

further reduce the risk of injury associated with bassinets/crib cradles.¹

Section 104(b)(2) of the CPSIA requires that after the Commission issues mandatory safety standards for durable infant or toddler products, the Commission shall periodically review and revise the standards to ensure that such standards provide the highest level of safety for such products that is feasible. 15 U.S.C. 2056a(b)(2). Accordingly, on April 16, 2024, the Commission published an NPR in the **Federal Register** proposing to amend part 1218 to address the hazards identified in the NPR and to ensure that the mandatory bassinet/cribble regulation provides the highest level of safety feasible.² 89 FR 27246. The proposed modifications to part 1218 would remove a product category—compact bassinets—and address five identified hazard patterns associated with young infants. The NPR proposed to incorporate by reference ASTM F2194–22^{e1}, with modifications to further reduce the risk of injury associated with bassinets, and to provide the highest level of safety that is feasible for such products. 89 FR 27246, 27247. The 60-day comment period closes on June 17, 2024.³

B. Request for Comment Period Extension

On May 22, 2024, Lisa Trofe, Executive Director of the Juvenile

¹ After issuing the mandatory standard in 2013, ASTM International (ASTM) published several revisions to ASTM F2194, including ASTM F2194–2013a, –2016, and –2016^{e1}. ASTM did not notify CPSC of these revisions, so the mandatory rule has not been updated since 2013. However, ASTM F2194–2016^{e1} is substantially the same as the existing mandatory rule for bassinets/cribbles codified in part 1218. 86 FR 33022, 33034–35 (June 3, 2021).

² On March 20, 2024, the Commission voted (4–0) to publish the NPR, available at: <https://www.cpsc.gov/s3fs-public/Commission-Meeting-Minutes-NPR-Safety-Standard-for-Bassinets-and-Cradles.pdf?VersionId=GwpmKZ4S9sRrEiBmDFaEWn1jBre6eZ2r>.

³ Staff provided a February 28, 2024, Memorandum, Staff's Draft Proposed Rule to Revise the Safety Standard for Bassinets and Cradles in support of the NPR, which is available at: <https://www.cpsc.gov/s3fs-public/Briefing-Package-Draft-Notice-of-Proposed-Rulemaking-Safety-Standard-for-Bassinets-and-Cradles.pdf?VersionId=137ijVJSjn32WnUTBDV27L6c37uJC4Iis>. The NPR contains an overview of staff's assessment and analysis, and the Commission's basis for issuing the NPR, which is based on the 2022 Bassinet Rejection Staff Briefing Package. Based on the information and analysis in the NPR and related staff packages, the Commission preliminarily determined that the proposed requirements are more stringent than the requirements in ASTM F2194–22^{e1}, would further reduce the risk of injury associated with products within the scope of the NPR, and would provide the highest level of safety that is feasible for such products. The Commission specifically sought comment on the feasibility of each proposed requirement, including technical feasibility.

Products Manufacturers Association (JPMA), on behalf of JPMA's members and ten companies that individually co-signed the request, submitted a request for a 90-day extension of the NPR comment period (JPMA request).^{4,5} The JPMA request asserts that the 60-day comment period is insufficient, providing three primary reasons for additional time to provide comments: (1) prototyping and evaluating new product designs to “understand if the proposed requirements are feasible, and what new hazards, if any, such designs could create”; (2) testing to evaluate the proposed side-to-side “zero-degree tilt angle, plus or minus one degree,” including the proper equipment needed for repeatable measurements and considering the tilt angle requirement which they allege “does not consider the stacked tolerances of building construction and laboratory floors or consumer floors” and how this may impact the test results; and (3) evaluating the availability of equipment needed to test the proposed side wall rigidity requirement.

C. Assessment of the JPMA Request

The testing equipment identified in the NPR is the same equipment currently identified in the ASTM standard and CPSC's regulation,^{6,7} and therefore, stakeholders do not require additional time to test and evaluate equipment. Moreover, based on CPSC staff's experience testing sample bassinets/cribbles to the NPR proposals, testing should not require more than 10

⁴ JPMA's request has been placed on the docket for this rulemaking, as well as attached as to Staff's June 5, 2024, Briefing Memorandum: Proposed Rule to Amend the Safety Standard for Bassinets and Cradles; Request to Extend Comment Period (Staff Briefing Memo), available at: https://www.cpsc.gov/s3fs-public/NPR-Safety-Standard-for-Bassinets-and-Cradles-Draft-Federal-Notice-Regarding-Extension-of-Comment-Period.pdf?VersionId=dBX_tnUc3Ld5vG6_S0UbuLliq4wPkx.

⁵ On June 11, 2024, the Commission voted (4–1) to publish this notice. Commissioner Feldman issued a statement with his vote, available at: <https://www.cpsc.gov/s3fs-public/RCA-NPR-Safety-Standard-for-Bassinets-and-Cradles-Draft-Federal-Notice-Regarding-Extension-of-Comment-Period.pdf?VersionId=Sbjp34yYPSuhrXa6p1TG9s9bVhkjVWg>.

⁶ ASTM F2194–22^{e1} specifies in section 4.6 that angle measurements shall be taken using a digital inclinometer with a 0.1° minimum resolution for angle measurements. However, section 7.8 specifies the use of a digital inclinometer with a 0.5° minimum resolution. Users of the standard should use the more precise instrumentation to ensure they are following all applicable sections of the standard.

⁷ It is common and a known test setup for lab floors to be 0 +/- 0.5 degrees. This is already addressed in ASTM F2194–22^{e1}, see section 7.10 Rock/Swing Angle Tests. Additionally, the test requires to ZERO out the inclinometer on that test surface (floor) before starting the test to minimize any influence of the floor on the bassinet angle measurements.

business days to test up to 15 product samples; an *additional* 90 days, totaling 5 months (60 days plus 90 days), is unnecessary to assess products to the NPR requirements and provide feedback. However, we agree with JPMA that prototype design, evaluation, and testing to the zero-degree side-to-side tilt angle, plus or minus one degree, and other proposed requirements may require additional time. Assessing how to modify products to feasibly meet the proposed modifications, identifying any new potential hazards, and providing comments on these assessments may benefit from more than the 60 days provided in the NPR. Providing additional time in the comment period will allow manufacturers to produce prototypes that are closer to the final design specifications and that will more accurately reflect what a manufacturer finds to be achievable.

D. Conclusion

The Commission has considered the JPMA request to extend the comment period and staff's assessment of the request. Currently, the comment period is due to close on June 17, 2024. To provide sufficient time for stakeholders to prototype and evaluate new designs, and to assess and provide comment on the NPR proposals, especially as it relates to specific products, the Commission will grant a 45-day extension of the comment period, until August 1, 2024.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124593–23]

RIN 1545–BR07

Certain Partnership Related-Party Basis Adjustment Transactions as Transactions of Interest

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: This document contains proposed regulations that would identify certain partnership related-party basis adjustment transactions and substantially similar transactions as transactions of interest, a type of

reportable transaction. Material advisors and certain participants in these transactions would be required to file disclosures with the IRS and would be subject to penalties for failure to disclose. The proposed regulations would affect participants in these transactions as well as material advisors. This document also provides a notice of a public hearing on the proposed regulations.

DATES:

Comments due: Written or electronic comments must be received by August 19, 2024.

Public hearing: A public hearing on this proposed regulation has been scheduled for Tuesday, September 17, 2024, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by August 19, 2024. If no outlines are received by August 19, 2024, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. ET on September 13, 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 September 12, 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-124593-23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the "Comments and Requests for a Public Hearing" section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG-124593-23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Elizabeth Zanet of the Office of Associate Chief Counsel (Passthroughs and Special Industries), (202) 317-6007; concerning the submission of comments or the hearing, Vivian Hayes at (202) 6901 (not toll-free numbers) or by email at publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:**Background**

This document contains proposed additions to the Income Tax Regulations (26 CFR part 1) under section 6011 of

the Internal Revenue Code (Code). The proposed additions would add § 1.6011-18 to identify certain partnership related-party basis adjustment transactions as transactions of interest for purposes of section 6011 (proposed regulations).

I. Disclosure of Reportable Transactions by Participants and Penalties for Failure To Disclose

Section 6011(a) generally provides that, if required by regulations prescribed by the Secretary of the Treasury or her delegate (Secretary), any person made liable for any tax imposed by the Code, or with respect to the collection thereof, must make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement must include therein the information required by such forms or regulations.

Section 1.6011-4(a) provides that every taxpayer that has participated in a reportable transaction within the meaning of § 1.6011-4(b) and who is required to file a tax return must file a disclosure statement within the time prescribed in § 1.6011-4(e). Reportable transactions are identified in § 1.6011-4 and include listed transactions, confidential transactions, transactions with contractual protection, loss transactions, and transactions of interest. See § 1.6011-4(b)(2) through (6). Section 1.6011-4(b)(6) defines a "transaction of interest" as a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has identified by notice, regulation, or other form of published guidance as a transaction of interest.

Section 1.6011-4(c)(4) provides that a transaction is "substantially similar" if it is expected to obtain the same or similar types of tax consequences and is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. For example, a transaction may be substantially similar to a transaction of interest even though it may involve different entities or use different Code provisions.

Section 1.6011-4(c)(3)(i)(E) provides that a taxpayer has participated in a transaction of interest if the taxpayer is one of the types or classes of persons identified as participants in the

transaction in the published guidance describing the transaction of interest.

Section 1.6011-4(d) and (e) provide that the disclosure statement, *Form 8886, Reportable Transaction Disclosure Statement* (or successor form), must be attached to the taxpayer's tax return for each taxable year in which a taxpayer participates in a reportable transaction. A copy of the disclosure statement must be sent to the IRS's Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction.

Section 1.6011-4(e)(2)(i) provides that if a transaction becomes a transaction of interest after the filing of a taxpayer's tax return (including an amended return) reflecting the taxpayer's participation in the transaction of interest and before the end of the period of limitations for assessment for any taxable year in which the taxpayer participated in the transaction of interest, then a disclosure statement must be filed with OTSA within 90 calendar days after the date on which the transaction becomes a transaction of interest. This requirement extends to an amended return and exists regardless of whether the taxpayer participated in the transaction in the year the transaction became a transaction of interest. The Commissioner of Internal Revenue (Commissioner) may also determine the time for disclosure of transactions of interest in the published guidance identifying the transaction.

