information was approved for IBR on January 27, 2022 (86 FR 72838, December 23, 2021).

(i) European Union Aviation Safety Agency (EASA) AD 2021–0130R1, dated June 10, 2021.

(ii) [Reserved]

(6) For EASA ADs 2021–0130R1, 2022–0127, and 2023–0157, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu*. You may find this EASA AD on the EASA website at *ad.easa.europa.eu*.

(7) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(8) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov*.

Issued on December 8, 2023.

**Victor Wicklund,**

*Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2023–27386 Filed 12–14–23; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–107423–23]**

**RIN 1545–BQ85**

## Section 45X Advanced Manufacturing Production Credit

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and public hearing.

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

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

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

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

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

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

**SUPPLEMENTARY INFORMATION:**

### Background

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

*I. Overview of Section 45X*

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

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

Section 45X(b)(1)(A) through (M) and section 45X(b)(2) set forth the credit amounts for each type of eligible component, which amounts, except for purposes of determining the credit amount for any applicable critical mineral, are subject to phase out rules set forth in section 45X(b)(3). For any eligible component (except applicable critical minerals) sold after December 31, 2029, the credit amount for such component equals the product of the amount determined under section 45X(b)(1) for such component multiplied by the applicable phase out percentage under section 45X(b)(3)(B)(i) through (iv). In the case of an eligible component sold during calendar year 2030, 2031, and 2032, the phase out percentages are 75 percent, 50 percent, and 25 percent, respectively. In the case of an eligible component sold after December 31, 2032, the phase out percentage is zero percent. Thus, current law provides no section 45X credit after 2032 for eligible components other than for applicable critical minerals.

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

Section 45X(c)(1)(A) defines the term ''eligible component'' to mean any solar energy component, any wind energy component, any inverter described in section 45X(c)(2)(B) through (G), any