Participants required to disclose these transactions under § 1.6011-4 who fail to do so are subject to penalties under section 6707A of the Code. Section 6707A(b) provides that the amount of the penalty is 75 percent of the decrease in tax shown on the return as a result of the reportable transaction (or which would have resulted from such transaction if such transaction were respected for Federal tax purposes), subject to minimum and maximum penalty amounts. The minimum penalty amount is \$5,000 in the case of a natural person and \$10,000 in any other case. For a transaction of interest, the maximum penalty amount is \$10,000 in the case of a natural person and \$50,000 in any other case.

Additional penalties may also apply. In general, section 6662A of the Code imposes a 20 percent accuracy-related penalty on any understatement (as defined in section 6662A(b)(1)) attributable to an adequately disclosed reportable transaction. If the taxpayer had a requirement to disclose participation in the reportable transaction but did not adequately disclose the transaction in accordance

with the regulations under section 6011, the taxpayer is subject to an increased penalty rate equal to 30 percent of the understatement. See section 6662A(c). Section 6662A(b)(2) provides that section 6662A applies to any item which is attributable to any listed transaction and any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

II. Disclosure of Reportable Transactions by Material Advisors and Penalties for Failure To Disclose

Section 6111(a) provides that each material advisor with respect to any reportable transaction must make a return setting forth: (1) information identifying and describing the transaction, (2) information describing any potential tax benefits expected to result from the transaction, and (3) such other information as the Secretary may prescribe. Such return must be filed not later than the date specified by the Secretary.

Section 301.6111-3(a) of the Procedure and Administration Regulations (26 CFR part 301) provides that each material advisor with respect to any reportable transaction, as defined in § 1.6011-4(b), must file a return as described in § 301.6111-3(d) by the date described in § 301.6111-3(e).

Section 301.6111-3(b)(1) provides that a person is a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of the threshold amount as defined in § 301.6111-3(b)(3) for the material aid, assistance, or advice. Under § 301.6111-3(b)(2)(i) and (ii), a person provides material aid, assistance, or advice if the person provides a tax statement, which is any statement (including another person's statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction as defined in § 1.6011-4(b)(2) through (7).

Material advisors must disclose transactions on Form 8918, *Material Advisor Disclosure Statement* (or successor form), as provided in § 301.6111-3(d) and (e). Section 301.6111-3(e) provides that the material advisor's disclosure statement for a reportable transaction must be filed with the OTSA by the last day of the month that follows the end of the calendar quarter in which the advisor

becomes a material advisor with respect to a reportable transaction or in which the circumstances necessitating an amended disclosure statement occur. A person may become a material advisor with respect to a transaction that is later identified as a transaction of interest. See § 301.6111-3(b)(4). The disclosure statement must be sent to the OTSA at the address provided in the instructions for Form 8918 (or successor form).

Section 301.6111-3(d)(2) provides that the IRS will issue to a material advisor a reportable transaction number with respect to the disclosed reportable transaction. Receipt of a reportable transaction number does not indicate that the disclosure statement is complete, nor does it indicate that the transaction has been reviewed, examined, or approved by the IRS. Material advisors must provide the reportable transaction number to all taxpayers for whom the material advisor acts as a material advisor as defined in § 301.6111-3(b). The reportable transaction number must be provided at the time the transaction is entered into, or if the transaction is entered into prior to the material advisor receiving the reportable transaction number, within 60 calendar days from the date the reportable transaction number is mailed to the material advisor.

Section 6707(a) of the Code provides that a material advisor who fails to file a timely disclosure, or files an incomplete or false disclosure statement, is subject to a penalty. Pursuant to section 6707(b)(1), the penalty for reportable transactions other than listed transactions, including transactions of interest, is \$50,000.

Additionally, section 6112(a) of the Code provides that each material advisor with respect to any reportable transaction, whether or not required to file a return under section 6111 with respect to such transaction, must maintain a list (1) identifying each person with respect to whom such advisor acted as a material advisor with respect to such transaction and (2) containing such other information as the Secretary may by regulations require. Material advisors must furnish such lists to the IRS in accordance with § 301.6112-1(e).

A material advisor may be subject to a penalty under section 6708 of the Code for failing to maintain a list under section 6112(a) and failing to make the list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of request. Section 6708(a) provides that the penalty is \$10,000 per day for each day of the failure after the 20th day. However, no penalty will be

imposed with respect to the failure on any day if such failure is due to reasonable cause.

III. Basis Adjustments Under Subchapter K

A. In General

Under subchapter K of chapter 1 of the Code (subchapter K), a distribution by a partnership of the partnership's property (partnership property) or a transfer of an interest in a partnership (partnership interest) may result in an adjustment to the basis of the distributed property, partnership property, or both.

A distribution of partnership property may result in an adjustment to the basis of the distributed property under section 732(a), (b), or (d) of the Code. In the case of a distribution of partnership property to a partner by a partnership with an election under section 754 of the Code (section 754 election) in effect, or with respect to which there is a substantial basis reduction as described in section 734(d) of the Code, the distribution may also result in an adjustment to the basis of the partnership's remaining property (remaining partnership property) under section 734(b).

If a partnership interest is transferred by sale or exchange or on the death of a partner, and the partnership either has a section 754 election in effect or has a substantial built-in loss with respect to the transfer of the partnership interest as described in section 743(d) of the Code, the transfer may result in an adjustment to the basis of partnership property under section 743(b) with respect to the transferee partner.

Section 754 provides that if a partnership makes an election in accordance with regulations prescribed by the Secretary, the basis of partnership property shall be adjusted, in the case of a distribution of property, in the manner provided by section 734, and in the case of a transfer of a partnership interest, in the manner provided in section 743. Unless the election is revoked in accordance with the regulations under section 754, the section 754 election applies with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which the election was filed and all subsequent taxable years.

B. Basis Adjustments Under Section 732

Section 732 governs a distributee partner's basis in distributed property other than money. In the case of a current distribution, and except as

provided under section 732(a)(1) and (2) provides that the distributee partner's basis in distributed property (other than money) is equal to the partnership's adjusted basis in the distributed property immediately before the distribution. Under section 732(a)(2), however, a distributee partner's basis in distributed property is limited to the adjusted basis of the distributee partner's partnership interest reduced by any money distributed to such partner in the same transaction.

In the case of a liquidating distribution, section 732(b) provides that the distributee partner's basis in distributed property (other than money) is equal to the adjusted basis of the distributee partner's partnership interest reduced by any money distributed to such partner in the same transaction.

In the case of a distribution of more than one property from a partnership, the basis of the distributed properties to which section 732(a)(2) and (b) apply must be allocated among the distributed properties under the rules of section 732(c) and the regulations thereunder.

C. Basis Adjustments Under Section 734

In the case of a distribution of property by a partnership with a section 754 election in effect, and for which either the distributee partner recognizes gain or loss on the distribution, or for which the basis of the distributed property in the distributee partner's hands, as determined under section 732, differs from the partnership's adjusted basis in the distributed property immediately before the distribution, section 734(b) requires the partnership to increase or decrease (as applicable) the basis of its remaining partnership property. Also, in the case of a distribution of property by a partnership that results in a substantial basis reduction under section 734(d), the basis of remaining partnership property must be adjusted under section 734(b), even if the partnership does not have a section 754 election in effect.

Section 734(b)(1) requires a partnership to increase the basis of its remaining partnership property if a distribution of partnership property by the partnership results in the distributee partner recognizing gain under section 731(a)(1) of the Code, or if property (other than money) to which section 732(a)(2) or (b) applies is distributed to the distributee partner and the property's adjusted basis to the partnership immediately before the distribution is greater than the distributee partner's basis in the distributed property as determined under section 732. Section 731(a)(1) requires a distributee partner to

recognize gain in a current or liquidating distribution to the extent that any money distributed to that partner in the distribution exceeds the adjusted basis of that partner's partnership interest immediately before the distribution. The amount of the basis increase to the partnership's remaining property under section 734(b)(1) following a distribution of partnership property to a partner is equal to the amount of gain recognized by the distributee partner in the distribution under section 731(a)(1) and the excess of the partnership's adjusted basis in the distributed property immediately before the distribution over the distributee partner's basis in the distributed property as determined under section 732.

Section 734(b)(2) requires a partnership to decrease the basis of its remaining property if a distribution of property by the partnership results in the distributee partner recognizing loss under section 731(a)(2), or if property (other than money) is distributed to the distributee partner in a distribution to which section 732(b) applies and the property's adjusted basis to the partnership immediately before the distribution is less than the distributee partner's basis in the distributed property as determined under section 732. Under section 731(a)(2), a distributee partner may recognize a loss in a liquidating distribution of that partner's interest in the partnership to the extent that such partner received only money, unrealized receivables described in section 751(c), or inventory items described in section 751(d) of the Code in the distribution. In such a case, the distributee partner is required to recognize a loss to the extent that such partner's adjusted basis in the partnership interest exceeds the sum of any money distributed to that partner in the distribution and the basis to the distributee partner (determined under section 732) of any unrealized receivables or inventory received by that partner in the distribution. The amount of the basis decrease to the partnership's remaining property under section 734(b)(2) following a distribution of partnership property to a partner is equal to the amount of loss recognized by the distributee partner in the distribution under section 731(a)(2) and the excess of the distributee partner's basis in the distributed property as determined under section 732 over the partnership's adjusted basis in the distributed property immediately before the distribution.

A partnership without a section 754 election in effect is subject to a mandatory basis adjustment under

section 734(b)(2) if there is a substantial basis reduction with respect to a distribution of partnership property. Under section 734(d), a substantial basis reduction with respect to a distribution of partnership property occurs if the sum of the amount of loss recognized to the distributee partner on the distribution, plus any increase in basis in the distributed property to the distributee partner under section 732(b), exceeds \$250,000.

D. Basis Adjustments Under Section 743(b)

Generally, if a partnership interest is transferred in a sale or exchange or on the death of a partner, the transferee partner's basis in the transferred partnership interest is determined under section 742 of the Code and the basis of partnership property is determined under section 743(a). Section 742 provides that the transferee partner's basis in a partnership interest acquired other than by contribution is determined under part II of subchapter O of chapter 1 of the Code, beginning at section 1011 of the Code and following. Thus, for example, a transferee partner's basis in a partnership interest acquired by purchase generally is cost basis under section 1012 of the Code. Section 743(a) provides that, in the case of a transfer of a partnership interest by sale or exchange or on the death of a partner, the basis of partnership property is not adjusted unless either the partnership has a section 754 election in effect or the partnership has a substantial built-in loss with respect to the transfer of the partnership interest.

Under section 743(b), in the case of a transfer of a partnership interest by sale or exchange or on the death of a partner, a partnership with a section 754 election in effect or that has a substantial built-in loss with respect to the transfer of the partnership interest must increase or decrease (as applicable) the adjusted basis of partnership property with respect to the transferee partner.

Section 743(b)(1) provides that the adjusted basis of partnership property is increased by the excess of the transferee partner's basis in the transferred partnership interest over the transferee partner's proportionate share of the adjusted basis of partnership property.

Section 743(b)(2) provides that the adjusted basis of partnership property is decreased by the excess of the transferee partner's proportionate share of the adjusted basis of partnership property over the transferee partner's basis in the transferred partnership interest.

A partnership without a section 754 election is subject to a mandatory basis

adjustment under section 743(b) with respect to a transfer of a partnership interest if the partnership has a substantial built-in loss with respect to the transfer of the partnership interest. Under section 743(d)(1), a partnership has a substantial built-in loss with respect to a transfer of an interest in the partnership if either the partnership's adjusted basis in its property exceeds the fair market value of such property by more than \$250,000, or the transferee partner would be allocated a loss of more than \$250,000 if the partnership assets were sold for cash equal to their fair market value immediately after the transfer.

Under regulations prescribed by the Secretary, a basis adjustment under section 743(b) is an adjustment to the basis of partnership property with respect to the transferee partner only. The transferee partner's proportionate share of the partnership's adjusted basis in its property generally is determined in accordance with the transferee partner's interest in the partnership's previously taxed capital (including the transferee partner's share of partnership liabilities) under regulations prescribed by the Secretary.

In the case of a transferee partner who acquired all or part of its partnership interest by a transfer to which no section 754 election was in effect, and to whom a distribution of property (other than money) is made with respect to the transferred interest within two years, section 732(d) and the regulations thereunder allow the partner to make an election to treat as the adjusted basis of the distributed property the adjusted basis such property would have if the adjustment under section 743(b) were in effect with respect to the partnership property.

Under § 1.732-1(d)(4), the special basis adjustment under section 732(d) is required to apply to a distribution of property to a partner who acquired all or part of its interest by a transfer from a partnership without a section 754 election in effect for the taxable year of such transfer, whether or not the distribution is made within two years of such transfer, if at the time the partnership interest was transferred, (i) the fair market value of all partnership property (other than money) exceeded 110 percent of its adjusted basis to the partnership, (ii) an allocation of basis under section 732(c) upon a liquidation of the transferee partner's interest in the partnership immediately after the transfer of such interest would have resulted in a shift of basis from property not subject to an allowance for depreciation, depletion, or amortization to property subject to such an

allowance, and (iii) a basis adjustment under section 743(b) would change the basis to the transferee partner of the property actually distributed.

E. Allocation of Basis Adjustments Under Sections 734 and 743

Section 734(c) states that a basis adjustment under section 734(b) is allocated among partnership properties under the rules of section 755 of the Code. Section 743(c) states that a basis adjustment under section 743(b) is allocated among partnership properties under the rules of section 755.

Section 755(a) generally requires basis adjustments under section 734(b) or section 743(b) to be allocated in a manner that has the effect of reducing the difference between the fair market value and the adjusted basis of partnership properties or in any other manner permitted by regulations. In addition, section 755(b) requires these basis adjustments to be allocated to partnership property of a like character or to subsequently acquired partnership property of a like character if such property is not available or has insufficient basis at the time of the basis adjustment (because a decrease in the adjusted basis of the property would reduce the basis of such property below zero). Section 755(c) provides a special rule that prohibits allocating a basis decrease under section 734(b) to the stock of a corporation that is a partner of the partnership (or to any related partner in the partnership within the meaning of section 267(b) of the Code or section 707(b)(1) of the Code).

F. Common Terminology for Bases With Respect to a Partnership Interest

A partner's adjusted basis in its partnership interest commonly is referred to as the partner's "outside basis" in its partnership interest. A partnership's adjusted basis in its property commonly is referred to as the "inside basis" of the partnership's property. Each partner has a share of inside basis. For ease of explanation, this terminology is used in part IV of this Background section.

IV. Partnership Related-Party Basis Adjustment Transactions

A. Overview

The Treasury Department and the IRS are aware of related persons using partnerships to engage in transactions that inappropriately exploit the basis adjustment provisions of subchapter K applicable to distributions of partnership property or transfers of partnership interests discussed in part III of this Background section. This

awareness results from the IRS's review of various partnership transactions involving related parties in which basis adjustments were created to artificially generate or regenerate Federal income tax benefits that resulted in significant tax savings without a corresponding economic outlay. These transactions were carefully structured to exploit the mechanical basis adjustment provisions of subchapter K to produce significant tax benefits with little or no economic impact on the related parties, and in a manner that would not be a likely arrangement between partners negotiating at arm's-length.

Four variations of the transactions are referred to in this preamble as "Partnership Related-Party Basis Adjustment Transactions." The manner in which the transactions exploit the basis adjustment provisions of sections 732(b) and (d), 734(b), and 743(b), and the potential for tax abuse presented by the transactions are described in this part IV and part VI of this Background section.

Generally, in a Partnership Related-Party Basis Adjustment Transaction, partnership property is distributed to a partner who is related to one or more other partners, and that distribution results in a person related to the distributee partner, the distributee partner, or both, receiving all or a share of a basis increase in the distributed property or remaining partnership property under section 732 or 734(b) (as applicable); alternatively, a partnership interest is transferred between related persons or to a transferee partner who is related to an existing partner in the partnership, and that transfer results in an increase to the inside basis in partnership property with respect to the transferee partner under section 743(b).

Partnership Related-Party Basis Adjustment Transactions generally are structured so that, under the applicable allocation rules (sections 732(c), 734(c), 743(c), and 755), the basis increase is allocated to property that is eligible for cost recovery allowances (or eligible for a shorter cost recovery period) or that the partnership or the distributee partner disposes of in a taxable sale or exchange. Accordingly, the basis increase results in related partners decreasing their overall taxable income through additional or accelerated cost recovery allowances or decreasing their taxable gain or increasing their taxable loss on the subsequent taxable disposition of the property subject to the basis increase.

The related partners receive these tax benefits directly in the case of a distribution of property in which the basis of the distributed property is

increased in the distributee partner's hands under section 732(b) or (d). They receive these benefits indirectly in the case of a transfer of a partnership interest in which the inside basis of partnership property is increased for the transferee partner under section 743(b) or in the case of a distribution of property that results in an increase to the common basis of partnership property under section 734(b). Whether the tax benefits are received directly or indirectly, the resulting decrease in taxable income or gain (or increase in taxable loss) benefits the related-party group as a whole. Further, because the partners are related, the distributions or transfers may have little or no effect on the overall economic ownership of the property yet produce significant tax benefits shared by the related partners.

A related partner's partnership interest must have certain characteristics to create the opportunity for a Partnership Related-Party Basis Adjustment Transaction. In general, these characteristics are (1) a partner's outside basis in its partnership interest that is low compared to the partnership's basis in property it distributes to such partner, (2) a partner's outside basis in its partnership interest that is high compared to such partner's share of the partnership's basis in the partnership property (that is, the partner's share of inside basis), or (3) a partner's outside basis in its partnership interest that is high compared to the partnership's basis in property it distributes to such partner in liquidation of the partner's interest. Partnerships with related parties can create these characteristics through orchestrated contributions and distributions, as well as allocations under section 704(b) and (c). In most commercial transactions involving unrelated parties, the opportunity for abuse is limited because each party has separate, and often competing, economic and tax interests and the parties transact at arm's length. In contrast, for related parties, basis can be manipulated to provide a material net tax benefit to the related parties, as illustrated in part IV.B, C, D and E of this Background section.

B. Partnership Related-Party Basis Adjustment Transactions Under Section 734(b)

In a Partnership Related-Party Basis Adjustment Transaction under section 734(b), a partnership with a section 754 election in effect and two or more direct or indirect partners that are related to each other makes a current or liquidating distribution of partnership property to one or more of the related

partners. Immediately before the distribution, the partnership's basis in the distributed partnership property exceeds the distributee partner's basis in its partnership interest (that is, the partnership distributes property with a relatively high inside basis to a distributee partner with a relatively low outside basis). Under section 732(a)(2) or (b), the low-outside basis partner takes a basis in the distributed property that is lower than the inside basis of the property immediately before the distribution.

As a result of the basis decrease to the distributed property in the hands of the distributee partner under section 732(a)(2) or (b), the partnership increases the basis of its remaining partnership properties under section 734(b) by an amount equal to the excess of the partnership's basis in the distributed property immediately before the distribution over the basis of the distributed property in the hands of the distributee partner immediately after the distribution.

As a result of the distribution, under sections 734(c) and 755, the partnership allocates the basis increase to its remaining partnership properties; these remaining partnership properties are eligible for cost recovery allowances or are disposed of by the partnership in a taxable sale or exchange. The partnership then claims increased cost recovery allowances or decreased taxable gain (or increased taxable loss) on the disposition of the partnership property with the increased basis.

Because the transaction occurs among related persons, any economic consequences inherent in distributing partnership property to a partner that will have to reduce the basis of the distributed property under section 732(a)(2) or (b) can be minimized. For example, the distributed property might be property that the distributee partner intends to hold indefinitely and that is not eligible for cost recovery allowances. Further, because the transaction occurs among related persons, the overall economic ownership of the property remains substantially the same as before the transaction.

Related parties may choose to structure a distribution of partnership property to a related partner so that gain is recognized, for example, by distributing cash or marketable securities. If the recognized gain is insignificant compared with the increase in basis obtained under section 734(b) or is offset because of a tax attribute of the distributee partner (such as net operating losses), then the transfer may be considered a

Partnership Related-Party Basis Adjustment Transaction under section 734(b).

C. Partnership Related-Party Basis Adjustment Transactions Under Section 743(b)

In a Partnership Related-Party Basis Adjustment Transaction under section 743(b), a partner transfers an interest in a partnership with a section 754 election in effect to a related transferee or a transferee that is related to one or more of the partners in a nonrecognition transaction within the meaning of section 7701(a)(45) of the Code, such as a transfer under section 351(a) or 721(a) of the Code. Because the transfer is accomplished through a nonrecognition transaction, the transferee's basis in the transferred partnership interest generally will be equal to the transferor partner's basis in the transferred partnership interest (that is, the transferred partnership interest will be substituted basis property within the meaning of section 7701(a)(42) of the Code, such as that provided under section 362(a) of the Code in the case of a transfer of property to a corporation in exchange for stock under section 351(a), or under section 722 of the Code in the case of a transfer of property to a partnership in exchange for a partnership interest under section 721(a)).

In order for the transfer to give rise to a basis increase under section 743(b)(1), the transferor partner must have an inside-outside basis disparity with respect to its partnership interest so that the transferor partner's basis in the partnership interest (that is, the transferor partner's outside basis that carries over to the transferee partner) is greater than the transferor partner's share of the partnership's basis in its properties (that is, the transferor partner's share of inside basis immediately prior to the transfer). Because a section 754 election is in effect for the taxable year of the transfer, section 743(b) requires a basis increase to eliminate the inside-outside basis disparity of the transferee partner. The basis increase under section 743(b)(1) is equal to the excess of the transferee partner's outside basis over its proportionate share of the inside basis.

As a result of the transfer, under sections 743(c) and 755, the partnership allocates the basis increase with respect to the transferee partner to its partnership properties; these properties are eligible for cost recovery allowances or are disposed of by the partnership in a taxable sale or exchange. The transferee partner then receives increased allocations of cost recovery

allowances or lower allocations of taxable gain (or higher allocations of taxable loss) on the sale or exchange of the property by the partnership. Further, because the transaction occurs among related persons, the overall economic ownership of the partnership among the related partners remains the same as before the transaction.

Related parties may choose to structure a transfer of a partnership interest between a related transferor partner and related transferee so that gain is recognized. If the recognized gain is insignificant compared with the increase in basis obtained under section 743(b)(1) or is offset because of a tax attribute of the transferor (such as net operating losses), then the transfer may be considered a Partnership Related-Party Basis Adjustment Transaction under section 743(b).

D. Partnership Related-Party Basis Adjustment Transactions Under Section 732(b)

In a Partnership Related-Party Basis Adjustment Transaction under section 732(b), a partnership with two or more direct or indirect partners that are related makes a liquidating distribution of property to a related partner. Immediately before the distribution, the partnership's basis in the distributed property was relatively low and the distributee partner had a relatively high outside basis. Under section 732(b), the distributee partner's basis in the distributed property is equal to the partner's outside basis. As a result, the distributed property's basis is increased by an amount equal to the excess of the distributee partner's outside basis over the partnership's basis in the distributed property. As part of the transaction, under section 732(b) and (c), the distributee partner allocates the basis increase to its distributed property; this property is eligible for cost recovery allowances or is property that the distributee partner disposes of in a taxable sale or exchange. Accordingly, the distributee partner receives increased cost recovery allowances or decreases its taxable gain (or increases taxable loss) on the disposition of the distributed property.

Because the transaction occurs among related parties, any economic consequences inherent in distributing partnership property that may result in tax benefits to the distributee, potentially at the expense of the remaining partners, is minimized. Further, because the transaction occurs among related persons, the overall economic ownership of the property among the related partners remains the same as before the transaction.

As a result of the basis increase to the distributed property, the partnership may be required to decrease the basis of one or more of its remaining properties under the elective or mandatory basis adjustment provisions of section 734(b)(2) or (d). The parties may plan the transaction so that this reduction in basis will not have an adverse tax effect on the related parties because the partnership can allocate the basis reduction to property the partnership intends to hold indefinitely and that is not eligible for cost recovery allowances.

The related parties may achieve similar results through a transaction in which the partnership is liquidated. In a Partnership Related-Party Basis Adjustment Transaction in which a partnership makes liquidating distributions to all partners, a partner with a high outside basis (distributee partner) receives a liquidating distribution of low-inside basis property that is eligible for cost recovery allowances or that the distributee partner disposes of in a taxable sale or exchange. The partnership also distributes property to one or more parties related to the distributee partner (related distributee partner(s)), and such distribution may require a reduction to the basis of property under section 732(b) because the related distributee partner's basis in the partnership interest at the time of liquidation may be low compared to the partnership's basis in the distributed property. Similar to the version of the transaction in which only the distributee partner's partnership interest is liquidated, the property that is subject to reduction in basis as a result of the liquidation may be property that the related distributee partner(s) intend to hold indefinitely and that is not eligible for cost recovery allowances.

E. Partnership Related-Party Basis Adjustment Transactions Under Section 732(d)

In a Partnership Related-Party Basis Adjustment Transaction under section 732(d), a partnership with two or more direct or indirect partners that are related makes a current or liquidating distribution of property to a related partner. Prior to the distribution, the related partner acquired all or part of its partnership interest in a transaction that would have been a Partnership Related-Party Basis Adjustment Transaction under section 743(b) if the partnership had a section 754 election in effect.

The subsequent property distribution to the related transferee partner is made within two years of the transfer (in the case of an elective basis adjustment

under section 732(d)) or at any time after the transfer if at the time of the transfer the fair market value of the partnership's property (other than money) exceeded 110 percent of the property's adjusted basis to the partnership (in the case of a mandatory basis under section 732(d)). In either case, under section 732(d), for purposes of section 732(a), (b), and (c), the adjusted partnership basis of the distributed property is treated as equal to the adjusted basis the property would have had if the basis adjustment under section 743(b) were in effect at the time of the transfer.

As part of the transaction, the related distributee partner receives property with a higher basis than the property had before the transaction and either the property is eligible for cost recovery allowances or the distributee partner recovers the property's basis by disposing of it in a taxable sale or exchange.

Similar to a Partnership Related-Party Basis Adjustment Transaction under section 732(b), because the transaction occurs among related parties, any economic consequences inherent in distributing partnership property to a partner that, as a result of the distribution, will receive tax benefits is lessened or eliminated. Further, because the transaction occurs among related persons, the economic ownership of the property remains essentially the same as before the transaction.

V. Tax-Indifferent Parties Involved in Partnership Basis Adjustment Transactions

The Treasury Department and the IRS are aware that persons using partnerships that include tax-indifferent parties as partners may undertake transactions that accomplish the same results as the Partnership Related-Party Basis Adjustment Transactions. These transactions may take the form of any of the variations of the transactions described in part IV of this Background section and produce the same tax benefits for the taxable partners, except that the partners may not be related and negative tax consequences resulting from the transactions are borne by the tax-indifferent party. For example, a partnership with a section 754 election in effect and unrelated partners, one of which is a tax-indifferent party with a low outside basis, may distribute high-basis nondepreciable property to the tax-indifferent party. Under section 732(a)(2) or (b), the distribution results in the tax-indifferent party taking a basis in the distributed property that is lower than the partnership's basis in the property immediately before the

distribution. Under section 734(b), the partnership must adjust the basis of its remaining property and, as part of the transaction under sections 734(c) and 755, it increases the basis of depreciable property. Since the distributee partner is a tax-indifferent party, it does not experience any negative tax consequences from receiving property subject to a basis decrease as a result of the distribution. At the same time, the partners that are not tax-indifferent receive the tax benefit of increased cost recovery allowances through the partnership.

VI. Potential Tax Avoidance Using Partnership Related-Party Basis Adjustment Transactions

In Partnership Related-Party Basis Adjustment Transactions, related persons use partnerships to engage in transactions that inappropriately apply the basis adjustments under section 732, 734(b), or 743(b). These provisions can be exploited to create inappropriate basis increases to the partnership's properties, including any distributed property, but without meaningful change in the economic ownership of the properties or partnership interests because the parties involved in the transactions are related. The basis increases may be used to increase cost recovery allowances or decrease taxable gain or increase taxable loss on the subsequent taxable disposition of the property by the partnership or distributee partner.

The Treasury Department and the IRS propose to identify the Partnership Related-Party Basis Adjustment Transactions and substantially similar transactions as transactions of interest under proposed regulations described in the Explanation of Provisions section of this preamble. Identifying the transactions as transactions of interest would substantially improve the IRS's ability to detect abusive transactions and gather information about their prevalence and the contexts in which they arise.

Explanation of Provisions

I. Partnership Related-Party Basis Adjustment Transactions of Interest

Proposed § 1.6011-18(a) would identify transactions that are the same as or substantially similar (within the meaning of § 1.6011-4(c)(4)) to transactions described in proposed § 1.6011-18(c) as transactions of interest for the purposes of § 1.6011-4(b)(6). Proposed § 1.6011-18(c) would include a relatedness requirement and a \$5 million minimum threshold requirement. Further, proposed

§ 1.6011-18(a) would identify transactions that are substantially similar (within the meaning of § 1.6011-4(c)(4)) to the transactions described in proposed § 1.6011-18(c) as including the transactions described in proposed § 1.6011-18(d).

The relatedness requirement would be set forth in proposed § 1.6011-18(b)(8) and (9). Proposed § 1.6011-18(b)(8) would define "related" as having a relationship described in section 267(b) (without regard to section 267(c)(3)) or 707(b)(1). Proposed § 1.6011-18(b)(9) would define "related partners" as partners of a partnership that are related in the following manner—(i) in a transaction described in proposed § 1.6011-18(c)(1), the partnership has two or more direct or indirect partners that are related to each other within the meaning of proposed § 1.6011-18(b)(8), or (ii) in a transaction described in proposed § 1.6011-18(c)(2), the transferor of a partnership interest is related to the transferee, or the transferee is related to one or more of the partners in the partnership, within the meaning of proposed § 1.6011-18(b)(8). The relatedness requirement may be met either immediately before or immediately after a basis adjustment transaction described in proposed § 1.6011-18(c)(1) or (2).

Proposed § 1.6011-18(c) would provide that a transaction of interest is a transaction the factual elements of which are described in proposed § 1.6011-18(c)(1)(i) through (iii) or (c)(2). A basis adjustment transaction under proposed § 1.6011-18(c)(1)(i) would occur when a partnership makes a current or liquidating distribution of property to a partner who is related to one or more partners, the partnership increases the basis of one or more of its remaining properties under section 734(b) and (c), and the \$5 million threshold under proposed § 1.6011-18(c)(3) is met.

A basis adjustment transaction under proposed § 1.6011-18(c)(1)(ii) would occur when a partnership distributes property to a partner who is related to one or more partners in liquidation of a partnership interest (or in complete liquidation of the partnership), the basis of one or more distributed properties is increased under section 732(b) and (c), and the \$5 million threshold under proposed § 1.6011-18(c)(3) is met.

A basis adjustment transaction under proposed § 1.6011-18(c)(1)(iii) would occur when a partnership distributes property to a partner who is related to one or more partners, the basis of one or more distributed properties is increased under section 732(d), the related partner acquired all or a part of

its interest in the partnership in a transaction that would have been a transaction described in proposed § 1.6011-18(c)(2) if the partnership had a section 754 election in effect for the year of transfer, and the \$5 million threshold under proposed § 1.6011-18(c)(3) is met.

A basis adjustment transaction under proposed § 1.6011-18(c)(2) would occur when a partner transfers an interest in the partnership to a related transferee or to a person who is related to one or more existing partners in a nonrecognition transaction, the basis of one or more partnership properties is increased under section 743(b)(1) and (c), and the \$5 million threshold under proposed § 1.6011-18(c)(3) is met. Proposed § 1.6011-18(b)(2) would define nonrecognition transaction as defined in section 7701(a)(45) (other than a transfer on the death of a partner).

Proposed § 1.6011-18(c)(3) would provide rules for determining the \$5 million threshold. Under proposed § 1.6011-18(c)(3), a basis adjustment would include basis increases from multiple transactions described in proposed § 1.6011-18(c)(1) or (2) by the same partner or partnership during the taxable year that in the aggregate (without netting for any basis adjustments in the same transaction or another transaction that reduces basis) and after reducing the resulting aggregate amount by the gain recognized, if any, on which tax imposed under subtitle A of the Code (subtitle A) is required to be paid by any of the related parties to the transaction equal or exceed \$5 million.

Accordingly, a transaction of a partner or partnership described in proposed § 1.6011-18(c)(1) or (2) that results in a basis increase of less than \$5 million during the taxable year would be a transaction of interest under proposed § 1.6011-18(a) if, in the same taxable year, the partner or partnership participated in another transaction or transactions described in proposed § 1.6011-18(c)(1) or (2), and in the aggregate, the transactions resulted in a basis increase that equals or exceeds \$5 million, without regard to any basis decrease resulting from the transactions and after reducing the resulting aggregate amount by the gain recognized, if any, on which tax imposed under subtitle A is required to be paid by any of the related parties to the transactions. A threshold of \$5 million of basis increases in a taxable year to which no corresponding tax is paid should be sufficiently large to capture situations that use the provisions of subchapter K to produce

significant tax benefits with little or no economic impact.

If a basis adjustment transaction is described in proposed § 1.6011–18(c)(1)(i) through (iii) or (c)(2), any basis adjustments to recoverable property must be reported in the taxable year of the basis adjustment transaction, in each taxable year there is a cost recovery allowance, and in the taxable year the recoverable property is disposed of in a transaction in which gain or loss is recognized in whole or in part. Any basis adjustments to other property must be reported in the taxable year of the basis adjustment transaction and the taxable year in which the other property is disposed of in a transaction in which gain or loss is recognized in whole or in part. See proposed § 1.6011–18(e) and (f).

Proposed § 1.6011–18(b)(7) would define recoverable property as property of a character subject to an allowance for depreciation, amortization, or depletion under subtitle A of the Code.

II. Examples of Partnership Related-Party Basis Adjustment Transactions of Interest

The following examples illustrate the transactions of interest described in proposed § 1.6011–18(c).

A. Example 1. A Partnership Related-Party Basis Adjustment Transaction Under Proposed § 1.6011–18(c)(1)(i)

XY Partnership is owned by partners X and Y. The partners are related to each other within the meaning of proposed § 1.6011–18(b)(8) and (b)(9)(i). Each partner directly owns 50 percent of the capital and profits interests in XY Partnership and shares losses equally. X has an outside basis of \$10 million, and Y has an outside basis of \$1 million. XY Partnership owns property it uses in its trade or business, including Property 1 and Property 2. For Federal income tax purposes, Property 1 is depreciable property and Property 2 is nondepreciable property. XY Partnership has an adjusted basis in Property 1 of zero, and an adjusted basis in Property 2 of \$10 million.

XY Partnership has a section 754 election in effect for the taxable year and makes a current distribution of Property 2 to Y. Under section 732(a)(2), Y's basis in distributed Property 2 is limited to Y's adjusted basis in its partnership interest of \$1 million. As a result of the distribution to Y, Property 2's adjusted basis is decreased from \$10 million immediately before the distribution to \$1 million in Y's hands. Under section 734(b), XY Partnership must increase the basis of its remaining property. The amount of the basis

increase is equal to the excess of XY Partnership's basis in Property 2 immediately before the distribution of \$10 million over Y's adjusted basis in Property 2 after the distribution of \$1 million, which results in an increase to the basis of XY Partnership's remaining property of \$9 million.

Under sections 734(c) and 755 and the regulations thereunder, XY Partnership allocates the basis increase of \$9 million to Property 1. As a result, XY Partnership claims depreciation deductions based on an increased basis in Property 1.

B. Example 2. A Partnership Related-Party Basis Adjustment Transaction Under Proposed § 1.6011–18(c)(1)(ii)

DEF Partnership is owned by partners D, E and F. The partners are related to each other within the meaning of proposed § 1.6011–18(b)(8) and (b)(9)(i). D's outside basis is \$7 million. E and F each have an outside basis of \$1 million. DEF Partnership owns only two properties, Property 1 and Property 2, both of which it uses in its trade or business. For Federal income tax purposes, Property 1 is depreciable property and Property 2 is nondepreciable property. DEF Partnership has an adjusted basis in Property 1 of zero, and an adjusted basis in Property 2 is \$9 million.

DEF Partnership distributes Property 1 to D in liquidation of D's partnership interest. Under section 732(b), D's basis in distributed Property 1 is equal to \$7 million. As a result, D claims depreciation deductions based on a \$7 million basis in Property 1.

C. Example 3. A Partnership Related-Party Basis Adjustment Transaction Under Proposed § 1.6011–18(c)(1)(iii)

XYZ Partnership is owned by partners X, Y and Z. The partners are related to each other within the meaning of proposed § 1.6011–18(b)(8) and (b)(9)(i). Each partner directly owns one-third of the capital and profits interests in XYZ Partnership and shares losses equally.

XYZ Partnership owns Property 1, Property 2, and Property 3. Property 1 is depreciable property, and XYZ Partnership's adjusted basis in Property 1 is zero. Property 2 and Property 3 are nondepreciable property.

X acquired its interest in XYZ Partnership in a nonrecognition transaction from a person related to X within the meaning of proposed § 1.6011–18(b)(8). At the time of the transfer, XYZ Partnership did not have a section 754 election in effect. Immediately after the transfer, X's outside basis was \$12 million and share of inside basis was \$2 million. If XYZ

Partnership had a section 754 election in effect at the time of the transfer, XYZ Partnership would have adjusted X's share of inside basis under section 743(b). Assume that the adjustment under section 743(b) would have resulted in a basis increase to Property 1 of \$10 million.

In a taxable year that is within two years of the transfer of the partnership interest to X, XYZ Partnership makes a current distribution of Property 1 to X. Under section 732(a)(1), X's adjusted basis in Property 1 is zero. However, X makes an election under section 732(d) to adjust the basis of Property 1 to the adjusted basis it would have if the adjustment under section 743(b) were in effect with respect to the partnership property at the time X acquired its interest. As a result of the election under 732(d), because the adjusted basis of Property 1 under section 743(b) with respect to X would have been increased by \$10 million, X takes a basis in Property 1 equal to \$10 million and claims depreciation deductions based on a \$10 million basis in Property 1.

D. Example 4. A Partnership Related-Party Basis Adjustment Transaction Under Proposed § 1.6011–18(c)(2)

AB Partnership is owned by partners A and B. A owns 95 percent of the capital and profits interests in AB Partnership and is allocated 95 percent of all losses. B owns 5 percent of the capital and profits interests in AB Partnership and is allocated 5 percent of all losses. A's outside basis is \$6 million and share of inside basis is \$1 million. AB Partnership owns depreciable property it uses in a trade or business.

In a taxable year in which AB Partnership has a section 754 election in effect, A transfers its entire partnership interest to C, a person related to A within the meaning of proposed § 1.6011–18(b)(8) and (b)(9)(ii), in a nonrecognition transaction in which no gain was recognized. Because AB Partnership has a section 754 election in effect for the taxable year of the transfer, under section 743(b)(1), AB Partnership increases the basis of the partnership property with respect to C by \$5 million.

Assume that under sections 743(c) and 755 and the regulations thereunder, the basis increase with respect to C of \$5 million is allocated to partnership property that is depreciable. As a result, C may be allocated depreciation deductions over the recovery periods of the partnership properties equal to the amount of the basis increase under section 743(b)(1).

III. Substantially Similar Transactions

Proposed § 1.6011–18(a) would provide that substantially similar transactions include, but are not limited to, the transactions described in proposed § 1.6011–18(d). For purposes of proposed § 1.6011–18, transactions would be “substantially similar” transactions if the transactions are substantially similar within the meaning of § 1.6011–4(c)(4).

Under proposed § 1.6011–18(d)(1), a transaction would be substantially similar to a transaction described in proposed § 1.6011–18(c) if the transaction is a basis adjustment transaction described in proposed § 1.6011–18(c)(1) or (2), except that it does not involve related partners and one or more partners of the partnership is a tax-indifferent party. Under proposed § 1.6011–18(b)(11), a tax-indifferent party would mean a person that is either not liable for Federal income tax because of its tax-exempt or, in certain cases, foreign status or to which gain from a transaction described in proposed § 1.6011–18(c) would not result in Federal income tax liability for the person’s taxable year within which such gain is recognized (for example, because the taxpayer has a net operating loss carryforward or capital loss carryforward).

Under proposed § 1.6011–18(d)(2), a transaction would be substantially similar to a transaction described in proposed § 1.6011–18(c) in situations in which a partner transfers its partnership interest in a recognition transaction to a related transferee or to a person related to one or more existing partners, and the \$5 million threshold under proposed § 1.6011–18(c)(3) is met. Proposed § 1.6011–18(b)(6) would define a recognition transaction as a transaction other than a nonrecognition transaction as defined in proposed § 1.6011–18(b)(2).

IV. Persons Treated as Participants

Whether a taxpayer has participated in a transaction of interest described in proposed § 1.6011–18(c) during a taxable year is determined under proposed § 1.6011–18(e). Participants would include a participating partner within the meaning of proposed § 1.6011–18(b)(3), a participating partnership within the meaning of proposed § 1.6011–18(b)(4), and a related subsequent transferee within the meaning of proposed § 1.6011–18(b)(10). A participant would also include a tax-indifferent party within the meaning of proposed § 1.6011–18(b)(11).

Proposed § 1.6011–18(b)(3) would define “participating partner” as any

partner that directly receives a distribution of property or an interest in a participating partnership, or directly transfers an interest in a participating partnership, in a transaction described in proposed § 1.6011–18(c), including a person that becomes or ceases to be a partner as a result of such transaction. Accordingly, except for in the case of a related subsequent transferee, the proposed regulations would impose the disclosure requirement only on the direct distributee, transferor, or transferee in the transaction of interest identified under proposed § 1.6011–18(a). The person identified as the participating partner must be the owner for Federal income tax purposes of the partnership interest. As a result, in the case of a partnership interest held by a disregarded entity, the participating partner would be the owner of the disregarded entity for Federal income tax purposes. In the case of a partnership interest held by a grantor trust, the participating partner would be the grantor or owner of the grantor trust. Similar principles would be applied in determining the participating partner in circumstances similar to the disregarded entity or grantor trust situations. Under proposed § 1.6011–18(e)(2), a participating partner would participate in a transaction of interest in any taxable year in which the partner directly receives a distribution of property or an interest in a participating partnership, or directly transfers an interest in a participating partnership, in a transaction described in proposed § 1.6011–18(c).

Proposed § 1.6011–18(b)(4) would define “participating partnership” as any partnership that makes a distribution of property to a participating partner in a transaction described in proposed § 1.6011–18(c)(1), or a partnership interest of which was transferred in a transaction described in proposed § 1.6011–18(c)(2). Under proposed § 1.6011–18(e)(3), a participating partnership would participate in a transaction of interest in any taxable year in which (i) the partnership makes a distribution of property to a participating partner in a transaction described proposed § 1.6011–18(c)(1) or (ii) a participating partnership interest is transferred in a transaction described proposed § 1.6011–18(c)(2).

Proposed § 1.6011–18(b)(10) would define “related subsequent transferee” as any person related within the meaning of proposed § 1.6011–18(b)(8) to a participating partner that directly received in a nonrecognition transaction a transfer (including a distribution) of property that was subject to an increase

in basis as a result of a transaction described in proposed § 1.6011–18(c). Under proposed § 1.6011–18(e)(4), any direct transfer, in a nonrecognition transaction, to a related person of property subject to a basis increase resulting from a transaction described in proposed § 1.6011–18(c) would result in the related subsequent transferee becoming a participant in the transaction of interest identified under proposed § 1.6011–18(a). However, any subsequent transfer (including a distribution) by the related subsequent transferee to a transferee would not cause that transferee to become a participant.

Proposed § 1.6011–18(e)(5) would provide that a participating partnership, participating partner, or related subsequent transferee also participates in a transaction described in proposed § 1.6011–18(c) in any taxable year in which its tax return reflects the Federal income tax consequences of the basis increase from such transaction.

V. Information Disclosure Requirements

Proposed § 1.6011–18(f) would require participants to provide the information required under § 1.6011–4(d) and the Instructions to Form 8886 (or successor form). For all participants, describing the transaction in sufficient detail would include (but would not be limited to) describing on Form 8886 (or successor form) an increase in basis resulting from a transaction described in proposed § 1.6011–18(c) by providing the information required in proposed § 1.6011–18(f)(1)(i), through (iii).

Proposed § 1.6011–18(f)(1)(i) would require reporting of the names and identifying numbers (for example, social security number, employer identification number) of all participants.

Proposed § 1.6011–18(f)(1)(ii) would require participants to provide all basis adjustments resulting from a transaction described in § 1.6011–18(c), and basis information, including the participating partnership’s adjusted basis in the distributed property immediately before the distribution, any adjustments to basis under sections 732(a)(2), (b), (d) or 734(b), any adjustments to basis under section 743(b) with respect to a participating partner that is transferred an interest in a participating partnership, and with respect to a participating partner that transfers an interest in a participating partnership, that participating partner’s adjusted basis in the participating partnership interest and share of the participating partnership’s adjusted basis in its

property immediately before the transfer.

Proposed § 1.6011–18(f)(1)(iii) would require participants to provide information on Form 8886 (or successor form) of any Federal income tax consequences realized during the taxable year as a result of a transaction described in proposed § 1.6011–18(c), including cost recovery allowances attributable to an increase in basis described in proposed § 1.6011–18(c) or taxable gain or loss attributable to the disposition of property that was subject to an increase in basis described in proposed § 1.6011–18(c). In the case of Federal income tax consequences realized after the taxable year of a transaction described in proposed § 1.6011–18(c), such as cost recovery allowances or taxable gain or loss on a disposition, a participant must provide information on the Federal income tax consequences on Form 8886 (or successor form) for the taxable year of realization.

Under proposed § 1.6011–18(f)(2), if the property subject to an increase in basis as a result of a transaction described in proposed § 1.6011–18(c) is disposed of in a subsequent taxable year in a transaction in which gain or loss is recognized in whole or in part, a participant must send a copy of Form 8886 to OTSA, for the taxable year of the disposition, in addition to sending a copy to OTSA in the taxable year of the basis adjustment transaction.

Proposed § 1.6011–18(g) would provide examples of the participants' disclosure requirements for the taxable year in which the transaction of interest occurred and the subsequent taxable years in which a participant continued to realize the Federal income tax consequences of the transaction of interest.

VI. Effect of Transaction Becoming a Transaction of Interest

Participants required to disclose these transactions under § 1.6011–4 who fail to do so would be subject to penalties under section 6707A. Material advisors required to disclose these transactions under section 6111 who fail to do so would be subject to penalties under section 6707. Material advisors required to maintain lists of investors under section 6112 who fail to do so (or who fail to provide such lists when requested by the IRS) would be subject to penalties under section 6708(a). In addition, the IRS may impose other penalties on persons involved in these transactions or substantially similar transactions, including accuracy-related penalties under section 6662 or section 6662A, the penalty under section 6700

of the Code for promoting abusive tax shelters, and the penalty under section 6701 of the Code for aiding and abetting understatement of a tax liability.

In addition, material advisors have disclosure requirements with regard to transactions occurring in prior years. However, notwithstanding § 301.6111–3(b)(4)(i) and (iii), material advisors would be required to disclose only if they have made a tax statement on or after six years before the date of the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

Proposed Applicability Date

Proposed § 1.6011–18(a) would apply to identify certain partnership related-party basis adjustment transactions described in proposed § 1.6011–18(c) and substantially similar transactions as transactions of interest effective as of the date of publication in the **Federal Register** of a Treasury decision adopting these regulations as final regulations.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

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

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) generally requires that a federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public regardless of whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. 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 control number assigned by OMB.

The proposed regulations would contain reporting and recordkeeping requirements that are required to identify increases to the basis of partnership property in certain transactions involving adjustments to the basis of partnership property. These collections of information would generally be used by the IRS for tax compliance purposes and by taxpayers to facilitate proper reporting and recordkeeping.

The proposed regulations would identify certain transactions as

reportable transactions and require partners and partnerships that participate in the transactions, and material advisors that provide advice on the transactions, to meet the reporting requirements under Sections 6011 and 6111, and material advisors to meet the list maintenance requirements of Section 6112. The reporting requirements contained in the proposed regulations would be met by completing Forms 8886 and 8918. These forms have been approved by OMB under control numbers 1545–1800 and 1545–0865, respectively. Accordingly, the proposed regulations would not be creating new collection of information requirements or changing the collection of information requirements already contained in the burden associated with the control numbers for Forms 8886 and 8918.

III. Regulatory Flexibility Act

When an agency issues a proposed rulemaking, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) requires the agency to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on “small entities.” 5 U.S.C. 603(a). The term “small entities” is defined in 5 U.S.C. 601 to mean “small business,” “small organization,” and “small governmental jurisdiction,” which are also defined in 5 U.S.C. 601. Small business size standards define whether a business is “small” and have been established for types of economic activities, or industry, generally under the North American Industry Classification System (NAICS). See 13 CFR part 121 (Small Business Size Regulations). The size standards look at various factors, including annual receipts, number of employees, and amount of assets, to determine whether the business is small. See 13 CFR part 121.201 for the Small Business Size Standards by NAICS Industry.

Section 605 of the RFA provides an exception to the requirement to prepare an initial regulatory flexibility analysis if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS hereby certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities under the RFA.

The IRS's Research, Applied Analytics, and Statistics division (RAAS) estimates that, in the case of a Partnership Related-Party Basis Adjustment Transaction identified as a transaction of interest involving a basis

adjustment under section 743(b), partnerships with gross receipts or sales of \$25 million or less might comprise two-thirds and partnerships with gross receipts or sales of over \$25 million might comprise one-third of all partnerships engaging in the transaction. This data provides an estimate that cannot yet be tested or confirmed without actual reporting of these transactions. Further, although the estimate suggests that the majority (two-thirds) of partnerships subject to reporting might be partnerships with gross receipts or sales of \$25 million or less, the estimate does not indicate that the majority of partnerships subject to reporting will be small entities. The “\$25 million or less” parameter is used as a reference point that does not necessarily correlate with the meaning of small entities under the Small Business Size Regulations. Thus, some or many of the partnerships in the category having gross receipts or sales of \$25 million or less might be too large to meet the size standards for small businesses under the Small Business Size Regulations. In addition, the data does not indicate whether the partnerships with gross receipts or sales of \$25 million or less are part of larger enterprises.

The proposed regulations will not have a significant economic impact on small entities because the proposed regulations would implement sections 6111 and 6112 and § 1.6011-4 by specifying the manner in which and the time at which a Partnership Related-Party Basis Adjustment Transaction identified as a transaction of interest must be reported. Accordingly, because the proposed regulations would be limited in scope to time and manner of information reporting, their economic impact is expected to be minimal.

The Treasury Department and the IRS expect that the reporting burden is low because the information sought is necessary for regular annual return preparation and ordinary recordkeeping. The estimated burden for any taxpayer required to file Form 8886 is approximately 10 hours, 16 minutes for recordkeeping, 4 hours, 50 minutes for learning about the law or the form, and 6 hours, 25 minutes for preparing, copying, assembling, and sending the form to the IRS. RAAS estimates that the appropriate wage rate for complying with the proposed regulations is \$102.00 (2022 dollars) per hour. Thus, it is estimated that persons required to comply with the proposed regulations would incur costs totaling approximately \$2,194.70 per filing. This amount is small in comparison to the \$5 million or more of basis increase in a

Partnership Related-Party Basis Adjustment Transaction identified as a transaction of interest. As a result, the relatively small cost to comply with the proposed regulations will not pose any significant economic impact to any small entities that would be subject to the proposed regulations.

For the reasons stated, a regulatory flexibility analysis under the RFA is not required. The Treasury Department and the IRS invite comments on the impact of the proposed regulations on small entities.

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

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 proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

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

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be made available at [https://](https://www.regulations.gov)

www.regulations.gov. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for September 17, 2024 beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by August 19, 2024. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by August 19, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must contain the regulation number REG-124593-23 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG-124593-23.

Individuals who want to testify by telephone at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-125593-23 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-124593-23.

Individuals who want to attend the public hearing in person without testifying must also send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must contain the regulation number REG-

124593–23 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG–124593–23. Requests to attend the public hearing must be received by 5 p.m. ET on September 13, 2024.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–124593–23 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–124593–23. Requests to attend the public hearing must be received by 5 p.m. ET on September 13, 2024.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317–6901 (not a toll-free number) at least September 12, 2024.

Drafting Information

The principal author of these proposed regulations is Elizabeth Zanet, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry for § 1.6011–18 in numerical order to read in part as follows:

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

Section 1.6011–18 also issued under 26 U.S.C. 6001 and 26 U.S.C. 6011.

* * * * *

■ **Par. 2.** Section 1.6011–18 is added to read as follows:

§ 1.6011–18 Certain partnership related-party basis adjustment transactions as transactions of interest.

(a) *Identification as transaction of interest.* Transactions that are the same as or substantially similar (within the meaning of § 1.6011–4(c)(4)) to the transactions described in paragraph (c) of this section are identified as transactions of interest for purposes of § 1.6011–4(b)(6). Transactions that are substantially similar (within the meaning of § 1.6011–4(c)(4)) to the transactions described in paragraph (c) of this section include, but are not limited to, transactions described in paragraph (d) of this section.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *Code* means the Internal Revenue Code.

(2) *Nonrecognition transaction* means a nonrecognition transaction within the meaning of section 7701(a)(45) of the Code (other than a transfer on the death of a partner).

(3) *Participating partner* means any partner that directly receives a distribution of property or an interest in a participating partnership, or directly transfers an interest in a participating partnership, in a transaction described in paragraph (c) of this section, including a person that becomes or ceases to be a partner as a result of such transaction. In the case of a participating partnership interest held by an entity that is disregarded as separate from its owner within the meaning of § 301.7701–2(c)(2)(i) of this chapter, participating partner means the owner of the disregarded entity for Federal income tax purposes. In the case of a participating partnership interest held by a grantor trust within the meaning of section 671 of the Code, participating partner means the grantor or other person designated under sections 671 through 679 of the Code as the owner of that portion of the trust that holds the participating partnership interest.

(4) *Participating partnership* means any partnership—

(i) That makes a distribution of property to a participating partner in a transaction described in paragraph (c)(1) of this section, or

(ii) A partnership interest which is transferred in a transaction described in paragraph (c)(2) of this section.

(5) *Participating partnership interest* means any partnership interest in a participating partnership.

(6) *Recognition transaction* means a transaction other than a nonrecognition transaction within the meaning of paragraph (b)(2) of this section.

(7) *Recoverable property* means property of a character subject to an allowance for depreciation, amortization, or depletion under subtitle A of the Code (subtitle A).

(8) *Related* means having a relationship described in section 267(b) of the Code (without regard to section 267(c)(3)) or section 707(b)(1) of the Code.

(9) *Related partners* mean partners of a partnership that are related in the following manner:

(i) In the case of a transaction described in paragraph (c)(1) of this section, the partnership has two or more direct or indirect partners that are related immediately before or immediately after a transaction described in paragraph (c)(1) of this section.

(ii) In the case of a transaction described in paragraph (c)(2) of this section, the transferor of a partnership interest is related to the transferee, or the transferee is related to one or more of the partners in the partnership, immediately before or immediately after a transaction described in paragraph (c)(2) of this section.

(10) *Related subsequent transferee* means any person who is related to a participating partner and directly received in a nonrecognition transaction, a transfer (including a distribution) of property that was subject to an increase in basis as a result of a transaction described in paragraph (c) of this section.

(11) *Tax-indifferent party* means a person that is either not liable for Federal income tax because of its tax-exempt or, in certain cases, foreign status or to which gain from a transaction described in paragraph (c) of this section would not result in Federal income tax liability for the person's taxable year within which such gain is recognized.

(c) *Transaction description.* A transaction is described in this paragraph (c) if the factual elements of the transaction described in paragraph (c)(1)(i) through (iii) or (c)(2) of this section are met.

(1) *Distributions by partnership.* A partnership engages in any of the transactions described in paragraphs (c)(1)(i) through (iii) of this section with one or more of the related partners:

(i) The partnership distributes property to a person who is a related partner in a current or liquidating distribution, the partnership increases the basis of one or more of its remaining properties under section 734(b) and (c) of the Code, and the \$5 million threshold described in paragraph (c)(3) of this section is met.

(ii) The partnership distributes property to a person who is a related partner in liquidation of the person's partnership interest (or in complete liquidation of the partnership), the basis of one or more distributed properties is increased under section 732(b) and (c) of the Code, and the \$5 million threshold described in paragraph (c)(3) of this section is met.

(iii) The partnership distributes property to a person who is a related partner, the basis of one or more distributed properties is increased under section 732(d) of the Code, the related partner acquired all or a part of its interest in the partnership in a transaction that would have been a transaction described in paragraph (c)(2) of this section if the partnership had a section 754 election in effect for the year of transfer, and the \$5 million threshold described in paragraph (c)(3) of this section is met.

(2) *Transfer of partnership interest.* A partner transfers an interest in a partnership to a related partner in a nonrecognition transaction, the basis of one or more partnership properties is increased under section 743(b)(1) and (c) of the Code, and the \$5 million threshold described in paragraph (c)(3) of this section is met.

(3) *\$5 million threshold.* For the purpose of determining whether a transaction is described in paragraph (c)(1), (c)(2), (d)(1), or (d)(2) of this section, the \$5 million threshold is met for a taxable year if the sum of all basis increases resulting from all such transactions of a partnership or partner during the taxable year (without netting for any basis adjustment in the same transaction or another transaction that reduces basis) exceeds by at least \$5 million the gain recognized from such transactions, if any, on which tax imposed under subtitle A is required to be paid by any of the related partners (or tax-indifferent party, in the case of a transaction described in paragraphs (d)(1) and (2) of this section) to such transactions.

(d) *Substantially similar transaction.* A transaction that is substantially similar (within the meaning of § 1.6011-4(c)(4)) to a transaction described in paragraph (c) of this section includes, but is not limited to:

(1) A transaction that is described in paragraph (c) of this section except that the partners of the partnership are not related and one or more partners of the partnership is a tax-indifferent party that facilitates, by receiving a distribution of property from the partnership or otherwise, an increase in the basis of partnership property or an

increase in the basis of property held by another partner in the partnership; and

(2) A transaction in which a partner transfers an interest in a partnership to a related partner in a recognition transaction, and the \$5 million threshold described in paragraph (c)(3) of this section is met.

(e) *Participation*—(1) *In general.* Whether a taxpayer has participated in a transaction of interest described in paragraph (c) of this section during a taxable year is determined under this paragraph (e).

(2) *Participating partners.* A participating partner participates in a transaction of interest described in paragraph (c) of this section in any taxable year in which the partner directly receives a distribution of property or an interest in a participating partnership, or directly transfers an interest in a participating partnership, in a transaction described in paragraph (c) of this section.

(3) *Participating partnerships.* A participating partnership participates in a transaction of interest described in paragraph (c) of this section in any taxable year in which the partnership makes a distribution of property to a participating partner in a transaction described in paragraph (c)(1) of this section, or a participating partnership interest is transferred in a transaction described in paragraph (c)(2) of this section.

(4) *Related subsequent transferees.* A related subsequent transferee participates in a transaction of interest described in paragraph (c) of this section in any taxable year in which the related subsequent transferee directly receives, in a nonrecognition transaction, a transfer (including a distribution) of property that was subject to an increase in basis as a result of a transaction described in paragraph (c) of this section.

(5) *Subsequent realization of tax benefit.* A participating partnership, participating partner or related subsequent transferee also participates in a transaction of interest described in paragraph (c) of this section in any taxable year in which its tax return reflects the tax consequences of a basis increase resulting from a transaction of interest described in paragraph (c) of this section. For example, if a participating partner sells property the basis of which has been increased as a result of a transaction of interest described in paragraph (c) of this section during a taxable year after the year in which the transaction of interest described in paragraph (c) of this section resulting in the basis increase occurred, the participating partner

participates in a transaction of interest described in paragraph (c) of this section during the taxable year(s) in which the tax consequences of the sale are reported on the participating partner's tax return.

(f) *Disclosure requirements*—(1) *In general.* Participants must provide the information required under § 1.6011-4(d) and the Instructions to Form 8886, *Reportable Transaction Disclosure Statement* (or successor form) for each taxable year in which the participant participated in a transaction described in paragraph (c) of this section as determined under paragraph (e) of this section. For all participants, describing the transaction in sufficient detail includes describing the information described in paragraphs (f)(1)(i) through (iii) of this section, as applicable, on Form 8886 (or successor form) for the taxable year of a transaction described in paragraph (c) of this section.

(i) The names and identifying numbers of all participants, including the participating partnership, participating partners and any related subsequent transferees or tax-indifferent parties.

(ii) All basis adjustments resulting from a transaction described in paragraph (c) of this section, and basis information, including the participating partnership's adjusted basis in the distributed property immediately before the distribution, any adjustments to basis under section 732(a)(2), (b), (d) or 734(b), any adjustments to basis under section 743(b) with respect to a participating partner that is transferred an interest in a participating partnership, and with respect to a participating partner that transfers an interest in a participating partnership, that participating partner's adjusted basis in the participating partnership interest and share of the participating partnership's adjusted basis in its property immediately before the transfer.

(iii) Any Federal income tax consequences realized during the taxable year, as a result of a transaction described in paragraph (c) of this section, including cost recovery allowances attributable to an increase in basis as a result of a transaction described in paragraph (c) of this section, and taxable gain or taxable loss attributable to the disposition of property that was subject to an increase in basis as a result of a transaction described in paragraph (c) of this section. For example, in the case of a distribution of depreciable property that was subject to an increase in basis as a result of a transaction described in paragraph (c) of this section, the Federal

income tax consequences realized during the taxable year include the basis increase and cost recovery allowances attributable to the basis increase during the taxable year.

(2) *Disposition in subsequent taxable years.* If the property subject to an increase in basis as a result of a transaction described in paragraph (c) of this section is disposed of in a transaction in which gain or loss is recognized in whole or in part in a subsequent taxable year, the participant must send a copy of Form 8886 to the Office of Tax Shelter Analysis (OTSA). This requirement is in addition to the requirement that a participant send a copy of Form 8886 to OTSA for the taxable year of the basis increase.

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

(1) *Example 1: Reporting by a participating partner and participating partnership in the taxable year of the transaction, including cost recovery allowances—(i) Facts.* ABC Partnership is owned by partners A, B and C. Partners A, B and C are related within the meaning of paragraphs (b)(8) and (9) of this section. At the beginning of taxable year 1, ABC Partnership distributes a depreciable asset, Property X, to Partner A in liquidation of Partner A's interest in ABC Partnership. The distribution is a transaction described in paragraph (c)(1)(ii) of this section. As a result of the distribution, the basis of Property X is increased by \$5 million. On its tax return for taxable year 1, Partner A reports deductions for depreciation expense attributable to the \$5 million increase in the basis of Property X resulting from the transaction under paragraph (c)(1)(ii) of this section. ABC Partnership and Partner A have the same taxable year.

(ii) *Analysis.* Partner A is a participant during taxable year 1 within the meaning of paragraph (e) of this section because it is a participating partner within the meaning of paragraph (b)(3) of this section since it directly received a distribution of property during taxable year 1 in a transaction described in paragraph (c) of this section. ABC Partnership is a participant during taxable year 1 within the meaning of paragraph (e) of this section because it is a participating partnership within the meaning of paragraph (b)(4) of this section since it made a distribution of property to a participating partner during taxable year 1 in a transaction described in paragraph (c) of this section. As part of its disclosure requirements under paragraph (f) of this section and § 1.6011-4(d) and (e), Partner A must disclose the distribution as a transaction of interest under this

section on Form 8886 (or successor form) and file the form with its tax return for taxable year 1. Partner A must include the information described in paragraph (f) of this section, including the amount of the deductions attributable to the \$5 million increase in the basis of Property X resulting from the transaction described in paragraph (c)(1)(ii) of this section. As part of its disclosure requirements under paragraph (f) of this section and § 1.6011-4(d) and (e), ABC Partnership must disclose the distribution as a transaction of interest under this section on Form 8886 (or successor form) and file the form with its tax return for taxable year 1, including the information described in paragraph (f) of this section. In addition, Partner A and ABC Partnership must send a copy of their respective Form 8886 (or successor form) to OTSA.

(2) *Example 2: Reporting of the Federal income tax consequences (cost recovery allowances) of the transaction in all taxable years—(i) Facts.* Under the same facts as in paragraph (g)(1)(i) of this section (*Example 1*), on its tax returns for taxable years 2 through 5, Partner A reports deductions for depreciation expense attributable to the \$5 million increase in the basis of Property X related to the transaction described in paragraph (c)(1)(ii) of this section, which occurred in taxable year 1.

(ii) *Analysis.* As part of its disclosure requirements under paragraph (f) of this section and § 1.6011-4(d) and (e), Partner A must disclose the deductions on Form 8886 (or successor form) for taxable years 2 through 5 as the Federal income tax consequences of the transaction described in paragraph (c)(1)(ii) of this section. As a result, for each taxable year 2 through 5, Partner A must file the form with its tax return for the taxable year with the information described in paragraph (f) of this section, including the amount of the deductions attributable to the \$5 million increase in the basis of Property X resulting from the transaction described in paragraph (c)(1)(ii) of this section.

(3) *Example 3: Reporting by a participating partner, participating partnership, and related subsequent transferee in the taxable year of the transaction—(i) Facts.* The facts are the same as in paragraph (g)(1)(i) of this section (*Example 1*), except that at the beginning of taxable year 1, ABC Partnership distributes a nondepreciable asset, Land with an adjusted basis of \$1 million, to Partner A in liquidation of Partner A's interest in ABC Partnership. The distribution is a transaction described in paragraph (c)(1)(ii) of this

section. As a result of the distribution, the basis of Land is increased to \$6 million. Subsequently in taxable year 1, Partner A contributes Land to another partnership, AX Partnership, in a transfer that is treated as a contribution of property under section 721(a). Partner A and AX Partnership are related within the meaning of paragraph (b)(8) of this section. ABC Partnership, Partner A and AX Partnership have the same taxable year.

(ii) *Analysis.* Partner A is a participant during taxable year 1 within the meaning of paragraph (e) of this section because it is a participating partner within the meaning of paragraph (b)(3) of this section since it directly received a distribution of property during taxable year 1 in a transaction described in paragraph (c) of this section. ABC Partnership is a participant during taxable year 1 within the meaning of paragraph (e) of this section because it is a participating partnership within the meaning of paragraph (b)(4) of this section since it made a distribution of property to a participating partner during taxable year 1 in a transaction described in paragraph (c) of this section. AX Partnership is a participant during taxable year 1 within the meaning of paragraph (e) of this section because it is a related subsequent transferee within the meaning of paragraph (b)(10) of this section since it directly received in a nonrecognition transaction, a transfer of property during taxable year 1 that was subject to an increase in basis as a result of a transaction described in paragraph (c) of this section. As part of its disclosure requirements under paragraph (f) of this section and § 1.6011-4(d) and (e), Partner A must disclose the distribution as a transaction of interest under this section on Form 8886 (or successor form) and file the form with its tax return for taxable year 1. Partner A must include the information described in paragraph (f) of this section. As part of its disclosure requirements under paragraph (f) of this section and § 1.6011-4(d) and (e), ABC Partnership must disclose the distribution as a transaction of interest under this section on Form 8886 (or successor form) and file the form with its tax return for taxable year 1, including the information described in paragraph (f) of this section. Further, AX Partnership is subject to the disclosure requirements under paragraph (f) of this section and § 1.6011-4(d) and (e). AX Partnership must disclose that it is a related subsequent transferee within the meaning of paragraph (b)(10) of this section that received, in a

nonrecognition transaction, a transfer of property that was distributed in a transaction of interest under this section on Form 8886 (or successor form) and file the form with its tax return for taxable year 1. In addition, Partner A, ABC Partnership and AX Partnership must send a copy of their respective Form 8886 (or successor form) to OTSA.

(4) *Example 4: Reporting of the Federal income tax consequences (reduced taxable gain) of the transaction in the taxable year of disposition of the property—(i) Facts.* Under the same facts as in paragraph (g)(3)(i) of this section (*Example 3*), in taxable year 2, AX Partnership disposes of Land in a taxable sale for its fair market value of \$6 million and recognizes gain of zero.

(ii) *Analysis.* As part of its disclosure requirements under paragraph (f) of this section and § 1.6011-4(d) and (e), AX Partnership must disclose the taxable gain (zero) on the disposition of Land on Form 8886 (or successor form) for taxable year 2 as the Federal income tax consequences of the transaction described in paragraph (c)(1)(ii) of this section. AX must file the form with its tax return for taxable year 2 and send a copy of the form to OTSA.

(h) *Applicability date.* This section's identification of transactions that are the same as or substantially similar (within the meaning of § 1.6011-4(c)(4)) to the transactions described in paragraph (c) of this section as transactions of interest for purposes of § 1.6011-4(b)(6) and sections 6111 and 6112 of the Code is effective on the date the regulations are published as final regulations in the **Federal Register**.

Douglas W. O'Donnell,
Deputy Commissioner.

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Chapter 99

Application of Cost Accounting Standards to Indefinite Delivery Vehicles

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Notice of availability; request for comments.

SUMMARY: The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards Board (CAS Board or the Board), is announcing the availability a document, from case 2021-01, intended to elicit public views on whether and how to amend the Board's rules to address the application of Cost Accounting Standards (CAS) to indefinite delivery vehicles (IDVs).

DATES: Comments must be in writing and must be received by August 19, 2024.

ADDRESSES: Respondents are strongly encouraged to submit comments electronically to ensure timely receipt. Electronic comments may be submitted to OMBCASB@omb.eop.gov. Be sure to include your name, title, organization, and reference case 2021-01. If you must submit by regular mail, please do so at Office of Federal Procurement Policy, 725 17th Street NW, Washington, DC 20503, ATTN: John L. McClung.

Privacy Act Statement: The CAS Board issues this request to elicit public views pursuant to 41 U.S.C. 1502. Submission of comments is voluntary. The information will be used to inform sound decision-making. Please note that all comments received in response to

this document may be posted or released in their entirety, including any personal and business confidential information provided. Do not include any information you would not like to be made publicly available.

Additionally, the OMB System of Records Notice, OMB Public Input System of Records, OMB/INPUT/01, 88 FR 20913 (available at www.federalregister.gov/documents/2023/04/07/2023-07452/privacy-act-of-1974-system-of-records), includes a list of routine uses associated with the collection of this information.

FOR FURTHER INFORMATION CONTACT: John L. McClung, Manager, Cost Accounting Standards Board (telephone: 202-881-9758; email: john.l.mcclung2@omb.eop.gov).

Availability: The full text of the document is available at: <https://www.whitehouse.gov/omb/management/office-federal-procurement-policy/#cost>.

SUPPLEMENTARY INFORMATION:

Application of Cost Accounting Standards to Indefinite Delivery Vehicles (IDVs). The Board is soliciting public views on whether and how to amend its rules to address the application of CAS to IDVs.

Rules, regulations, and standards issued by the Board are codified at 48 CFR chapter 99. In accordance with 41 U.S.C. 1502, the Board is inviting interested persons to provide input on this document. All comments must be in writing and submitted as instructed in the **ADDRESSES** section.

Christine J. Harada,

Senior Advisor Office of Federal Procurement Policy, and Chair, Cost Accounting Standards Board, performing by delegation the duties of the Administrator for Federal Procurement Policy.

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